11-20-92
Vol. 57 No. 225
Pages 54677-54894

federal register

Friday
November 20, 1992

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

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

ALBUQUERQUE, NM

WHEN: December 8, at 9:00 am
WHERE: University of New Mexico
Continuing Education Bldg., Room I
1634 University Blvd., NE
Albuquerque, NM
RESERVATIONS: Julie Stone
505–768–3532

WASHINGTON, DC

WHEN: November 30, at 9:00 am
WHERE: Office of the Federal Register
Seventh Floor Conference Room
800 North Capitol Street, NW, Washington, DC
RESERVATIONS: 202–523–4534

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 317

RIN 3206-AE06

Retention of Senior Executive Service Provisions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on procedures for electing Senior Executive Service (SES) benefits by career SES members appointed to positions at level V of the Executive Schedule or higher. Under Public Law 101-335, additional individuals were entitled to the election; and the law provided that certain individuals could make an election on a retroactive basis. Public Law 102-378 later made certain changes in the retroactive election provision, which are included in the final regulations.

DATES: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Neal Harwood at (202) 606-1610.

SUPPLEMENTARY INFORMATION: Under the Civil Service Reform Act of 1978 (Pub. L. 95-454), career Senior Executive Service (SES) members who received Presidential appointments with Senate confirmation at level V of the Executive Schedule or higher without a break in service were entitled to elect to retain certain SES benefits. These benefits included SES pay, annual and sick leave coverage, retirement coverage, severance pay, and eligibility for performance awards and Presidential rank awards. (5 U.S.C. 3392(c))

Section 7 of Public Law 101-335 of July 17, 1990, extended this election right to certain other career SES members, irrespective of whether the appointment was by the President with Senate confirmation. OPM issued interim regulations on April 16, 1991 (56 FR 15273) to implement Public Law 101-335. Comments were received from one agency and one member of Congress concerning the election of performance awards.

Under the interim regulations, if an affected individual elected to retain eligibility for performance awards, the awards could not be paid on a retroactive basis unlike other provisions that the individual could elect. For example, if an individual who was appointed in November 1986 made an election in May 1991, the individual was not eligible to receive on a retroactive basis performance awards for 1987, 1988, 1989, and 1990.

The reason for this provision was that section 5384 of title 5, United States Code, provides that to be eligible to receive a performance award, an individual must have been under the SES performance appraisal system during the period for which the award is being given and received at least a fully successful rating under subchapter II of chapter 43 of title 5, United States Code. In this case, the individual would not have been under the performance appraisal system for the earlier periods.

Subsequent to the issuance of the interim regulations, Public Law 101-335 was amended by section 7 of Public Law 102-378 (October 2, 1992) to specifically permit the retroactive payment of performance awards under certain conditions. The head of the agency must make a written determination that the individual's performance during the fiscal year for which the award is given was at least fully successful and must consider the recommendation of the agency's Performance Review Board with respect to the award. No award during any fiscal year may be less than 5 percent nor more than 15 percent of the individual's rate of basic pay as of the end of such fiscal year. Since the awards are being made on a retroactive basis, the law also exempts them from the ceiling on aggregate compensation for the calendar year in which they are received.

The regulations at 5 CFR 317.801(d) have been amended to accord with the changes in the law.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

List of Subjects in 5 CFR Part 317

Government employees.

U.S. Office of Personnel Management.
Douglas A. Brook,
Director.

Accordingly, OPM's interim regulations under 5 CFR part 317 published April 16, 1991 (56 FR 15273), are adopted as final with the following changes:

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595.

2. In section 317.801, the introductory text of paragraph (d)(2) and paragraph (d)(2)(iii) are revised and paragraph (d)(2)(iv) is added to read as follows:

§ 317.801 Retention of SES provisions.

* * * * *

(d) *Retroactive election.*

* * * * *

(2) An individual covered by this paragraph (d) shall make an election within 60 days of the effective date of this section which, if any, provisions under paragraph (b) of this section the individual wishes to retain. The election shall be effective as of the date of appointment to the position described in paragraph (d)(1) of this section unless otherwise indicated.

* * * * *

(iii) If Presidential rank awards are elected, the appointee may first receive those awards approved after the election.

(iv) If performance awards are elected, the head of the agency in which the individual is serving shall determine whether to grant awards for any fiscal years prior to fiscal year 1991 and the amount of any such awards. Awards

shall be made in accordance with section 7 of Public Law 102–378 and may not be less than 5 percent nor more than 15 percent of the individual's rate of basic pay as of the end of each fiscal year. The amounts of any awards shall be reported to the Office of Personnel Management, which shall include them in the report it makes to each House of the Congress under 5 U.S.C. 3135.

[FR Doc. 92–28087 Filed 11–19–92; 8:45 am]
BILLING CODE 6325–01–M

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5 CFR Parts 842 and 843

RIN 3206–AE70

Spousal Survivor Benefits Under the Federal Employees Retirement System

AGENCY: Office Of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting final regulations concerning survivor benefits under the Federal Employees Retirement System (FERS). The regulations provide for partial survivor annuities and make editorial and other minor changes to clarify the current regulations. The regulations are needed to implement statutory changes that permit partial survivor annuities and to incorporate improvements from the corresponding Civil Service Retirement System regulations into the FERS regulations.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On March 4, 1992, we published (at 57 FR 7666) proposed rules to make several technical changes to the regulations affecting spousal survivor benefits under the Federal Employees Retirement System (FERS). We proposed to replace the existing regulatory language for FERS with improved language that we had developed for the corresponding provisions under the Civil Service Retirement System (CSRS) and to add a section on receipt of multiple benefits that is already part of the regulations under CSRS. We also proposed to implement section 131 of Public Law 100–238, enacted January 8, 1988, which amended the FERS Act, Public Law 99–335, enacted June 6, 1986, to allow retiring employees, and retirees who marry after retirement, the option of electing to provide one-half the maximum survivor annuity. We received no comments on the proposed regulations. These final rules adopt the proposed rules without change.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Parts 842 and 843

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Douglas A. Brook,
Acting Director.

Accordingly, OPM is amending parts 842 and 843 of Title 5, Code of Federal Regulations, as follows:

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

1. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

2. Section 842.602 is amended by removing the definition of the term, "reduced annuity" and adding in alphabetical order definitions of the terms, "fully reduced annuity" and "one-half reduced annuity," to read as follows:

§ 842.602 Definitions.

* * * * *

Fully reduced annuity means the recurring payments under FERS received by a retiree who has elected the maximum reduction in his or her annuity to provide a current spouse annuity and/or a former spouse annuity or annuities.

* * * * *

One-half reduced annuity means the recurring payments under FERS received by a retiree who has elected one-half of the full reduction in his or her annuity to provide a partial current spouse annuity or a partial former spouse annuity or annuities.

* * * * *

3. In § 842.603, the section heading and paragraphs (a) and (c) are revised to read as follows:

§ 842.603 Election at time of retirement of a fully reduced annuity to provide a current spouse annuity.

(a) A married employee or Member retiring under FERS will receive a fully reduced annuity to provide a current spouse annuity unless—

(1) The employee or Member, with the consent of the current spouse, elects a self-only annuity, a one-half reduced annuity to provide a current spouse annuity, or a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity, in accordance with § 842.604 or § 842.606; or

(2) The employee or Member elects a self-only annuity or a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity, and current spousal consent is waived in accordance with § 842.607.

* * * * *

(c) The amount of the reduction to provide a current spouse annuity under this section is 10 percent of the retiree's annuity.

4. In § 842.604, the section heading, paragraphs (a), (b) and (e), and the introductory text of paragraphs (c) and (d) are revised to read as follows:

§ 842.604 Election at time of retirement of a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity.

(a) An unmarried employee or Member retiring under FERS may elect a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity or annuities.

(b) A married employee or Member retiring under FERS may elect a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity or annuities instead of a fully reduced annuity to provide a current spouse annuity, if the current spouse consents to the election in accordance

with § 842.606 or spousal consent is waived in accordance with § 842.607.

(c) An election under paragraph (a) or (b) of this section is void to the extent that it—

* * * * *

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the month after the former spouse remarries before age 55 or dies, or the former spouse's eligibility for a former spouse annuity terminates under the terms of a qualifying court order, unless—

* * * * *

(e) Except as provided in § 842.614, the amount of the reduction to provide a former spouse annuity equals—

(1) Ten percent of the employee's or Member's annuity if the employee or Member elects a fully reduced annuity; or

(2) Five percent of the employee's or Member's annuity if the employee or Member elects a one-half reduced annuity.

5. In § 842.605, paragraphs (c)(4), (c)(5) and (k)(3) are added and paragraphs (b), (c)(2)(iii), (c)(3), (g)(1), (h)(1), (h)(3), and (k)(1) are revised, to read as follows:

§ 842.605 Election of insurable interest rate.

* * * * *

(b) An insurable interest rate may be elected by an employee or Member electing a fully reduced annuity or a one-half reduced annuity to provide a current spouse annuity or a former spouse annuity or annuities.

(c) * * *

(2) * * *

(iii) The retiree elects a fully reduced annuity to provide a current spouse annuity under § 842.610.

(3) An election of a one-half reduced annuity under § 842.610(b) to provide a current spouse annuity for a current spouse who is the beneficiary of an insurable interest rate is void unless the spouse consents to the election.

(4) If a retiree who had elected an insurable interest rate to benefit a current spouse elects a fully reduced annuity to provide a current spouse annuity (or with the consent of the spouse, a one-half reduced annuity to provide a current spouse annuity) under § 842.610(b), the election of the insurable interest rate is cancelled.

(5)(i) A retiring employee or Member may not elect a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity and an insurable interest rate to benefit the same former spouse.

(ii) If a retiring employee or Member who is required by court order to provide a former spouse annuity elects an insurable interest rate to benefit the former spouse with the court-ordered entitlement—

(A) If the benefit based on the election is greater than or equal to the benefit based on the court order, the election of the insurable interest rate will satisfy the requirements of the court order as long as the insurable interest rate continues.

(B) If the benefit based on the election is less than the benefit based on the court order, the election of the insurable interest rate is void.

(iii) An election under § 842.611 of a fully reduced annuity or a one-half reduced annuity to benefit a former spouse by a retiree who elected and continues to receive an insurable interest rate to benefit that former spouse is void.

* * * * *

(g)(1) When an employee or Member elects both an insurable interest rate, and a fully reduced annuity or a one-half reduced annuity, the combined reduction may exceed the maximum 40 percent reduction in the retired employee's or Member's annuity permitted under section 8420 of title 5, United States Code, applicable to insurable interest annuities.

* * * * *

(h)(1) Except as provided in § 842.604(d), if a retiree who is receiving a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity has also elected an insurable interest rate to benefit a current spouse and if the eligible former spouse remarries before age 55, dies, or loses eligibility under the terms of the court order, and no other former spouse is entitled to a survivor annuity based on an election made in accordance with § 842.611 or a qualifying court order, the retiree may elect, within 2 years after the former spouse's remarriage, death, or loss of eligibility under the terms of the court order, to convert the insurable interest rate to a fully reduced annuity to provide a current spouse annuity, effective on the first day of the month following the event causing the former spouse to lose eligibility.

* * * * *

(3) When a former spouse receiving an annuity under section 8445 of title 5, United States Code, loses eligibility to that annuity, a beneficiary of an insurable interest rate who was the current spouse at both the time of the retiree's retirement and death may, within 2 years after the former spouse's death, remarriage, or loss of eligibility under the terms of the court order, elect to receive a current spouse annuity instead of the annuity he or she had been receiving.

The election is effective on the first day of the month following the event causing the former spouse to lose eligibility.

* * * * *

(k)(1) An election under this section is prospectively voided by an election of a fully reduced annuity to provide a current spouse annuity under § 842.612 that would benefit the same person.

* * * * *

(3) An annuity reduction under this section terminates on the first day of the month after the beneficiary of the insurable interest rate dies.

6. In § 842.606, paragraph (d) is redesignated paragraph (e), the section heading and paragraph (a) are revised, and paragraphs (d) and (f) are added to read as follows:

§ 842.606 Election of a self-only annuity or a one-half reduced annuity by married employees and Members.

(a) A married employee may not elect a self-only annuity or a one-half reduced annuity to provide a current spouse annuity without the consent of the current spouse or a waiver of spousal consent by OPM in accordance with § 842.607.

* * * * *

(d) The form described in paragraph (c) of this section may be executed before a notary public, an official authorized by the law of the jurisdiction where executed to administer oaths, or an OPM employee designated for that purpose by the Associate Director.

* * * * *

(f) The amount of the reduction in the retiree's annuity for a one-half reduced annuity to provide a current spouse annuity is 5 percent of the retiree's annuity.

7. In § 842.607, paragraph (b) is revised to read as follows:

§ 842.607 Waiver of spousal consent requirement.

* * * * *

(b) The spousal consent requirement will be waived based on exceptional circumstances if the employee or Member presents a judicial determination finding that—

(1) The case before the court involves a Federal employee who is in the process of retiring from Federal employment and the spouse of that employee;

(2) The nonemployee spouse has been given notice and an opportunity to be heard concerning this order;

(3) The court has considered sections 8416(a) of title 5, United States Code,

and this section as they relate to waiver of the spousal consent requirement for a married Federal employee to elect an annuity without a reduction to provide a survivor benefit to a spouse at retirement; and

(4) The court finds that exceptional circumstances exist justifying waiver of the nonemployee spouse's consent.

8. Section 842.610 is amended by revising paragraphs (b)(1) and (b)(3) and by adding paragraph (b)(7) to read as follows:

§ 842.610 Changes of election after final adjudication.

* * * * *

(b)(1) Except as provided in § 842.605 and paragraphs (b)(2) and (b)(3) of this section, a retiree who was married at the time of retirement and has elected a self-only annuity, a one-half reduced annuity to provide a current spouse annuity, a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity, or an insurable interest rate may elect, no later than 18 months after the time of retirement, an annuity reduction or an increased annuity reduction to provide a current spouse annuity.

* * * * *

(3) To make an election under paragraph (b)(1) of this section, the retiree must pay, in full no later than 18 months after the time of retirement, a deposit equal to the sum of the monthly differences between the annuity paid to the retiree and the annuity that would have been paid if the additional annuity reduction elected under paragraph (b)(1) of this section had been in effect since the time of retirement, plus—

(i) If the election under paragraph (b)(1) of this section changes the annuity from a self only annuity to a fully reduced annuity, 24.5 percent of the retiree's annual annuity, plus 6 percent interest on both; or

(ii) If the election under paragraph (b)(1) of this section changes the annuity from a self only annuity to a one-half reduced annuity or from a one-half reduced annuity to a fully reduced annuity, 12.25 percent of the retiree's annual annuity, plus 6 percent interest on both.

* * * * *

(7) If a retiree who had elected a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity (or annuities) makes an election under paragraph (b)(1) of this section which would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 842.613, the former spouse annuity (or annuities) must be reduced to not exceed the maximum allowable under § 842.613.

9. In § 842.611, the section heading and paragraphs (a), (b), and (d) are revised and paragraph (e) is added to read as follows:

§ 842.611 Post-retirement election of a fully reduced annuity or one-half reduced annuity to provide a former spouse annuity.

(a) Except as provided in paragraphs (b) and (c) of this section, when a retiree's marriage terminates after retirement, the retiree may elect in writing a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(b)(1) Qualifying court orders prevent payment of former spouse annuities to the extent necessary to comply with the court order and § 842.613.

(2) A retiree who elects a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity may not elect to provide a former spouse annuity in an amount that either—

(i) Is smaller than the amount required by a qualifying court order; or

(ii) Would cause the sum of all current and former spouse annuities based on a retiree's elections under § 842.603, § 842.604, § 842.612 and this section to exceed the maximum allowed under § 842.613.

(3) An election under this section is void—

(i) In the case of a married retiree, if the current spouse does not consent to the election on a form as described in § 842.606(c) and spousal consent is not waived by OPM in accordance with § 842.607; or

(ii) To the extent that it provides a former spouse annuity for the spouse who was married to the retiree at the time of retirement in an amount that is inconsistent with any joint designation or waiver made at the time of retirement under § 842.603(a)(1) or (a)(2).

* * * * *

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the month after the former spouse remarries before age 55 or dies, or the former spouse's eligibility for a former spouse annuity terminates under the terms of a qualifying court order, unless—

(1) The retiree elects, within 2 years after the event causing the former spouse to lose eligibility, to continue the reduction to provide or increase a former spouse annuity for another former spouse, or to provide or increase a current spouse annuity; or

(2) A qualifying court order requires the retiree to provide another former spouse annuity.

(e) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section equals—

(1) Ten percent of the employee's or Member's annuity if the employee or Member elects a fully reduced annuity; or

(2) Five percent of the employee's or Member's annuity if the employee or Member elects a one-half reduced annuity.

10. Section 842.612 is revised to read as follows:

§ 842.612 Post-retirement election of a fully reduced annuity or one-half reduced annuity to provide a current spouse annuity.

(a) Except as provided in paragraph (c) of this section, a retiree who was unmarried at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a one-half reduced annuity to provide a current spouse annuity.

(b) Except as provided in paragraph (c) of this section, a retiree who was married at the time of retirement may elect, within 2 years after a post-retirement marriage—

(1) A fully reduced annuity or a one-half reduced annuity to provide a current spouse annuity if—

(i) The retiree was awarded a fully reduced annuity under § 842.603 at the time of retirement; or

(ii) The election at the time of retirement was made with a waiver of spousal consent in accordance with § 842.607; or

(iii) The marriage at the time of retirement was to a person other than the spouse who would receive a current spouse annuity based on the post-retirement election; or

(2) A one-half reduced annuity to provide a current spouse annuity if—

(i) The retiree elected a one-half reduced annuity under § 842.606 at the time of retirement;

(ii) The election at the time of retirement was made with spousal consent in accordance with § 842.606; and

(iii) The marriage at the time of retirement was to the same person who would receive a current spouse annuity based on the post-retirement election.

(c)(1) Qualifying court orders prevent payment of current spouse annuities to the extent necessary to comply with the court order and § 842.613.

(2) If an election under this section causes the total of all current and former spouse annuities provided by a qualifying court order or elected under § 842.604, § 842.611, or this section to exceed the maximum survivor annuity permitted under § 842.613, OPM will accept the election but will pay the portion in excess of the maximum only when permitted by § 842.613(c).

(d)(1) Except as provided in paragraph (d)(2) or (e)(3) of this section, a retiree making an election under this section must deposit an amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraphs (a) or (b) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 841.606 of this chapter, from the date when each difference occurred.

(2) An election under this section may be made without deposit, if that election prospectively voids an election of an insurable interest annuity.

(e)(1) An election under this section is irrevocable when received by OPM.

(2) An election under this section is effective when the marriage duration requirements of § 843.303 of this chapter are satisfied.

(3) If an election under paragraph (a) or (b) of this section does not become effective, no deposit under paragraph (d) of this section is required.

(4) If payment of the deposit under paragraph (d) of this section is not required because the election never became effective and if some or all of the deposit has been paid, the amount paid will be returned to the retiree, or, if the retiree has died, to the person who would be entitled to any lump-sum benefits under the order of precedence in section 8424 of title 5, United States Code.

(f) Any reduction in an annuity to provide a current spouse annuity will terminate effective on the first day of the month after the marriage to the current spouse ends, unless—

(1) The retiree elects, within 2 years after a divorce terminates the marriage, to continue the reduction to provide for a former spouse annuity; or

(2) A qualifying court order requires the retiree to provide a former spouse annuity.

(g) The amount of the reduction to provide a current spouse annuity under this section equals—

(1) Ten percent of the employee's or Member's annuity if the employee or Member elects a fully reduced annuity; or

(2) Five percent of the employee's or Member's annuity if the employee or Member elects a one-half reduced annuity.

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

11. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

§ 843.311 [Amended]

12. In § 843.311(c)(2)(ii), the "(1)" following "paragraph (b)" is removed.

13. Section 843.313 is added to read as follows:

§ 843.313 Elections between survivor annuities.

(a) A current spouse annuity cannot be reinstated under § 843.305 unless—

(1) The surviving spouse elects to receive the reinstated current spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under FERS, or any other retirement system for Government employees, by reason of the remarriage; and

(2) Any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund.

(b) A current spouse is entitled to a current spouse annuity based on an election under § 842.612 only upon electing this current spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under FERS, or any other retirement system for Government employees.

(c) A former spouse who marries a retiree is entitled to a former spouse annuity based on an election by that retiree under § 842.611, or a qualifying court order terminating that marriage to that retiree only upon electing this former spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under FERS, or any other retirement system for Government employees.

(d) As used in this section, "any other retirement system for Government employees" does not include Survivor Benefit Payments from a military retirement system or social security benefits.

[FR Doc. 92–28088 Filed 11–19–92; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

General Crop Insurance Regulations; Rice Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the General Crop Insurance Regulations, effective for the 1993 and succeeding crop years, by adding new definitions for "planted," "controlled flood," "aerial seeding," and "broadcast seeding" to the Rice Endorsement. The intended effect of this rule is to eliminate confusion for both insured rice producers and insurance companies, created by the lack of a clear definition of these terms in the rice crop insurance policy, and to remove the possibility of restrictions for non-compliance with the terms of the policy because of misinterpretation.

DATES: This rule is effective on November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 254–8450.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is now October 1, 1997.

James E. Cason, Manager, FCIC has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

James E. Cason, Manager, Federal Crop Insurance Corporation, certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a

significant economic effect on a substantial number of small entities, or the farmers served by this totally voluntary crop insurance program. This action does not require significant improvements to the enterprise. This action only defines certain terms to agree with the Corporation's policy. No additional paperwork or monetary burden will be imposed. Further, this action does not require of the reinsured company or sales and service contractor any additional action beyond what is considered normal in the ordinary conduct of business. This action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12728.

Background

FCIC has received several questions regarding the interpretation of the term "planted" in the Rice Crop Insurance Endorsement. Because of the unique requirements in the planting of rice, FCIC has determined that the term "planted" should be defined. Requests have also been received from insureds to acknowledge aerial seeding practices.

The Rice Crop Insurance Endorsement, published in the **Federal Register** on December 1, 1987, at 52 FR 45604, refers to rice planted for harvest as grain. The terms "planted" and "planting" are used throughout the rice policy. There is, however, no definition of the term "planted," nor is there a clarification of the conditions under which planting by aerial seeding is permissible for insurance purposes. An additional definition of the term "broadcast seeding" is also necessary to cover those practicing such method.

It has become clear that the currently accepted interpretation of "planted," as being the proper placement of the seed in the soil, is no longer adequate.

FCIC has determined that a definition of the term "planted" for the rice policy is necessary. Further, definitions of "aerial seeding", "broadcast seeding", and "controlled flood", are necessary to define planting for the rice crop.

Insured producers must be provided with an insurance policy that is clear and easy to understand, and such clarification must be provided as quickly as possible. FCIC administratively determined to accept the definition of the term "planted" as it is outlined in this rule for all 1992 crop year rice insurance policies, and has communicated its intention and instructions to all insureds, agents, and reinsured companies.

On Thursday, August 27, 1992, FCIC published a notice of proposed rulemaking in the **Federal Register** at 57 FR 38783, to replace the current optional coverage for the rice crop with more effective provisions that are an integral part of the basic coverage.

Following publication of the proposed rule, the public was given 30 days in which to submit comments, data, and opinions. No comments were received.

Accordingly, the proposed rule published at 57 FR 38783 is hereby issued as final rule. FCIC amends the Rice Endorsement (7 CFR part 401.120), effective for the 1993 and succeeding crop years, to add definitions for the terms "planted," "aerial seeding," "broadcast seeding," and "controlled flood."

Because the contract change date for this regulation is November 31, good cause is shown to expedite the review of this rule so that all affected parties have time to assess the regulation before that date.

List of Subjects in 7 CFR Part 401

Crop insurance, Rice.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1993 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 401.120 is amended by revising section 10 of the Rice Crop Insurance Endorsement, to read as follows:

§ 401.120 Rice endorsement.

* * * * *

10. *Meaning of Terms:*

(a) *Aerial seeding*—distribution of pre-soaked rice seed onto a prepared seedbed covered by water under controlled flooding conditions by use of an airplane specifically modified for this purpose. The modification must ensure a sufficient distribution of the rice seed in the seed bed to assure a normal crop.

(b) *Broadcast seeding*—distribution of the seed by the use of ground equipment that mechanically delivers the seed to the prepared soil surface (such as a fan type seeder), and then mechanically incorporating the seed into the soil at the proper depth; provided that such practice is considered to be recognized good planting practice for the unit involved.

(c) *Controlled flood*—intentional covering of the prepared seedbed with water that is under the control of the insured, free of movement and is contained by properly constructed levees and gates.

(d) *Harvest*—the completion of combining or threshing of rice on the unit.

(e) *Mill center*—any location in which two or more mills are engaged in milling rough rice.

(f) *Planted*—the proper placement of the seed in a prepared seedbed by use of a drill, broadcasting, or by aerial seeding. Drill seeding, and broadcast seeding other than aerial seeding, requires mechanical incorporation of seed into the soil at the proper depth. Aerial seeding pre-soaked seed onto the seedbed will be considered planted if a controlled flood of the seedbed exists at the time of planting and a uniform distribution of seed exists after removal of flood water. Planting in any other manner will be considered as a failure to follow recognized good farming practices for rice and any loss of production resulting will not be insured under the policy.

(g) *Replanting*—the performing of cultural practices necessary to replant insured acreage to rice.

(h) *Second crop rice*—regrowth of a stand of rice originating from the initially insured rice crop following harvest and which can be harvested in the same crop year.

Done in Washington, DC on October 19, 1992.

David Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-28218 Filed 11-19-92; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 406

Nursery Crop Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Nursery Crop Insurance regulations effective for

the 1993 crop year only, by allowing a six month delay in the payment of premiums. The intended effect of this rule is to provide temporary relief to farmers who suffered damages as a result of Hurricane Andrew. At the voluntary discretion of the private reinsured companies, the premium billing date may be deferred for up to six months from September 30, 1992 to March 31, 1993 for, Collier, Dade, Lee, and Palm Beach Counties, Florida; and Acadia, Avoyelles, Evangeline, Iberia, Iberville, Lafayette, Point Coupee, Rapides, St. Landry, St. Martin, Vermilion, and West Baton Rouge Parishes, Louisiana.

EFFECTIVE DATE: November 20, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1993.

James E. Cason, Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

James E. Cason also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or the farmers served by this totally voluntary crop insurance program because this action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection.

Further, this action requires of the reinsured company or sales and service contractor what is considered normal in the ordinary conduct of business, therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the Nursery Crop Insurance Regulations (7 CFR part 406) for the 1993 crop year only, to provide that notwithstanding the terms of the crop insurance, premium will be deferred for those producers in areas devastated by Hurricane Andrew from September 30, 1992, until March 31, 1993. Because of the financial devastation Hurricane Andrew caused to nursery producers, James E. Cason, Manager, has determined that the deferment of nursery premiums should be implemented as quickly as possible to respond to the needs of the affected nursery producers. The Manager has determined that this rule will be effective upon publication in the **Federal Register** without providing the normal period for notice and comment before its effectiveness.

FCIC requests is soliciting written public comment on this proposed rule for 60 days following its publication. Written comments should be addressed to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. This rule will be scheduled for review so that any amendment made necessary by such public comment may be published as quickly as possible.

Written comments received pursuant to this rule will be made available for public inspection and copying in suite 500, 2101 L Street NW., Washington, DC during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 406

Crop Insurance, Nursery, Premium deferred.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance hereby amends the Nursery Crop Insurance Regulations (7 CFR part 406) effective for the 1993 crop year only, by making a mandatory amendment to the provisions for coverage therein. This rule amends the regulations set forth herein in the following instances:

PART 406—[AMENDED]

1. The authority citation for 7 CFR part 406 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 406.7 is amended by revising subsection 5.a. to read as follows:

§ 406.7 The application and policy.

* * * * *

5. Annual Premium.

a. The annual premium is due and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective. For the 1993 crop year, the premium may be deferred until March 31, 1993, for Broward, Collier, Dade, Lee, and Palm Beach Counties, Florida, and Acadia, Avoyelles, Evangeline, Iberia, Iberville, Lafayette, Point Coupee, Rapides, St. Landry, St. Martin, Vermilion, and West Baton Rouge Parishes, Louisiana.

* * * * *

Done in Washington, DC on October 26, 1992.

David L. Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92–28219 Filed 11–19–92; 8:45 am]

BILLING CODE 3410–08–M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB34

Loan Policies and Operations; Collateral Evaluation Requirements, Actions on Applications, and Review of Credit Decisions

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts a final regulation relating to collateral evaluation requirements for Farm Credit System (FCS or System) institutions engaged in lending or leasing. The final collateral evaluation regulation: Sets forth minimum standards for performing a collateral evaluation; establishes evaluation requirements for various types of transactions, which include what type of evaluation may be used; distinguishes those transactions requiring the services of an evaluator from those requiring the services of either a State certified or a

State licensed appraiser; requires the board of directors of each FCS institution engaged in lending or leasing to adopt policies and standards for the evaluation of all real, personal, and intangible property and to prescribe qualifications for evaluators that are consistent with the regulation; and requires the board of directors of each FCS institution to adopt collateral evaluation policies and standards for appraisals of real property and to prescribe qualifications of real estate appraisers that are consistent with the requirements of the regulation and the Uniform Standards of Professional Appraisal Practices (USPAP) as adopted by the Appraisal Foundation.

DATES:

Effective Date: The regulation shall become effective March 1, 1993, or upon the expiration of 30 days after publication during which either or both houses of Congress are in session, whichever is later. Notice of the effective date will be published in the **Federal Register.**

Compliance Date: Evaluations of all collateral, including appraisals of real estate, completed on or after the effective date of this regulation must comply with the standards of this regulation on its effective date. However, the effective date for the requirement to use State certified or State licensed appraisers, as appropriate, is the effective date of this regulation, or such later date as may be established by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC), pursuant to section 1119 of the Financial Institutions Recovery, Reform and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183 (1989) as codified at 12 U.S.C. 3348.

Real estate appraisals contracted for before the effective date of this regulation do not have to comply with the standards of this regulation. Moreover, sales of loans that were originated before such effective date will not require an appraisal to be performed in accordance with this regulation. An appraisal will be deemed contracted for and a loan will be deemed originated if there is a binding commitment to perform before the effective date of this regulation.

During the period from the effective date of this regulation, to March 1, 1994, any funding bank, on behalf of itself and/or its affiliated associations, and any bank for cooperatives (BC) that has made good faith efforts to comply with this regulation may apply to the FCA for a waiver from the use of State certified or State licensed real estate appraisers if the funding bank or the BC presents written evidence that the scarcity of certified or licensed appraisers in a State to perform real estate appraisals is causing significant delays in the performance of such appraisals.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Christine C. Dion, Attorney, Regulatory and Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

Amendments relating to appraisal standards, lending limits, and loan participations were originally included as part of the Eligibility/Lending Authorities regulations proposed on November 3, 1988, 53 FR 44438. The amendments were removed from the regulations prior to their adoption and were reproposed on January 23, 1991, 54 FR 2452. The comment period on the reproposed amendments ended on March 25, 1991. The FCA received approximately 430 letters of comment in response to the published reproposed regulations. A substantial number of the comment letters expressed concern about the potential impact of the lending limits and appraisal requirements of the reproposed regulations. The FCA published a Notice of Public Hearings on May 10, 1991, 54 FR 21637, to provide an opportunity for Farm Credit borrowers, institutions, and other interested parties to state their views and to offer constructive suggestions on issues of concern in the reproposed regulations. The Notice of Public Hearings solicited comments on specific topics. Testimony was presented by 121 individuals during the 4 days of the public hearings; 94 comment letters responded to questions asked by the FCA in the Notice of Public Hearings and at the hearings, and 85 additional letters were received by the FCA during the comment period, which ended on July 31, 1991.

All comments received after publication of the reproposed regulations, as well as all documents, testimony, and comments relating to the public hearings were considered by the FCA in the development of the final collateral evaluation requirements regulation. The FCA notes that the lending limits and loan participation regulations, which were reproposed with the appraisal regulation, are being addressed separately.

The FCA Board recognizes the importance of this topic to the business operations of the institutions and acknowledges the high level of concern about the content of this final regulation. Some commenters have continued to request that the Board repropose rather than adopt the regulations in the form published today. The Board desires to be responsive to the concerns of the FCS institutions, yet must be aware of the time involved if the regulation were to be reproposed and the operational constraints that could be placed on the institutions in the absence of final regulations. However, it should be noted that these regulations will not be effective until Congress reconvenes in January 1993 and is in session for 30 days or March 1, 1993, whichever is later. Therefore, the Board believes that the public will have ample opportunity to further review the regulation and bring any technical or substantive concerns to the Board's attention prior to the effective date of the regulation. As always, the Board can consider requests for further clarification or amendments to the regulations prior to or after their effective date.

Amendments reproposed on January 23, 1991, ("reproposed regulation") comments received on the reproposed regulation, and the regulation published as final today ("final regulation") are described below. Significant changes to the reproposed regulation, including comments received on their subject matter, are explained below in the Summary of Comments and in the Section-by-Section Analysis.

II. Subpart F—Collateral Evaluation Requirements

A. Background

On November 3, 1988, the FCA published a proposed rule (53 FR 44438) implementing changes resulting from the amendment of the Farm Credit Act of 1971, as amended (Act) by the Agricultural Credit Act of 1987,[1] (1987 Act), relating to borrower eligibility and the lending authorities of FCS institutions. The proposed rule contained amendments to provisions of several parts of the Act to make conforming changes and to eliminate a number of FCA prior approvals.

Included in the provisions was an amendment to part 614, subpart F, titled, "Appraisal Standards." The amendment to the appraisal regulation was proposed to ensure that FCS institutions

[1] Public Law No. 100–233, 101 Stat. 1568 (1988).

develop a more structured and uniform collateral appraisal process that would conform to the uniform standards of the appraisal industry. The proposed regulation would also have removed the existing FCA prior approval of the Farm Credit banks' appraisal policies and procedures and replaced the approval with general criteria for the establishment of FCS institutions' policies and procedures governing appraisals. The proposed regulation would have required each bank and association board to develop policies governing appraisal standards and standards for the qualifications of staff and fee appraisers. The proposed regulation did not prescribe such standards in the regulation.

While the comments received on the proposed regulation were under consideration, Congress enacted FIRREA. Title XI of FIRREA prescribed appraisal standards and appraiser qualifications for all federally related real estate loans and required bank regulatory agencies to prescribe regulations implementing these provisions. Although the FCA is not subject to the requirements of title XI of FIRREA, the FCA supports the policy underlying title XI of FIRREA, namely that appraisals that accurately reflect the value of collateral are essential to the safe and sound exercise of the lending authorities vested in FCS institutions.

As a result of its consideration of comments received and the passage of FIRREA, the FCA concluded that the proposed amendment to its appraisal regulation should be adjusted. Accordingly, on January 23, 1991, the FCA published for comment reproposed amendments to its regulation relating to appraisal requirements. See 56 FR 2452 (January 23, 1991). The reproposed amendments closely paralleled in most respects the real estate appraisal regulations that had been proposed at that time by other Federal financial institutions regulatory agencies subject to title XI of FIRREA.

Under the provisions of title XI of FIRREA, appraisals used in connection with real estate-related transactions must be performed in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. Toward this end, title XI of FIRREA provides for the adoption and implementation by the States of standards and procedures for certification and licensing of real estate appraisers. The ASC is required under the statute to monitor State appraiser certification and licensing programs. Federal financial institutions regulatory agencies subject to FIRREA are required to use State licensed or State certified appraisers in federally related real estate transactions.

Title XI of FIRREA also requires such agencies to adopt regulations regarding appraisals used in connection with certain real estate-related financial transactions entered into by financial institutions that are regulated by these agencies. The regulations must, at a minimum, require that all such appraisals be written and conform to the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. The regulations must also prescribe which categories of federally related transactions must be performed by a State certified appraiser, and which by a State licensed appraiser. An agency has authority under title XI of FIRREA to establish such additional qualification criteria as may be necessary or appropriate to carry out its statutory responsibilities. In accordance with the regulatory mandate of title XI of FIRREA, final appraisal regulations have been adopted by the Resolution Trust Corporation (RTC) and the five-member agencies of FFIEC, which include the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

The effective date for the use of State licensed and State certified appraisers for all appraisals performed in connection with federally related transactions under title XI of FIRREA was extended from July 1, 1991, to January 1, 1993.[2] By that date, it is anticipated that a nationwide, comprehensive, and uniform real estate appraiser regulatory system in conformity with title XI of FIRREA will be in place. At present, a number of States have already established an appraiser certification and licensing system in conformity with title XI of FIRREA. Individuals in those States may seek accreditation as a State licensed and a State certified appraiser. The ASC encourages lenders to use appraisers certified and licensed by those States' systems as soon as possible.

B. Collateral Evaluations

The FCA's final regulation adopts the appraisal requirements of title XI of FIRREA and also incorporates general collateral evaluation requirements to address the specific needs of FCS institutions. The final regulation, entitled "Collateral Evaluation Requirements," requires an evaluation of all collateral taken as security on extensions of credit by FCS institutions. It requires the board of directors of each FCS institution engaged in lending and leasing to adopt evaluation policies and standards for collateral evaluation. Toward this end, the final regulation sets forth minimum requirements for the development of evaluation policies and standards, and distinguishes transactions that require the services of an evaluator from those requiring a State licensed or State certified real estate appraiser. The regulation requires that the evaluation of all collateral, whether by an evaluator or by an appraiser, must be performed by a "qualified" individual who has demonstrated the knowledge and experience necessary to value the type of collateral that is subject of the evaluation.

The FCA notes that the collateral evaluation requirements of the final regulation relating to appraisals of real estate are consistent in most respects with the regulatory requirements of other Federal financial institutions regulatory agencies adopted pursuant to title XI of FIRREA, as these have recently been modified. They are also generally consistent with those of government agencies providing guarantees supported by real estate, and with the standards of the appraisal industry. The final regulation recognizes that FCS staff and fee appraisers cannot be certified or licensed under State law unless they satisfy FIRREA's appraisal standards and appraiser qualifications criteria.

Furthermore, while it is not bound by the appraisal requirements of title XI of FIRREA, the FCA recognizes that Congress, through the enactment of FIRREA, has expressed a strong belief that all financial transactions involving real estate-related collateral should be supported by adequate and accurate collateral evaluations. Congress also expressed the belief that such collateral evaluations of real estate should be based on standards and guidelines that are consistently applied by the financial and appraisal industries.

The congressional policy reflected in FIRREA has been supported and implemented not only by the Federal financial institutions regulatory agencies but also by the Office of Management and Budget (OMB). Specifically, OMB

[2] *Id.*, amended section 1119(a)(1) of FIRREA (12 U.S.C. 3348(a)(1)) by extending the effective date for use of State certified and State licensed appraisers from July 1, 1991, to December 31, 1992.

Bulletin 91–05 [3] extends title XI real estate appraisal standards for Federal credit programs, including federally guaranteed loan programs. Under OMB's guidelines, any loan sold to secondary market entities, [4] including loans sold by a FCS institution, is subject to the appraisal requirements of title XI of FIRREA. However, any loan sold into the Federal Agricultural Mortgage Corporation (Farmer Mac) is subject to the appraisal requirements of title XI only if the lender selling the loan is subject to title XI. OMB Bulletin 92–06 further extends title XI real estate appraisal standards to Federal agencies subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended. The bulletin also directs all Federal agencies not subject to the Uniform Act and not otherwise covered by Bulletin 91–05 to implement regulations that follow the appraisal requirements of FIRREA on Federal and federally assisted real estate transactions within their jurisdictions.[5] The FCA believes that the real estate appraisal requirements of the final collateral evaluation regulation, which are similar to the appraisal requirements of FIRREA, are necessary to enable FCS institutions to conduct real estate lending activities with other Federal financial institutions and with the various government agencies which follow the congressional policy set forth in FIRREA.

The FCA emphasizes that the requirement for an appraisal in accordance with standards similar to those required by title XI of FIRREA has been modified under the final collateral evaluation regulation. As will be discussed in subsequent sections, the final regulation has raised the *de minimis* level at which appraisals are required, and has dropped appraisal requirements for both personal property and for real property taken solely out of an abundance of caution.

C. Regulatory Issues

The FCA adopts this final regulation to enhance the safe and sound operation of the institutions it regulates. The soundness of loans and investments made by FCS institutions depends upon the adequacy of the analysis used to support those transactions. The FCA believes that an evaluation of collateral is one of several essential components of a prudent lending process. Accordingly, through the integration of minimum collateral evaluation policies and standards with the additional appraisal requirements of title XI of FIRREA for real estate loans, the final regulation provides the FCA with reasonable assurance that evaluations of collateral supporting the lending and leasing authorities of FCS institutions will be completed in a reliable manner.

The FCA anticipates that adoption of this regulation may increase costs to some degree for borrowers and regulated institutions stemming primarily from the use of certified or licensed appraisers. However, those institutions already having strong appraisal policies should have limited cost increases. The FCA further anticipates that ensuring that loans are collateralized adequately will reduce defaults along with loan losses, thus decreasing costs to FCS institutions of all sizes.

After considering the comments received, the FCA made a number of significant changes to the reproposed regulation that should help reduce costs, particularly for smaller FCS institutions. The final regulation has been revised to focus primarily on the evaluation of collateral, codifying minimum standards and policies which are usual and customary for prudent lenders. The appraisal requirements of the final regulation have been limited to those transactions for which the additional appraisal standards and additional appraiser qualifications required under this regulation are most important. The principal changes to the reproposed regulation made in the final regulation are as follows:

1. The final rule drops the FIRREA-based appraisal requirements for loans collateralized by personal property. This deletion substantially reduces costs and delays that commenters anticipated would result under the reproposed regulation because of the extensive use of personal property as collateral in the System. Such collateral is subject to collateral evaluation requirements, but these are considerably less onerous and costly than the FIRREA-based appraisal requirements.

2. The *de minimis* or threshold level has been raised from $50,000 to $100,000, thus eliminating smaller loans from the appraisal requirements of the final regulation and focusing those requirements on those large transactions where the exposure to loss is greater.

3. The final regulation exempts certain additional types of transactions from the appraisal requirements. Such transactions include the advancement of new funds under certain conditions on a transaction supported by a prior appraisal, and the guarantee of a loan by an agency of the Federal government on a transaction supported by a conforming appraisal.

4. Finally, the reproposed regulation required an appraisal under the Departure Provision of the USPAP for collateral taken solely through an abundance of caution. The final regulation only requires that such collateral be evaluated and that the use of an abundance of caution exception be justified by documentation.

D. Summary of Comments

A substantial number of comments was received by the FCA regarding its reproposed appraisal regulation. The FCA carefully considered all comments received and has modified portions of the final collateral evaluation regulation in response to the comments. The major areas of concern and significant changes from the reproposed regulation, as well as a summary of the comments and suggestions received, are discussed more fully below.

1. Personal Property Appraisals

The majority of comments received on the reproposed appraisal regulation opposed the personal property appraisal requirements. Major concerns expressed in the comments were that such appraisals would: (a) Increase costs without corresponding benefits; (b) be unnecessary, as there is no evidence of fraud or abuse contributing to losses on loans secured by personal property or intangibles; (c) be of minimal value given the specialized and fluctuating nature of most of the personal property; (d) encourage the use of unsecured credit or increase reliance on real estate collateral in preference to personal property; (e) delay credit decisions; and (f) place FCS institutions at a competitive disadvantage.

At the time the FCA's proposed appraisal regulation was developed, the appraisal industry, the banking industry and the other Federal financial regulators were considering extending FIRREA's appraisal requirements to personal property. When the FCA issued its proposed regulation imposing FIRREA-based appraisal requirements on personal property, it recognized that the scope of evaluation of personal

[3] OMB Circular A–129, "Managing Federal Credit Programs," as amended by OMB Bulletin No. 91–02, dated November 26, 1990, entitled "Guidance for the Management of Guaranteed Loan Programs."

[4] Such secondary market entities include the Federal National Mortgage Corporation (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

[5] OMB Bulletin No. 92–06, dated March 16, 1992, entitled "Guidance on Real Estate Appraisal Standards and Practices," extends title XI real estate appraisal standards to agencies subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, which was implemented by regulations in 49 CFR part 24.

property collateral in its final appraisal regulation would be influenced by the coverage of the final regulations of the other Federal financial regulators. To date, the other Federal regulators have chosen not to extend the FIRREA-based appraisal requirements to personal property collateral.

In March 1991, the ASC reported to Congress pursuant to section 1122(e) of title XI of FIRREA, its findings regarding the feasibility and desirability of extending the provisions of title XI of FIRREA to the function of personal property appraising and to personal property appraisers. The "Personal Property Appraisal Study" of the ASC concluded that some form of extension of the real estate appraisal/appraising requirements of title XI of FIRREA to personal property is feasible, but is not desirable or necessary at the current time. The primary reason for the conclusion was that the comments indicated that significant losses have not resulted from personal property collateral evaluations. This was due largely to the secondary role that personal property collateral plays in the lending process of commercial institutions.

The FCA, upon review of the comments and the position taken by the other Federal regulatory agencies, has deleted the appraisal requirements for personal property in its final regulation. Although FCS institutions may rely more heavily on personal property for collateral than commercial banks, the FCA is persuaded that FCS institutions should not be placed at a competitive disadvantage in the absence of historical loss data demonstrating that such appraisal requirements are needed.

Although the FCA has determined to drop the appraisal requirements for personal property in its final regulation, the FCA continues to believe that there is a need for controls with regard to personal property valuation because of the extensive use of such property as loan collateral within the System. During its public hearings, the FCA specifically asked witnesses what they would consider to be appropriate controls. The overwhelming response was that the valuation of personal property collateral should be addressed in the policy and procedures adopted by the lending institution. While comments varied in specificity regarding recommended guidelines, they agreed that procedures to identify personal property values should be well defined and provide for ongoing monitoring of those values with appropriate documentation and with an objective internal review process.

The final regulation has been revised to require that the board of directors of each FCS institution adopt policy guidelines for the evaluation of personal property used as collateral to support the conditions of its credit decisions. Section 614.4266, entitled "Personal and intangible property evaluation," sets forth the minimum guidelines that FCS institutions must follow to assure consistent, reliable valuations of personal property collateral. The final regulation clarifies that the collateral evaluation of personal and intangible property should be completed by a qualified evaluator based on market value documented by a collateral evaluation report consistent with institution-established policies and standards. Such collateral evaluations may also be supported, as appropriate, by published source information, such as that relating to the sale price for new or used equipment and commodity market reports. However, such information may not be the sole basis for determining market value, as defined in § 614.4240, where conditions such as special financing terms, special sales, or leasing concessions may affect the market value. An appraisal of such collateral is only required when the institution determines that an appraisal is necessary due to the distressed condition, size, complexity, or the specialized nature of the collateral. The FCA notes that, when an institution determines that an appraisal of personal property is necessary, the appraisal must be completed by a qualified appraiser consistent with the Competency and Ethics Provisions of the USPAP.

2. Appraisals Not Primary Basis for Credit Decision

A significant number of commenters, as well as witnesses at the public hearings, alleged that the reproposed regulation would cause FCS institutions to rely on collateral value as the primary basis for a credit decision. Commenters alleged that loan officers would have less incentive to conduct an involved credit analysis using repayment capacity because the reproposed regulation's message is that collateral value at the time the credit is issued is a very critical credit factor, and that both the FCA and the BCs would use it to evaluate the quality of the loan. The commenters uniformly pointed out that BCs rely upon cashflow analysis of borrowers to support credit provided. They argued that it is cashflow that services the debt, not the value of underlying collateral. They further stated that the creditworthiness of any company is based on its viability as an ongoing business, not on the market value of its physical assets. They urged that loan repayment ability continue to be the basis of credit extensions.

The National Bank for Cooperatives (CoBank) asserted that the reproposed regulation would require the BCs to reverse existing policies prohibiting reliance on appraisals except for special situations. The BCs stated that real estate is only taken as collateral out of an abundance of caution, as a means of control or support for the cashflow-generating chattel assets of the borrower. The BCs also argued that their customers and operations are unlike the rest of the Farm Credit System and, therefore, that the BCs should not be included under the same collateral evaluation requirements.

Contrary to the allegations of the commenters, the reproposed regulation does not suggest that collateral value should become the sole or the primary basis for credit decisions. Under § 614.4160 (a) through (d) of the existing regulations, FCS institutions are required to consider five credit factors in evaluating creditworthiness of a loan application, which include both repayment capacity and adequacy of the collateral. The reproposed regulation merely provides standards for determining the adequacy of collateral that is relied on as security for a loan. An appraisal of that collateral is necessary to determine the collateral's adequacy and appropriateness. It does not make the appraisal the sole or the primary basis for determining creditworthiness. The FCA sought to clarify this misconception at the public hearings by noting that FCS institutions cannot become solely asset-based lenders and continue to be in compliance with FCA regulations. The FCA again emphasizes that while an appraisal plays an important role in the loan approval process, undue reliance should not be placed upon the collateral value in place of an adequate assessment of the borrower's repayment ability or any of the other credit factors prescribed by § 614.4160.

Under the final regulation, all real, personal, and intangible collateral taken as security in any credit decision must, at a minimum, be evaluated to determine its adequacy and appropriateness. However, a formal written appraisal is required only in transactions of over $100,000 that are secured by real estate when the real estate collateral is not taken solely out of an abundance of caution or is not otherwise specifically excepted under the regulation.

As stated in the preamble of the reproposed regulation (56 FR 2453, January 23, 1991), the FCA sees no material difference between the structure and requirements for the BCs' security, and similar requirements for large complex short- and intermediate-term production credit association (PCA) and agricultural credit association (ACA) loans. In view of the commercial nature of BC lending, the BCs should have security and evaluation requirements comparable with the standards of commercial banks and other competitors of the BCs. Furthermore, in response to the BCs' complaint that some of their competitors, such as insurance companies and other financial intermediaries, are not restricted by FIRREA-based appraisals, the FCA notes that those competitors are answerable to the financial markets as well as to their investors and/or stockholders. Unless they adhere to adequate collateral evaluation criteria to prevent losses, investor and/or stockholder support and confidence will not only decline, but will result in demands for greater controls through external and internal standards. The FCA further notes that under the final regulation, if collateral is taken out of an abundance of caution, lending institutions, such as the BCs, are only required to complete an evaluation of such collateral. They are not required to complete an appraisal of such collateral under the USPAP. To qualify for the use of the abundance of caution exception, lending institutions must document in the appropriate loan files the reasons why the collateral was not considered a necessary credit factor in support of the credit decision.

3. De minimis

The overwhelming majority of comments received on the *de minimis* (threshold) level suggested that it be raised. Suggested values ranged from $100,000 to $1,000,000. While a few commenters requested a threshold level of $250,000, the greatest number of commenters recommended that the threshold amount be raised to $100,000. Numerous commenters stated that they had not experienced substantial losses resulting from improper appraisals in connection with transactions below $100,000. Many commenters anticipated that delays and increased costs associated with obtaining appraisals for transactions below $100,000 would outweigh any benefits that might be obtained from requiring appraisals by certified or licensed appraisers for those transactions.

To determine an appropriate and cost-effective threshold level for real estate appraisals, the FCA requested data from public hearing witnesses on cost projections (per average loan volume) to borrowers based on threshold levels of $50,000, $100,000, and $250,000. It also solicited data on historical losses on loans in each of the tiers in the last 10 years. In addition to the data received during the public comment period and in response to the public hearings, the FCA also reviewed loan and collateral data that is periodically provided by the FCS institutions to the FCA.

After a thorough review of the solicited data, the FCA believes that the proposed $50,000 threshold level is too low. The data indicates that the average loan size of FCS institutions, excluding the BCs, is approximately $70,000. The proposed $50,000 threshold level would, therefore, require an appraisal of a substantial number of an institution's loans. The data further indicates that while a large percentage of the FCS institutions' loans are $100,000 or less in size, the concentration of loan volume and portfolio risk intended to be addressed by real estate appraisal requirements is contained in the smaller percentage of loans over $100,000. Transactions involving amounts below $100,000 have not led to substantial losses for FCS institutions and do not pose a systemic threat to the Farm Credit System.

Since the loss data did not demonstrate that the risk of loss on small loans was sufficient to warrant the cost of complying with the appraisal requirements of the regulation, the FCA has set the threshold level at $100,000 in the final regulation. This threshold level is consistent with the threshold level adopted by the RTC, the FRB, the OCC, the OTS, and the FDIC, who reached similar conclusions.

4. Evaluation Requirements

Under the final regulation, any real estate-related transaction value exceeding the $100,000 threshold level must have an appraisal of its real estate collateral that complies with the appraisal requirement, unless the collateral is taken out of an abundance of caution or is otherwise specifically excepted. Transactions with values of $250,000 or less but in excess of $100,000 require, at a minimum, an appraisal of real estate collateral performed by a State licensed appraiser. The services of a State certified appraiser may be used instead of the State licensed appraiser for such transactions. Transactions with values in excess of $250,000 must have an appraisal of real estate collateral by a State certified appraiser.

The final regulation requires collateral evaluations for all real, personal, and intangible property taken as collateral, even though they may be exempt from the appraisal requirement. Hence, under the final regulation, any evaluation of real estate with a transaction value at or below the $100,000 threshold level, or otherwise excepted from the appraisal requirements of this regulation, must have an evaluation of its collateral. The FCA expects all FCS institutions, as a matter of prudent banking practice, to obtain an appropriate evaluation of the collateral by a competent person (who need not be a certified or a licensed appraiser, except as required) before entering into any financial transaction. Consequently, any financial transaction that does not require an appraisal under this regulation still must have an evaluation of the collateral that complies with policy guidelines and standards adopted by the institution's board of directors.

The FCA is aware that Congress recently made several amendments to title XI of FIRREA. One of the amendments directed the OMB to conduct a study of whether there is a need to establish *de minimis* or threshold levels for commercial real estate.[6] The FCA will study the recommendation of the OMB study, and any future studies, and will review the threshold level adopted in the FCA's final collateral evaluation regulation in light of the study's recommendation.

Under the reproposed regulation, the FCA allowed appraisals on transactions with values over $50,000 but less than $1,000,000 to be performed by a "designated appraiser." The term is not used in the regulations of other agencies. When it was proposed, the FCA recognized the practical difficulty institutions might have in securing the services of a State certified appraiser during the implementation of FIRREA appraisal requirements and the adoption of State certification programs. The "designated appraiser" option was proposed only as an interim step and would have ceased to be effective January 1, 1994.

The FCA has deleted references to the "designated appraiser" from the final regulation. The extension of the effective date for the use of State licensed and certified appraisers to

[6] "Federal Deposit Insurance Corporation Improvement Act of 1991," Public Law 102-242, 105 Stat. 2386, December 19, 1991, amended section 1119 of FIRREA (12 U.S.C. 3348) by requiring the Director of OMB to conduct a study of a need to establish *de minimis* levels for commercial real estate. The final report was published and reported to Congress during August 1992.

March 1, 1993, or such later effective date as may be established by this regulation, limits the services of the "designated appraiser" to the 14-month period following the effective date of title XI of FIRREA. The final regulation addresses approximately the same concerns and covers the same period that the "designated appraiser" was proposed to address. Under the final regulation, for the period of March 1, 1993, or such later effective date as may be established by this regulation, to March 1, 1994, any funding bank, on behalf of itself and its affiliated associations, and any BC that has made good faith efforts to comply with this regulation may apply to the FCA for a waiver from the use of State certified or licensed real estate appraisers. To obtain such a waiver, the funding bank or the BC must provide reasonable written evidence that there is a scarcity of such appraisers in a State to perform real estate appraisals, leading to significant delays in the performance of such appraisals. It is the present intention of the Board of the FCA not to grant or extend such a waiver beyond March 1, 1994.

5. Abundance of Caution

The reproposed regulation allowed appraisals to be performed using the Departure Provision of the USPAP in several types of financial transactions. One such transaction is where a lien on property has not been taken as the primary security but has been taken solely through an abundance of caution, and the terms of the transaction have not, as a consequence, been made more favorable than they would have been in the absence of the lien.

The FCA views the "abundance of caution" exception narrowly. The exception requires that no material term of a loan be more favorable to the borrower because the institution takes real estate as collateral for the extension of credit. Neither the amount of the loan, the rate of interest, the term of the loan, the presence or absence of a guarantor, nor any other term affecting the institution's ability to recover on the loan may be more favorable to the borrower. By allowing this exception, the FCA recognized that an institution should not be required to obtain a full appraisal of real estate taken as collateral if the institution would have extended credit to the borrower on exactly the same terms without the collateral. The FCA believes that requiring a full appraisal under these circumstances would discourage institutions from accepting additional protection in this form. Accordingly, the reproposed regulation permitted the use of the Departure Provision of the USPAP to except collateral taken through an abundance of caution from the requirements of a full appraisal under the USPAP.

Comments were received acknowledging that the Departure Provision allows some flexibility to depart from one or more of the detailed requirements of the USPAP. For example, use of the Departure Provision would allow updating the existing appraisal through incorporation of the previous appraisal by reference. However, numerous commenters complained that the Departure Provision does not allow shortcutting of the appraisal process or the appraisal report, both of which must also conform with the Ethics and Competency Provisions of the USPAP. The commenters asserted that using the Departure Provision would result in a disproportionate effort in connection with routine loan maintenance or abundance of caution-related actions. The commenters requested that the requirement that the Departure Provision be satisfied to qualify for the abundance of caution exception be deleted.

The FCA is persuaded by the comments that collateral taken through an abundance of caution should not be required to satisfy the Departure Provision of the USPAP in order to qualify for the exception. Accordingly, the final regulation has been revised to require merely that all FCS institutions obtain an appropriate evaluation of real estate taken as collateral out of an abundance of caution, provided such evaluations are in accordance with the policy guidelines adopted by the board of directors of the institution under this regulation for the evaluation of collateral that is not subject to the appraisal requirements of this regulation.

In addition to performing an evaluation of the collateral, the final regulation continues to require documentation in the loan file to support an institution's use of the abundance of caution exception. The documentation must demonstrate that the credit decision is sufficiently supported by the credit factors without consideration of the subject collateral. The FCA notes that such credit decisions may be supported by the taking of collateral other than the collateral which is taken solely out of an abundance of caution.

6. Appraiser Independence

A variety of comments was received concerning appraiser independence. The majority of commenters objected to the independence requirement because they asserted that it prevented loan officers from appraising property, which would result in unnecessary costs for training other employees, hiring new employees, or retaining outside fee appraisers. Several commenters alleged that in their experience costly appraisals done by outside fee appraisers were not always as accurate or as reliable as those done by their loan officers.

Numerous commenters asserted that the reproposed regulation's appraiser independence requirement was too restrictive. Some requested that the final regulation allow FCS institutions the flexibility to develop their own structures and procedures to ensure that appraisers are independent.

The FCA continues to believe that any transaction requiring an appraisal of collateral must be performed by an appraiser who can produce an objective opinion about the market value of that collateral. This objectivity may be compromised if the appraiser is engaged in the marketing, lending, collection, or credit decision processes of the institution or an institution under common management. Also, a direct or indirect interest of the appraiser in the property appraised may undermine the accuracy of the appraisal.

While the FCA continues to support appraiser independence, the requirement of the reproposed regulation has been restricted under the final regulation to those transactions requiring an appraisal. For transactions not requiring an appraisal, the final regulation requires the collateral to have an evaluation performed by a "qualified evaluator." Under the final regulation, the qualified evaluator performing such an evaluation is not subject to the independence requirements of the USPAP, but is subject to the evaluation policy and standards adopted by the institution's board of directors, as prescribed by the final regulation, which only require transactional independence of the evaluator. They are less restrictive than the standards of the USPAP for appraisals, which require functional independence of the appraiser. Therefore, an individual involved in the loan-making function, such as a loan officer, may perform the evaluation, provided he or she has no personal interest in the collateral being evaluated and provided that the evaluation is reviewed by the institution's senior management or its board of directors.

The final regulation continues to require an appraisal of real estate collateral for transactions with values over $100,000, unless taken out of an abundance of caution or otherwise

specifically excepted. The appraisal must be performed by a qualified appraiser who is State licensed or State certified, as appropriate. The appraiser is subject to the functional independence requirement of the USPAP. This means that the appraiser cannot be involved in the loan-making function of the institution. The appraiser must have no direct or indirect interest, financial or otherwise, in the property or transaction. The appraiser must be independent of the marketing, lending, collection, or credit decision processes of the institution making the loan, an institution under common management, or an institution purchasing an interest in the loan. Directors or officers should abstain from any vote and/or approval involving assets on which they (as State licensed or certified appraisers) have performed an appraisal. If an appraisal is prepared by a fee appraiser, the appraiser must be engaged directly by the institution and must have no direct or indirect interest, financial or otherwise, in the property or the transaction. Furthermore, FCS institutions must ensure that all appraisers are qualified to appraise the type of collateral that is the subject of the appraisal. The FCA believes that the use of a qualified State licensed or certified appraiser will promote the accuracy and adequacy of an appraisal, and that the exercise of independent appraiser judgment will protect the integrity of the appraisal process.

Under the final regulation, a FCS institution may accept an appraisal that was prepared by an appraiser engaged directly by another FCS institution or by an institution subject to title XI of FIRREA, if the FCS institution that accepts the appraisal has: (a) Established procedures for reviewing real estate appraisals; (b) reviewed the appraisal under the established review procedures and found the appraisal acceptable; and (c) documented the review in writing.

7. Reciprocity

Several comments were received requesting clarification of whether a State licensing and certification agency will recognize the certification or license of an appraiser from another State. These commenters noted the multi-State structure of all Farm Credit districts and many associations. They requested that the FCA's final regulation address reciprocity by permitting licensed or certified appraisers to complete FCS appraisals in all States whenever permitted by State law.

Section 1122 of title XI of FIRREA (12 U.S.C. 3351) requires a State appraisal certifying or licensing agency to recognize on a temporary basis the certification or license of an appraiser issued by another State provided: (a) The property to be appraised is part of a federally related transaction; (b) the appraiser's business is of a temporary nature; and (c) the appraiser registers with the State regulatory agency in the State of temporary practice.

The ASC has published "Revised Guidelines" (56 FR 26088, June 6, 1991) to assist the States in establishing effective certification and licensing procedures for real estate appraisals. The guidelines reflect the general framework that the ASC will use in reviewing a State's program for compliance with title XI of FIRREA. The "Revised Guidelines" address temporary practice and reciprocity among States.

The ASC believes that States should not require temporary practitioners to obtain a certification or license in the State of temporary practice. Instead, the ASC recommends that the State should recognize the certificate or license issued by the individual's State of permanent certification or licensure. However, under title XI of FIRREA, a State may establish temporary practice and registration procedures. These procedures should measure "temporary" by specific appraiser assignments and not by a fixed time period or number of properties to be appraised.

Other than the temporary practice provisions of title XI of FIRREA, no Federal requirements exist regarding State reciprocity agreements. The ASC, in its "Revised Guidelines," encourage the States to consider permanent reciprocity arrangements to address the need of appraisers who practice on a permanent, multi-State basis. The FCA supports the ASC's recommendation, but the establishment of reciprocity is an issue for the States and is not within the FCA's purview. However, for purposes of complying with these regulations, an appraiser need not be licensed or certified by the State in which the appraised property is located provided the appraiser can legally perform appraisals in the State. Thus, until title XI of FIRREA is amended to require permanent reciprocity arrangements among the States, it appears that appraisals across State boundaries are limited to the temporary practice provisions of title XI of FIRREA unless or until the States voluntarily provide for permanent reciprocity. Section 614.4260(d) has been added to the final regulation to clarify that, subject to State law, staff appraisers or fee appraisers, appraising on behalf of FCS institutions, may appraise real property across State boundaries and in the Commonwealth of Puerto Rico.

8. Confidentiality

One comment was received noting that applications for licensing and certification in some States require that an affidavit be signed by the appraiser that the appraiser will, on request, provide the State with copies of his or her appraisals. The commenter pointed out that under existing regulation, § 618.8320 of this chapter, employees of FCS institutions are prohibited from providing copies of an appraisal report. The commenter requested that the prohibition be repealed in order that its staff appraisers may seek licensing and certification in those States and still be in compliance with FCA regulations.

In recognition of the fact that existing regulations may present a barrier in some States to employees of FCS institutions from obtaining their appraisal license and certification, the FCA is reviewing the applicable regulations and appropriate action is being considered to resolve the conflict.

9. Other Financial Institutions (OFIs)

Comments were received from several OFIs inquiring whether they must comply with the provisions of the reproposed appraisal regulation. The OFIs, which obtain their financing under agreements with Farm Credit Banks (FCBs), stated that such compliance would be detrimental to their ability to do business.

The FCA stated during its public hearings that the requirements of the reproposed appraisal regulation did not apply directly to the OFIs. The FCA noted that, while it has authority to regulate the discount relationship between the OFIs and the FCBs, it does not have direct regulatory authority over the OFIs. It is the FCA's position that collateral evaluation requirements for loans discounted for OFIs are an appropriate subject for the lending agreement between the FCBs and the OFIs.

E. Section-by-Section Analysis

Subpart F—Collateral Evaluation Requirements

The title of part 614, subpart F, of the final regulation has been changed from "Appraisal Requirements" to "Collateral Evaluation Requirements" to more appropriately reflect the subject of the subpart and its emphasis on evaluations of loan collateral. Subpart F of the final regulation addresses collateral evaluation requirements for all collateral taken as loan security,

including collateral evaluations requiring appraisals.

1. Section 614.4240—Collateral Definitions

Section 614.4240 of existing regulation, entitled "General," provides an overview of the FCA's existing regulatory requirements for real estate appraisals and chattel inspections. The reproposed and final regulations revise the existing section to identify and define specific terms that are applicable to collateral evaluations, including appraisals. The definitions section of the reproposed regulation has been revised in the final regulation as follows:

a. *Appraisal.* Comments were received requesting that the FCA redefine "appraisal" as the process of developing an opinion of market value, and separately define "appraisal report" as the written statement of an opinion of market value. While some entities separately define appraisal and appraisal report (as in the USPAP), the FCA is retaining the definition from the reproposed regulation because it enjoys widespread use and acceptance among governmental agencies and private entities and follows the statutory language requiring all appraisals used for federally related transactions to be in writing. For purposes of this regulation, the term "appraisal" is intended not only to address the evaluation process, but also its product, the written report.

b. *Designated appraiser.* The term "designated appraiser" has been deleted from the final regulation as it is not used in the final regulation.

c. *Evaluation.* A definition of "evaluation" has been added to the final regulation to clarify the FCA's position regarding collateral evaluation. The final regulation narrows the focus of the specific appraisal requirements to certain real estate transactions and imposes less onerous general evaluation requirements for all collateral taken as security for a loan. Although an appraisal may be used for any type of collateral, the requirement for an evaluation requiring an appraisal is limited to real estate transactions. The term "evaluation" means a study of the nature, quality, or utility of, or interest in, or aspect of, an asset. An appraisal is a type of evaluation.

d. *Fee appraiser.* Under the final regulation, the term "fee appraiser" has been expanded to include an evaluator, in addition to an appraiser. The definition also clarifies that for personal and intangible collateral evaluations, a fee appraiser may include knowledgeable industry experts, such as certified public accountants, equipment dealers, grain buyers, livestock buyers, and auctioneers.

e. *Income capitalization approach.* Several comments were received requesting revision of the term "income capitalization approach" to recognize that the income approach should address annual cashflows. The FCA in the reproposed regulation considered the annual cashflows to be implicitly addressed in the income capitalization approach definition. However, in response to comments, the FCA has revised the final regulation to explicitly address the discounting of annual cashflows.

f. *Qualified evaluator.* The final regulation has replaced the term "qualified appraiser" with the term "qualified evaluator." The substitution was made to address the focus of the final regulation requiring collateral evaluations which may include appraisals. The term "qualified evaluator" means an individual who is competent, reputable, impartial, and has demonstrated sufficient training and experience in evaluating the property of the type that is the subject of the evaluation. For purposes of this definition, the term "qualified evaluator" includes an appraiser with similar qualifications.

The term "qualified evaluator" may include, but is not limited to, loan officers, accountants, auctioneers, grain or livestock buyers, and equipment dealers.

g. *Real estate.* The term "real estate" has been added to the final regulation to distinguish between the terms "real estate" and "real property" as they are used in the collateral evaluation process. "Real estate" is defined to mean an identified parcel or tract of land, including improvements, if any.

h. *Real property.* The term "real property" has been added to the final regulation to distinguish between the terms "real property" and "real estate" as they are used in the collateral evaluation process. "Real property" is defined to mean all interests, benefits, and rights inherent in the ownership of real estate.

i. *State certified appraiser.* The definition of "State certified appraiser" has been expanded in the final regulation in recognition of the Appraisal Subcommittee's role in the approval and monitoring process of the States' appraiser certification programs and the Appraisal Qualifications Board's role in establishing certification criteria.

j. *State licensed appraiser.* The definition of "State licensed appraiser" has been expanded in the final regulation in recognition of the required conformance to FIRREA of the States' appraiser licensing requirements and the Appraisal Subcommittee's authority to approve the States' programs.

k. *Valuation.* A definition of "valuation" has been added to the final regulation to distinguish a collateral evaluation not requiring an appraisal from one requiring an appraisal. A valuation results from the completion of a collateral evaluation that does not require an appraisal.

2. Section 614.4245—Collateral Evaluation Policies

The title of this section under the reproposed regulation was "Appraisal policies." The section has been retitled, "Collateral evaluation policies," in the final regulation. The section addresses the development of policies by FCS institutions, currently contained in § 614.4240 of the existing regulation. However, the policy development requirements set forth in § 614.4245 of the final regulation remove existing FCA prior approval requirements, include all FCS institutions that are engaged in lending or leasing activities secured by collateral, and establish the basic framework under which such policies are to be developed.

The reproposed regulation addressed the development of appraisal policies and standards for all types of collateral. The regulation's focus was changed to expand the types of collateral that may be evaluated under less stringent standards than are required for appraisals under the USPAP. Under the final regulation, the institution's board of directors is responsible for establishing specific guidelines relating to the type of collateral evaluations that are required and the circumstances under which such evaluations are appropriate. The regulation requires that, at a minimum, the institution's policies and guidelines contain the basic criteria contained in the sections of part 614, subpart F, of the final regulation.

3. Section 614.4250—Collateral Evaluation Standards

Sections 614.4250 through 614.4260 of the existing regulations were removed and reserved by the Eligibility and Lending Authority regulations which were adopted by the FCA as final regulations on June 19, 1990 (55 FR 24877).

In the reproposed appraisal regulation, this section was titled "Appraisal Standards." The section provided specific criteria for the establishment of policies and procedures for collateral appraisal, including the requirement that the

USPAP be used for all collateral appraisals. Comments received on this section's requirements related to benchmark appraisals, recovery value, legal descriptions, environmental impact analysis, and the application of highest and best use.

a. *Benchmark approach.* The FCA published its position on the use of a benchmark system of real estate appraisals in the reproposed regulation at 56 FR 2456 on January 23, 1991. The FCA considers a benchmark system to be a form of sales comparison approach where the comparable properties are reflected in a comparison to a single property rather than several properties and adjustments are made for the differences in the subject property from the comparable, or benchmark, based on past experience. A benchmark system could be recognized as a form of the comparable sales approach, which is one of the three permitted approaches, provided the institution maintains a current market evaluation of the benchmark properties supplemented with sales data developed from ongoing sales comparisons.

b. *Recovery value.* The existing regulation requires the use of recovery value for personal property collateral. Recovery value is defined as the amount the lender should realize from a sale of the property on reasonable terms less estimated maintenance, selling costs, and prior liens and encumbrances, at the date of inspection or appraisal. The reproposed regulation required personal property, as well as intangibles, to be valued on the basis of a market value. Under the USPAP standards, the "market value" of certain types of personal property involving transportation costs or related expenses associated with the marketing of such products includes consideration of such factors and costs. In addition, the FCA recognizes that the characteristics of a sale of property as formerly defined by "recovery value" may more accurately reflect the liquidation valuation of collateral for underwriting purposes.

Therefore, although the reproposed regulation discontinued the use of recovery value as the required basis for valuing personal property, the FCA believes that institutions should continue to consider the net realizable value of collateral in their credit underwriting standards. However, the FCA has concluded that the use of "market value" as the basis for valuation for real, personal, and intangible property is consistent with industry standards. For these reasons, the final regulation continues to require "market value" as the basis for collateral evaluations of personal and intangible property as well as real property.

c. *Legal descriptions.* Commenters also expressed concern with the requirement that legal descriptions be required as part of the appraisal documentation included under § 614.4250 of the reproposed regulation. The FCA agrees that the general guidelines for collateral evaluations need not contain such a specific requirement where an appraisal is not required. Consequently, the legal description requirement has been deleted from the criteria of § 614.4250 of the final regulation. However, the FCA continues to believe that a legal description should be included in an appraisal report to ensure proper identification of the property being appraised. The legal description of any real property taken as primary security for a loan is necessary to ensure full closure of the property and the absence of any conditions that may jeopardize the validity of the appraisal and/or the legal position of the lender. Accordingly, the final regulation continues to require a legal description for real estate appraisals under § 614.4265.

d. *Environmental impact analysis.* Several commenters stated that the reproposed regulation imposed an environmental impact analysis requirement on appraisers. They argued that an appraiser is not qualified to perform such an analysis and that the requirement would introduce a higher degree of liability for the appraiser. The reproposed regulation did not require an appraiser to complete an environmental analysis of any property. It did require an appraiser or evaluator, in the exercise of due diligence to identify any obvious environmental concerns in the appraisal or evaluation report on the real property collateral. Once an environmental concern has been documented in the appraisal or evaluation report, it is the institution's responsibility to engage an expert to conduct an analysis to ascertain: (1) The impact of the environmental concern; (2) the associated cost of any necessary cleanup; and (3) the effect of the environmental concern on the market value of the subject property.

e. *Highest and best use.* Commenters also objected to the requirement contained in this section of the reproposed regulation that collateral be appraised in its "as is" condition. They requested substitution of the "highest and best use" requirement as defined in § 614.4240 for the "as is" requirement. The final regulation incorporates this suggestion, to avoid limiting construction and facility financing and because the "as is" requirement is adequately addressed in the USPAP.

4. Section 614.4255—Independence Requirements

Under the reproposed regulation, this section only addressed independence of the appraisal function within FCS institutions and required functional independence of the appraisal process. This meant that appraisals of all collateral had to be performed separately from the lending, marketing, and collection processes. The reproposed regulation required only transactional independence on loan transactions that were under the *de minimis* level, taken out of an abundance of caution, or were otherwise excepted from appraisal requirements.

Where an appraisal of real estate is required, the final regulation continues to require that the appraiser be functionally independent or separate from the lending, marketing, and collection processes of the institution. On all other collateral evaluation, only transactional independence is required. Under the final regulation, this section provides guidance for transactional independence in all evaluations of personal, intangible, and real property collateral. Under transactional independence, a loan officer or some other qualified employee engaged in the lending, marketing, or collection processes may complete the collateral evaluation, provided the credit decision is reviewed by the institution's senior management or board of directors.

5. Section 614.4260—Evaluation Requirements

This section under the reproposed regulation required that all collateral be appraised by a qualified appraiser and that State licensed or State certified real estate appraisers be used to complete the appraisals on all real estate-related transactions with values above $50,000. The reproposed regulation also created an interim "designated appraiser" category until January 1, 1994.

This section of the final regulation sets forth the evaluation requirements for a valuation of collateral and for an appraisal of collateral. Section 614.4260 provides that all collateral taken as security must be evaluated by a qualified evaluator. It also prescribes that real property that is above the *de minimis* level, and is not otherwise excepted, must be appraised in accordance with USPAP by a State licensed or a State certified appraiser. Specifically, appraisals of real estate

securing loan transactions valued at $250,000 or less but in excess of $100,000 must be completed by a State licensed appraiser. Appraisals of real estate securing loan transactions valued in excess of $250,000 must be completed by a State certified appraiser.

Section 614.4260 of the final regulation sets forth in paragraphs (a) and (b) the evaluation requirements for individuals completing an evaluation and an appraisal of collateral. Paragraph (a) provides that all collateral taken as security must be evaluated by a qualified evaluator. Paragraph (b) requires that real property transactions that are above the *de minimis* level, and are not otherwise excepted, be appraised by a State licensed or a State certified appraiser. Specifically, appraisals of real estate securing loan transactions valued at $250,000 or less but in excess of $100,000 must be completed by a State licensed appraiser. Appraisals of real estate securing loan transactions valued in excess of $250,000 must be completed by a State certified appraiser.

Paragraph (c) of § 614.4260 sets forth the criteria under which real property may be exempted from the appraisal qualification requirements of paragraph (b). Such real property is subject only to the evaluation requirements of paragraph (a).

Paragraph (c) of the final regulation also provides that an appraisal performed by a State certified or State licensed appraiser is not required for a real estate-related financial transaction in the following instances:

a. *De minimis.* A real estate-related financial transaction having a transaction value less than or equal to $100,000.

b. *Abundance of caution.* A real estate-related financial transaction in which a lien on real property has been taken as collateral solely through an abundance of caution.

c. *Renewals.* A real estate-related financial transaction in which there is a subsequent transaction resulting from a maturing extension of credit, provided that the borrower has made all scheduled payments under the note, no new funds are advanced other than previously agreed, the borrower remains creditworthy, and there has been no obvious and material deterioration in market condition or in the physical aspects of the property which would threaten the institution's collateral protection.

d. *Advancement of new funds.* When new funds are advanced on an existing real estate-related financial transaction, that is supported by an appraisal, provided that such funds are advanced within 2 years of the date of the prior appraisal; the financial condition of the borrower has not deteriorated; and there has been no obvious and material deterioration in the market value or the physical condition of the property that would threaten the institution's collateral protection.

e. *Pools.* When a FCS institution purchases a loan or an interest in a loan, pool of loans, or interests in real property, including mortgage-backed securities, provided that: (1) The appraisal prepared for each loan, pooled loan, or real property interest, when originated, met the standards of this regulation, other Federal regulations adopted pursuant to FIRREA, or the requirements of government-sponsored secondary market intermediaries under whose auspices the interest is sold; and (2) there has been no obvious and material deterioration in the market value or the physical condition of the property that would threaten the FCS institution's collateral position.

f. *Government-guaranteed loans.* A real estate-related financial transaction involving a loan guaranteed by an agency of the Federal government, provided that the transaction is supported by a current appraisal that conforms to the requirements of the Federal agency providing the guarantee.

The FCA notes, with regard to exemptions a. and e. stated above, that any loan to be sold in the secondary market is subject to the appraisal requirements of this regulation as well as the appraisal requirements of the purchaser. To date, Fannie Mae, Freddie Mac and Farmer Mac have not adopted a *de minimis* level for appraisals of secondary market loans. Therefore, all such loans require an appraisal regardless of transaction value.

The FCA further notes that exemptions d. and f. stated above were not contained in the reproposed regulation. Both exemptions have been adopted by the FCA in its final regulation in recognition that requiring those transactions to meet additional appraisal requirements would increase costs for FCS institutions without providing additional benefits or furthering the purposes for which title XI of FIRREA was enacted.

The FCA emphasizes that to qualify for any of the six exemptions of § 614.4260(c) from the appraisal requirements of this subpart, the institution must document support for such exemption in the applicable loan file(s).

Section 614.4261 of the existing regulation addressing separate BC security and appraisal standards has been removed from the final regulation. Under the final regulation, where collateral is taken as security for the BCs' loans, the collateral evaluation requirements of subpart F would be applicable to such loans.

6. Section 614.4265—Real Estate Evaluations

This section has been revised in the final regulation to address evaluations of real property, which may or may not require appraisals. Under the revised section, when appraisals are required for real estate collateral, these appraisals must conform to the USPAP. In addition, the appraisal report must include a legal description of the property being appraised, to avoid confusion that may arise from less precise identification. This requirement enables a reader to compare the legal description in the appraisal report to the legal description in the loan documents. The legal description is to be provided in addition to, and not in lieu of, the type of description required in the USPAP.

Consistent with the approach of other financial regulators, § 614.4265 of the final regulation also prohibits the use of the Departure Provision of the USPAP when an appraisal is completed on a real estate-related transaction requiring the services of a State licensed or a State certified appraiser. The FCA believes that the Departure Provision in the USPAP allows for the omission of data that should be included in developing and reporting appraisals rendered in connection with real estate-related transactions. Therefore, the FCA has determined that the Departure Provision shall not apply to such appraisals.

Under § 614.4265 of the final regulation, income-based evaluations of real estate collateral are required where the transaction value exceeds $100,000 and the collateral properties are rentable, income producing, and primarily support the source of loan repayment. The income approach is also required where the transaction value exceeds $100,000 and the collateral property is not an integral part of and does not support the principal source of loan repayment, but has demonstrable rental market appeal, is statutorily required as loan collateral, and fully or partially constitutes, or is an integral part of, an agricultural or aquatic operation.

The FCA notes that, under the final regulation, the income approach must be completed and documented for any such property and for the credit analysis on any related loan action, whether or not the income approach is used as the final determination of market value. If an

institution does not consider the completed income approach to be an appropriate final determination of the property's market value, the institution may select either the sales comparison approach or the cost approach as the basis of market value. The institution must, however, explain the elimination of each approach not used as the final determination of market value.

Numerous commenters also objected to the inclusion of underwriting standards, such as account officers' collateral inspection requirements, that were applicable to collateral evaluations as opposed to appraisal requirements. It is the FCA's continued position that such related standards are appropriate criteria for the consideration and control of the collateral evaluation process. In addition, the final regulation emphasizes the requirement that, while a loan officer may not be the evaluator of the subject collateral, the loan officer is still expected to be familiar with the collateral, its location, quantity, and quality. The loan officer should, as a part of prudent credit administration, periodically review and monitor the collateral securing a loan and, where applicable, verify the collateral against any borrowing base/collateral reporting requirements of the loan.

7. Section 614.4266—Personal and Intangible Property Evaluations

The reproposed regulation required all personal and intangible property taken as security for loans to be appraised by qualified appraisers under the USPAP. The final regulation merely requires a collateral evaluation of personal and intangible property taken as security for loans to be completed by a qualified evaluator based on market value documented by a collateral evaluation report consistent with institution-established policies and standards.

8. Section 614.4267—Professional Association Membership; Competency

a. *Membership in appraisal organizations.* Section 1122 (12 U.S.C. 3351) of title XI of FIRREA addresses Congress' concern that applicants for licensing and certification might be discriminated against on the basis of membership or nonmembership in certain appraisal organizations.[7] Paragraph (d) of section 1122 prohibits the exclusion of a certified or licensed appraiser for consideration of an assignment solely by virtue of membership or lack of membership in any particular appraisal organization. This prohibition is set forth in § 614.4256 of the FCA's final collateral evaluation regulation. The FCA believes that an institution should review the qualifications of appraisers rather than the qualifications of appraisal organizations to ensure that a qualified individual is being employed. Membership in an organization may be considered; however, it may not be the sole determining factor in accepting or rejecting an appraiser.

b. *Competency.* The FCA recognizes that not all evaluators and appraisers are qualified to perform every type of evaluation. The competency provision of this regulation requires that all evaluators and appraisers be qualified by having demonstrated knowledge and experience to perform evaluations of the specific type of property that is the subject of the evaluation. The provision also provides that an evaluator or an appraiser should not be considered competent solely because he or she is accredited, or State certified or State licensed. Institutions should look beyond an individual's title to determine if he or she has the requisite experience and training to complete a particular assignment competently.

This provision is not intended to prohibit an individual from appraising a type of property with which he or she is not familiar in every circumstance. However, in such instances, an appraiser may perform the appraisal only in accordance with the Competency Provision in the USPAP. In addition, an individual who is not a State certified or licensed appraiser may assist in the preparation of an appraisal if he or she is directly supervised by a licensed or certified appraiser (as appropriate), and the appraisal is approved and signed by a certified or licensed appraiser.

III. Subpart L—Actions on Applications; Review of Credit Decisions

A. Section 614.4440—Definitions

This section under the existing regulation does not provide a definition for an "independent appraiser." The need for the definition was discussed in the preamble to the final borrower rights regulation (53 FR 35452, September 14, 1988). The preamble stated that the definition would be subsequently developed under revisions to part 614, subpart F. Accordingly, the reproposed regulation (56 FR 2452, January 23, 1991) defined an independent appraiser as a State certified, a State licensed, a designated, or an accredited appraiser who was qualified to appraise the subject property and who was not a FCS institution employee.

Several commenters requested clarification of the words "designated," "accredited," and "qualified" in the definition of an "independent appraiser." After review of the comments received and in consideration of the revised focus of the final regulations contained in subpart F, the FCA has revised the definition of "independent appraiser" in subpart L of the final regulation. Section 614.4440 has substituted the term "independent evaluator" for the term "independent appraiser" in recognition that collateral evaluations must be completed by individuals on properties where an appraisal may not be required. The final regulation also includes "qualified evaluator" as a defined term under § 614.4240 and eliminates the term "designated appraiser." The revisions to the regulation recognize that all collateral securing loans is not real estate-related and that valuation of such collateral may be developed without full compliance with the USPAP.

Review of comments received indicated that some commenters believed that a "qualified" appraiser is a separate appraisal designation. The final regulation clarifies that all evaluators, including State licensed and certified appraiser, must be "qualified" to complete the particular collateral evaluation assignment competently. Qualification and competency standards for evaluators and appraisers are general criteria applicable to all evaluators, including appraisers, and are not intended to be a separate designation.

B. Section 614.4443—Review Process

Section 614.4443(c)—Independent collateral evaluations. The existing regulation addresses the general requirements for an independent appraisal completed by an accredited appraiser in connection with a review of a loan decision, which is required by section 4.14(d) of the Act. Under the reproposed regulation, a definition of an "independent appraiser" was added to recognize current practices of the appraisal industry resulting from the enactment of title XI of FIRREA. The reproposed regulation required that the borrower engage an independent appraiser and that the appraiser comply with the applicable requirements of part 614, subpart F, in completing an appraisal report.

Commenters asserted that the inclusion of State licensed, State certified, or designated appraisers in the definition of an independent appraiser

[7] See, *e.g.*, House Banking Committee Report at 484; see also H.R. Conf. Rept. No. 222, 101st Cong., 1st Sess., at 457 (1989).

exceeded the "accredited appraiser" criteria contained in section 4.14(d) of the Act. Commenters also expressed concern with the practical application and the ability of the FCA to compel compliance with the regulations contained in subpart F when the appraisers are engaged by the borrower.

The independent appraiser definition in the reproposed regulation recognized and incorporated the financial and appraisal industries' compliance with the requirements of title XI of FIRREA, which did not exist when section 4.14(d) of the Act was enacted. The comprehensive approach to real estate appraisals contemplated by FIRREA supplants to a large degree the concept of accreditation in the appraisal industry. In addition, the FCA believed that it would be unfair and unsafe and unsound for a FCS institution to be required to reconsider a credit decision on the basis of an appraisal meeting a lesser standard than the institution is required to meet. However, under the final regulation, appraisals are not required for all types of transactions. Therefore, this section has been revised in the final regulation to reflect the changes made in subpart F. The effect is to impose the same standards on the independent evaluation obtained by the borrower as upon the institution. It would be unfair to hold the institution to an evaluation standard and allow the borrower to appeal a credit decision based on an evaluation meeting a lesser standard. It would also be unfair to the borrower to require the borrower to meet a more stringent standard than the institution is required to meet. The effect of this change is to define "accredited appraiser" to be a qualified evaluator in those circumstances not requiring an appraisal, and a State certified or licensed appraiser in those circumstances in which an appraisal is required.

This section of the final regulation also recognizes the commenters' concerns relating to the institutions' lack of control of independent evaluators' compliance with the requirements of part 614, subpart F, when the evaluator is retained by the borrower. Under this section of the final regulation, the applicant/borrower engages the services of the independent evaluator and is responsible for the associated cost of the evaluation. Therefore, in the final regulation, this section requires that a copy of part 614, subpart F, be provided to the applicant/borrower. The applicant/borrower must then provide a copy of subpart F to the independent evaluator as part of the evaluation engagement agreement. The evaluator, as a condition of his or her engagement, will acknowledge receipt of a copy of part 614, subpart F, and will document the final evaluation report with the signed copy of subpart F as an attachment. It is the FCA's position that for comparison purposes the borrower's independent evaluator's report must be completed under evaluation standards comparable to those standards applicable to FCS institutions. Therefore, a FCS institution's credit review committee need not consider a borrower's application for reconsideration, where an independent collateral evaluation is requested, unless the independent evaluator has completed a collateral evaluation in conformance with the requirements described in subpart F of part 614 relative to collateral evaluation standards, independence requirements and qualification requirements.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

2. Subpart F is revised to read as follows:

Subpart F—Collateral Evaluation Requirements

Sec.

Subpart F—Collateral Evaluation Requirements

§ 614.4240 Collateral definitions.

For the purpose of this part, the following definitions shall apply:

(a) *Abundance of caution*, when used to describe decisions to require collateral, means that the collateral is required in circumstances in which it is not required by statute, regulation, or the institution's policies and it would not be required by a prudent lender to support the credit decision. To qualify for the abundance of caution exception to the requirements of this subpart, the institution must document in the loan file that the application, when evaluated on the credit factors set forth in § 614.4160 of this part without considering the collateral that is the subject of the collateral evaluation, would support the credit decision.

(b) *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(c) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, by professional appraisal organizations, as a not-for-profit corporation under the laws of Illinois, in order to enhance the quality of professional appraisals.

(d) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(e) *Cost approach* means the valuation process by which an evaluator establishes an indicated value by measuring the current market cost to construct a reproduction of or replacement for the improvements, minus the amount of depreciation (physical deterioration, or functional and/or external obsolescence) evident in the structure from all causes, plus the market value of the land.

(f) *Evaluation* means a study of the nature, quality, or utility of, or interest in, or aspects of, an asset. This may or may not include a valuation or an appraisal.

(g) *Fee appraiser* means a qualified evaluator/appraiser who is not an employee of the contracting party and who performs an evaluation/appraisal on a fee basis. For purposes of this subpart, a fee appraiser may include a staff evaluator/appraiser from another Farm Credit System institution only if the employing institution is not operating under joint management with

the contracting institution. In addition, for purposes of personal and intangible collateral evaluations, the term "fee appraiser" includes, but is not limited to, certified public accountants, equipment dealers, grain buyers, livestock buyers, and auctioneers.

(h) *FIRREA* means the Financial Institutions Recovery, Reform, and Enforcement Act of 1989.

(i) *Highest and best use* means the reasonable and most probable use of the property that would result in the highest market value of vacant land or improved property, as of the date of valuation; or that use, from among reasonably probable and legally alternative uses, found to be physically possible, appropriately supported, financially feasible, and which results in the highest land value.

(j) *Income capitalization approach* means the procedure that values property by measuring the present value of the expected future benefits of property ownership. This value is derived from either:

(1) Capitalizing a single year's income expectancy or an annual average of several years' income expectancies at a market-derived capitalization rate that reflects a specific income pattern, return on investment, and change in the value of the investment; or

(2) Discounting the annual cashflows for the holding period and the reversion at a specified yield rate or specified yield rates which reflect market behavior.

(k) *Market value* means the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming neither is under duress. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(l) *Personal property* for purposes of this subpart, means all tangible and movable property not considered real property or fixtures.

(m) *Qualified evaluator* means an individual who is competent, reputable, impartial, and has demonstrated sufficient training and experience to properly evaluate property of the type that is the subject of the evaluation. For the purposes of this definition, the term "qualified evaluator" includes an appraiser with similar qualifications.

(n) *Real estate* means an identified parcel or tract of land, including improvements, if any.

(o) *Real estate-related financial transactions* means any transaction involving:

(1) The sale, lease, purchase, investment in or exchange of real property, including interests in property or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

(p) *Real property* means all interests, benefits, and rights inherent in the ownership of real estate.

(q) *Sales comparison approach* means the procedure that values property by comparing the subject property to similar properties located in relatively close proximity, having similar size and utility, and having been recently sold in arms-length transactions (comparable sales). The sales comparison approach requires the evaluator to estimate the degree of similarity and difference between the subject property and comparable sales. Such comparison shall be made on the basis of conditions of sale, financing terms, market conditions, location, physical characteristics, and income characteristics. Appropriate adjustments shall be made to the sales price of the comparable property based on the identified deficiencies or superiorities of the subject property to arrive at a probable price for which the subject property could be sold on the date of the collateral evaluation.

(r) *State certified appraiser* means any individual who has satisfied the requirements for and has been certified as a real estate appraiser by a State or territory whose requirements for certification currently meet or exceed the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation. No individual shall be a State certified appraiser unless such individual has achieved a passing grade on a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board of the Appraisal Foundation. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA.

(s) *State licensed appraiser* means any individual who has satisfied the requirements for licensing and has been licensed as a real estate appraiser by a State or territory in which the licensing procedures comply with title XI of FIRREA and in which the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA.

(t) *Transaction value* means:

(1) For loans or other extensions of credit, the amount of the loan, loan commitment, or other extensions of credit;

(2) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the property interest involved; and

(3) For the pools of loans or interests in real property, the transaction value of the individual loans or the market value of the real property interests comprising the pool.

(u) *USPAP* means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Foundation.

(v) *Valuation* means the process of estimating a defined value of an identified interest or interests in a specific asset or assets as of a given date. A valuation results from the completion of a collateral evaluation that does not require an appraisal.

§ 614.4245 Collateral evaluation policies.

(a) The board of directors of each Farm Credit System institution that engages in leading or leasing secured by collateral shall adopt well-defined and effective collateral evaluation policies and standards to ensure that collateral evaluations are:

(1) Performed based on criteria established for the purpose of determining the circumstances under which collateral evaluations will be required and when they will be required. Such criteria must, at a minimum:

(i) Establish when an institution will require a collateral appraisal completed under the USPAP rather than a collateral valuation; and

(ii) Take into account such factors as market trends, market volatility, and various types of credit, loan servicing, collection, and liquidation actions; and

(2) Completed by a qualified evaluator in an unbiased manner.

(b) The policies and standards required by this section shall, at a minimum, address the criteria outlined in §§ 614.4250 through 614.4267 of this subpart.

(c) A Federal land bank association shall, with the approval of its respective Farm Credit bank, adopt collateral evaluation policies that are consistent with the bank's policies and standards.

§ 614.4250 Collateral evaluation standards.

(a) When real, personal, or intangible property is taken as security for a loan or is the subject of a lease, an evaluation of such property shall be performed in accordance with this section, § 614.4260, and the institutions' policies and procedures. Such a collateral evaluation shall be identified as either a collateral valuation or a collateral appraisal. Specifically, all collateral evaluations must:

(1) Value the subject property based upon market value as defined in § 614.4240(l);

(2) Be presented in a written format;

(3) Consider the purpose for which the property will be used and the property's highest and best use, if different from the intended use;

(4) Be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate;

(5) Provide sufficient detail and depth of analysis to reflect the relevant characteristics and complexity of the subject property;

(6) Analyze and report, as appropriate, on:

(i) The current income-producing capacity of the property;

(ii) A reasonable marketing period for the property;

(iii) The current market conditions and trends that will affect projected income, to the extent such conditions will affect the value of the property;

(iv) Identify the appropriate deductions and discounts as they would apply to the property, including but not limited to, those based on the condition of the property, as well as the specialization of the operation and property; and

(v) Identify potential liabilities, including those associated with any hazardous waste or other environmental concerns.

(7) Include in the evaluation report a certification that the evaluation was not based on a requested minimum valuation or specific valuation or approval of a loan; and

(8) Contain sufficient supporting documentation (including an identification and description of the property) with all pertinent information reported so that the evaluator's reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the market value reported.

(b) For purposes of determining appraisal value as required in section 1.10(a) of the Act, the definition of market value and the requirements of this subpart shall apply.

§ 614.4255 Independence requirements.

(a) *Evaluator.* For all personal and intangible property, and for all real property exempted under § 614.4260(c) of this subpart, qualified persons performing an evaluation may not be involved in the marketing, lending, collection, or credit decision processes of the employing Farm Credit System institution, unless such institution takes appropriate steps to ensure that the evaluator exercises independent judgment and that the evaluation is adequate. Such steps shall include, but are not limited to:

(1) Adopting procedures for ensuring that an individual will not perform evaluations in connection with transactions in which the evaluator has a direct or indirect interest, financial or otherwise, in the loan or subject property; and

(2) Prohibiting directors, officers, and employees from participating in any vote or approval involving assets on which they performed a collateral evaluation or in performing a collateral evaluation in connection with any transaction on which they have made a credit decision.

(b) *Real estate appraiser.* Except as provided in § 614.4260(c) of this subpart, all evaluations of real property that serve as the primary security for a loan shall be performed by a qualified real estate appraiser who has no direct or indirect interest, financial or otherwise, in the loan or subject property and is not engaged in the marketing, lending, collection, or credit decision processes of any of the following:

(1) A Farm Credit System institution making or originating the loan;

(2) A Farm Credit System institution operating under common management with the institution making or originating the loan; or

(3) A Farm Credit System institution purchasing an interest in the loan.

(c) *Fee appraisers.* Fee appraisers shall be engaged directly by the Farm Credit System institution or its agent, and shall have no direct or indirect interest, financial or otherwise, in the property or transaction. A Farm Credit System institution may accept a real estate appraisal that was prepared by an appraiser engaged directly by another Farm Credit System institution or another institution subject to title XI of FIRREA, if the Farm Credit System institution that accepts the appraisal has:

(1) Established procedures for review of real estate appraisals;

(2) Reviewed the appraisal under the established review procedures and found the appraisal acceptable; and

(3) Documented the review in writing.

(d) *Loan Purchases.* In those cases where an evaluation has been performed by an individual from another Farm Credit System institution in connection with a loan in which such institution subsequently purchases an interest, the evaluator shall not participate in any decision related to the loan purchase.

§ 614.4260 Evaluation requirements.

(a) *Evaluation.* Evaluations of personal and intangible property, as well as real property exempted under paragraph (c) of this section, shall be performed by qualified individuals who meet the established standards of the Farm Credit System institution obtaining the collateral evaluation.

(b) *Appraisal.* Appraisals of real estate shall be performed as follows:

(1) Appraisals for real estate-related financial transactions with transaction values of more than $250,000 shall be performed by a qualified appraiser who is a State certified real estate appraiser.

(2) Appraisals for real estate-related financial transactions with transaction values of $250,000 or less but in excess of $100,000 shall be performed by a qualified appraiser who, at a minimum, is a State licensed real estate appraiser.

(c) *Appraisals not required.* An appraisal performed by a State certified or State licensed appraiser is not required for any real estate-related financial transaction in which any of the following conditions are met:

(1) The transaction value is $100,000 or less;

(2) A lien on real property has been taken as collateral solely out of an abundance of caution and the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of the lien;

(3) There is a subsequent transaction resulting from the maturing extension of credit, provided that:

(i) The borrower has performed satisfactorily according to the original terms;

(ii) No new monies have been advanced other than as previously agreed;

(iii) The credit standing of the borrower has not deteriorated; and

(iv) There has been no obvious and material deterioration in market conditions or physical aspects of the property that would threaten the Farm Credit System institution's collateral position;

(4) New funds are advanced on an existing loan, that is supported by an appraisal, provided that:

(i) The new funds are advanced within 2 years of the date of the prior appraisal;

(ii) The financial condition of the borrower has not deteriorated; and

(iii) There has been no obvious and material deterioration in the market value or the physical condition of the property that would threaten the Farm Credit System institution's collateral position;

(5) A Farm Credit System institution purchases a loan or an interest in a loan, pool of loans, or interests in real property, including mortgage-backed securities, provided that:

(i) The appraisal prepared for each loan, pooled loan, or real property interest, when originated, met the standards of this regulation, other Federal regulations adopted pursuant to FIRREA, or the requirements of the government-sponsored secondary market intermediaries under whose auspices the interest is sold; and

(ii) There has been no obvious and material deterioration in the market value or the physical condition of the property that would threaten the Farm Credit System institution's collateral position, or

(6) A Farm Credit System institution makes or purchases a loan secured by real estate, which loan is guaranteed by an agency of the United States government and is supported by an appraisal that conforms to the requirements of the guaranteeing agency.

To qualify for exceptions (c)(1) through (c)(6) from the requirements of this subpart, the institution must have documentation for such exception in the applicable loan file(s).

(d) *Reciprocity.* The requirements of this regulation are satisfied by the use of State certified or State licensed appraisers from any State provided that:

(1) The appraiser is qualified to perform such appraisals;

(2) The applicable Farm Credit System institution has established policies providing for such interstate appraisals; and

(3) The applicable State appraiser licensing and certification agency recognizes the certification or license of the appraiser's State of permanent certification or licensure.

§ 614.4265 Real property evaluations.

(a) Real estate shall be valued on the basis of market value.

(b) Real estate shall be valued by a reasonable valuation method that considers the income capitalization approach, the sales comparison, and/or the cost approach, as appropriate, to determine market value; reconciles those approaches and explains the elimination of each approach not used.

(c) Where real estate appraisals are required, such appraisals shall be completed in accordance with the USPAP and shall include a legal description of the subject property.

(d) At a minimum, the evaluator shall develop and document the evaluation of the income capitalization approach (establishing production earnings capacity for the property) and at least one of the other two approaches to valuing real estate, whichever is appropriate, where the transaction value exceeds $100,000 and the real estate taken as collateral:

(1) Is an integral part of and supports the principal source of loan repayment, and the property has demonstrable rental market appeal; or

(2) Is not an integral part of and does not support the principal source of loan repayment, but has demonstrable rental market appeal, is statutorily required, and fully or partially constitutes or is an integral part of an agricultural or aquatic operation.

(e) The rental gross and the net earnings capacity established under paragraph (d) of this section on such properties shall be documented as part of the credit analysis for any related loan action whether or not the income approach value is used as the basis for the market value conclusion stated in the evaluation report.

(f) Collateral closely aligned with, an integral part of, and normally sold with real estate (fixtures) may be included in the value of the real estate. All other collateral associated with the real estate, but designated as personal property, shall be evaluated as personal property in accordance with §§ 614.4250 and 614.4266 of this subpart.

(g) The evaluation shall properly identify all nonagricultural influences, including, but not limited to, urban development, mineral deposits, and commercial building development value, and the reasoning supporting the evaluator's highest and best use conclusion.

(h) The "Departure Provision" of the USPAP may not be used for real estate evaluations requiring the use of a State licensed or State certified real estate appraiser as set forth in § 614.4260(b) of this subpart.

(i) Where an evaluation of real property is completed by a fee appraiser, as defined in § 614.4240(g) of this subpart, the institution's standards shall include provisions for periodic collateral inspections performed by the institution's account officer or designee.

§ 614.4266 Personal and intangible property evaluations.

(a) Personal property and intangibles shall be valued on the basis of market value in accordance with the institution's evaluation standards and policies.

(b) Personal property evaluations shall include a description of the property being evaluated, including location of the property and, where applicable, quantity, species/variety, measure/weight, value, type of identification (such as, brand, bill of lading, or warehouse receipt), quality, condition, and date.

(c) Evaluations of intangibles shall include a review and description of the legal documents supporting the property interests and the marketability of the intangible property, including applicable terms, conditions, and restrictions contained in the document that would affect the value of the property.

(d) Where an evaluation of personal or intangible property is completed by a fee appraiser, as defined in § 614.4240(g) of this subpart, the institution's standards shall include provisions for periodic collateral inspections and verification by the institution's account officer or designee.

(e) When a Farm Credit System institution deems an appraisal necessary, personal or intangible property shall be appraised in accordance with procedures and standards established by the institution by individuals deemed qualified by the institution to complete the work under the USPAP Competency and Ethics Provisions.

§ 614.4267 Professional association membership; competency.

(a) *Membership in appraisal organizations.* A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment for a real estate-related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee evaluators, including appraisers, performing evaluations in connection with real, personal, or intangible property taken as collateral in connection with extensions of credit must meet the qualification requirements of this subpart. However, an evaluator may not be considered competent solely by virtue of being certified, licensed, or accredited. Any determination of competency shall be based on the individual's experience and educational background as they relate to the particular evaluation assignment for which such individual is being considered.

Subpart L—Actions on Applications; Review of Credit Decisions

3. Section 614.4440 is revised by redesignating paragraphs (f), (g), and (h) as new paragraphs (g), (h), and (i), respectively, and adding a new paragraph (f) to read as follows:

§ 614.4440 Definitions.

* * * * *

(f) *Independent evaluator,* for the purposes of this subpart, means an individual who is a qualified evaluator and who satisfies the standards established by § 614.4260 of subpart F of this part and by the Farm Credit System institution for the type of property to be evaluated.

The independent evaluator may not be a Farm Credit System institution employee or have a relationship with the institution or any of its officers or directors that contravenes the provisions of part 612, subpart B of this chapter.

* * * * *

4. Section 614.4443 is amended by revising paragraph (c) to read as follows:

§ 614.4443 Review process.

* * * * *

(c) *Independent collateral evaluations.*

(1) An applicant for a loan, or a borrower who has applied for a restructuring, may, as part of the request for a review, request an independent collateral evaluation by an independent evaluator, as defined in § 614.4440 of this subpart, of any interests in property securing the loan (other than the stock or participation certificates of the lender held by the borrower). Within 30 days after a request for a collateral evaluation, the credit review committee shall present the applicant or borrower with a list of three independent evaluators approved by the qualified lender, and the borrower shall select and engage the services of an evaluator from the list to conduct the collateral evaluation, the cost of which shall be borne by the applicant or borrower. The credit review committee shall consider the results of any such collateral evaluation in any final determination with respect to the loan or restructuring provided the applicant's or borrower's evaluator has provided a copy of the evaluation report to the lender not less than 15 business days prior to any scheduled meeting of the credit review committee, and

(2) Any such collateral evaluations that are not completed in conformance with the collateral evaluation requirements described in subpart F of this part relative to collateral evaluation standards, independence requirements, and qualification requirements need not be considered by the credit review committee. To facilitate the proper completion of such collateral evaluations, a copy of part 614, subpart F, of these regulations shall be provided to the borrower for presentation to the borrower's evaluator, and a copy signed by the borrower's evaluator shall be a required exhibit in the subsequent evaluation report.

* * * * *

Dated: November 12, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–27961 Filed 11–19–92; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 90F–0045]

Food Additives Permitted For Direct Addition to Food For Human Consumption: Food Starch-Modified

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of modified food starch prepared using alpha-amylase. This action is in response to a petition filed by the Grain Processing Corp.

DATES: Effective November 20, 1992; objections by December 21, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vincent E. Zenger, Center for Food Safety and Applied Nutrition (HFF–333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 19, 1990 (55 FR 10113), FDA announced that a food additive petition (FAP 9A4153) had been filed by the Grain Processing Corp., 1600 Oregon St., P.O. Box 349, Muscatine, IA 52761, proposing that food-starch modified (21 CFR 172.892) be amended to provide for the safe use of alpha-amylase to treat modified food starch. In fact, the food additive under review is modified food starch, not alpha-amylase. Thus, the petition requested, and the agency evaluated, the safety of the use of modified food starch prepared using alph-amylase.

FDA has evaluated data in the petition and other relevant material. The agency concludes that modified food starch prepared using alpha-amylase is safe and that § 172.892(h) should be amended and a new paragraph (i) should be added as set forth below. The agency also concludes that alpha-amylase should more properly be identified as "alpha-amylase (International Union of Biochemistry Enzyme Commission (E.C. 3.2.1.1.))."

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 21, 1992, file

with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, 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 Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.892 is amended in paragraph (h) by removing the phrase"paragraphs (a) and/or (b)" and adding in its place "paragraphs (a), (b), and/or (i)", and by adding new paragraph (i) to read as follows:

§ 172.892 Food starch-modified.

* * * * *

(i) Food starch may be modified by treatment with the following enzyme:

Enzyme	Limitations
Alpha-amylase (E.C. 3.2.1.1).	The enzyme must be generally recognized as safe or approved as a food additive for this purpose. The resulting nonsweet nutritive saccharide polymer has a dextrose equivalent of less than 20.

Dated: October 27, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–28178 Filed 11–19–92; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 90F–0217]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of decanoic acid, nonanoic acid, phosphoric acid, propionic acid and sodium 1-octanesulfonate, and sulfuric acid as an optional ingredient, as components of a sanitizing solution to be used on food-processing equipment and utensils, including dairy-processing equipment. This action responds to a petition filed by West Agro, Inc.

DATES: Effective November 20, 1992; written objections and requests for a hearing by December 21, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 30, 1990 (55 FR 30983), FDA announced that a food additive petition (FAP 0B4203) had been filed by West Agro, Inc., 11100 North Congress Ave., Kansas City, MO 64153–1222, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of decanoic acid, nonanoic acid, phosphoric acid, propionic acid and sodium 1-octanesulfonate, and sulfuric acid as an optional ingredient, as components of a sanitizing solution to be used in contact with food.

I. Safety and Functional Effect of Petitioned Use of the Additives

Sanitizing solutions are regulated as mixtures of chemicals which function together to sanitize food-contact surfaces. Each listed component in a sanitizing solution has a functional effect. In addition, FDA regulations permit the addition to a sanitizing solution of any component that is generally recognized as safe (GRAS) (§ 178.1010(b)). The subject sanitizing solution contains decanoic acid, nonanoic acid, phosphoric acid, propionic acid and sodium 1-octanesulfonate, and sulfuric acid as an optional ingredient. The function of each component and the basis for FDA's determination of the safety of each component in the subject sanitizer are described below.

A. Decanoic Acid

Decanoic acid functions as an antimicrobial agent in the subject sanitizing solution. Decanoic acid is listed as a component in regulated sanitizing solutions under § 178.1010(b)(27), (b)(35), and (b)(36). On the basis of the data submitted in support of these already regulated uses and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of decanoic acid is safe in the subject sanitizing solution.

B. Nonanoic Acid

Nonanoic acid functions as an antimicrobial agent in the subject sanitizing solution. Nonanoic acid is regulated for use as a direct food additive under 21 CFR 172.515. On the basis of the data submitted in support of this already regulated use and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of nonanoic acid in the subject sanitizing solution is safe.

C. Phosphoric Acid

Phosphoric acid functions as an acidulant in the subject sanitizing solution. Phosphoric acid is listed as GRAS under 21 CFR 182.1073. It is also regulated for use in several sanitizing solutions under § 178.1010. On the basis of the data submitted in support of these already regulated uses, the data contained in the food additive petition submitted in support of this sanitizing solution, and other available data, FDA

finds that the use of phosphoric acid in the subject sanitizing solution is safe.

D. Sodium 1-octanesulfonate

Sodium 1-octanesulfonate functions as a solubilizing and emulsifying agent in the subject sanitizing solution. Sodium 1-octanesulfonate is listed as a component in a regulated sanitizing solution under § 178.1010(b)(27). On the basis of the data submitted in support of this already regulated use and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of sodium 1-octanesulfonate in the subject sanitizing solution is safe.

E. Propionic Acid

Propionic acid functions as a solubilizing agent for the fatty acids in the subject sanitizing solution. Propionic acid is listed as GRAS under 21 CFR 184.1081. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution and other available data, FDA finds that the use of propionic acid in the subject sanitizing solution is safe.

F. Sulfuric Acid

Sulfuric acid is listed as an optional ingredient that functions as an acidulant. It may optionally be used in the place of a portion of the phosphoric acid. Sulfuric acid is listed as GRAS under 21 CFR 184.1095. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution and other available data, FDA finds that the use of sulfuric acid in the subject sanitizing solution is safe.

G. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant materials. On the basis of this evaluation, the agency concludes that these data and materials establish the safety of the level of use and the effectiveness of the additive as a sanitizing solution, and that the regulations should be amended in § 178.1010 as set forth below. The agency also finds that the data in this petition support the use of the subject sanitizing solution on dairy-processing equipment as well as on other food processing equipment and utensils.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

II. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 21, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.1010 is amended by adding new paragraphs (b)(42) and (c)(37) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(42) An aqueous solution containing decanoic acid (CAS Reg. No. 334–48–5), nonanoic acid (CAS Reg. No. 112–05–0), phosphoric acid (CAS Reg. No. 7664–38–2), propionic acid (CAS Reg No. 79–09–04), and sodium 1-octanesulfonate (CAS Reg. No. 5324–84–5). Sulfuric acid (CAS Reg. No. 7664–93–9) may be added as an optional ingredient. In addition to use on food-processing equipment and utensils, this solution may be used on dairy-processing equipment.

(c) * * *

(37)(i) The solution identified in paragraph (b)(42) of this section not containing sulfuric acid shall provide when ready for use not less than 45 parts per million and not more than 90 parts per million of decanoic acid; and all components shall be present in the following proportions (weight/weight (w/w)): 1 part decanoic acid to 1 part nonanoic acid to 9.5 parts phosphoric acid to 3.3 parts propionic acid to 3.3 parts sodium 1-octanesulfonate.

(ii) The solution identified in paragraph (b)(42) of this section containing sulfuric acid shall provide when ready for use not less than 45 parts per million and not more than 90 parts per million of decanoic acid; and all components shall be present in the following proportions (w/w): 1 part decanoic acid to 1 part nonanoic acid to 2.8 parts phosphoric acid to 3.3 parts propionic acid to 3.3 parts sodium 1-octanesulfonate to 3.2 parts sulfuric acid.

* * * * *

Dated: October 26, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–28179 Filed 11–19–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 470

RIN 1294-AA06

Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Correction of final rule.

SUMMARY: This document contains a correction to the final rule which was published Monday, November 2, 1992 (57 FR 49588). The rule implements Executive Order 12800 which imposes obligations on federal contractors and subcontractors concerning notice of employee rights as to payment of union dues or fees.

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219-7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction would add a new subchapter C, consisting of part 470, to 29 CFR chapter IV on the effective date. Part 470 implements Executive Order 12800. Section 470.2 requires that contractors or subcontractors post an employee notice informing employees of their rights as to payment of union dues or fees.

Need for Correction

As published, the final rule contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on November 2, 1992 of the final rule is corrected as follows:

§ 470.2(d) [Corrected]

Paragraph 1. On page 49596, in the second column, in § 470.2(d), beginning line 14, the word "must" in front of the word "reproduce" is corrected to read "may".

Signed at Washington, DC, this 16th day of November, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-28239 Filed 11-19-92; 8:45 am]

BILLING CODE 4510-86-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart D—1992—1993 Subsistence Taking of Fish and Wildlife Regulations

AGENCIES: Forest Service, USDA. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule modifies the regulations for deer harvest in Game Management Unit (GMU) 4, as indicated in Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart D—1992-93 Subsistence Taking of Fish and Wildlife Regulations, which appeared in the Federal Register on May 28, 1992 (57 FR 22530). The harvest decisions reflect the capability of the deer populations to sustain the natural and human pressures on the herds. The modifications were taken to ensure the continued viability of the game populations.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistance Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802-1628, telephone (907) 586-8890.

SUPPLEMENTARY INFORMATION: Changes to the 1992-93 seasons and bag limits for deer harvest on federal public lands in GMU-4 were determined by the Federal Subsistence Board (Board) at a public meeting in Juneau, Alaska on July 29, 1992 The public was notified of proposed changes and the opportunity to comment at the meeting through announcements made available on July 23, 1992 to newspapers and radio and television stations in Juneau, Sitka, Petersburg, Wrangell, Anchorage, and Fairbanks. Paid announcements were also placed in the Juneau, Sitka, Petersburg, Wrangell, and Anchorage papers prior to the meeting. Subsistence Regional Advisory Councils and the Alaska Department of Fish & Game were given specific notice prior to the meeting. The decision was reached after careful analysis of available data including USDA Forest Service habitat capability models, deer populations surveys, hunter harvest surveys, and past weather conditions, and after considering public comment heard at the meeting.

Persuasive data indicate that current deer populations do not support the levels of subsistence and sport harvests that have occurred over the last few years. Deer populations are estimated to be down by as much as 31% on Admiralty Island, South Baranof and West Chichagof, 33% on Northeast Chichagof and 38% in the Sitka Sound/Peril Strait area. Deep and prolonged snowpack in recent years is the principal factor that has reduced deer numbers on portions of Chichagof and Baranof Islands. Despite the decreased deer population this year as compared to the last several years, liberal seasons and bag limits based upon an abundance of deer a few years ago were retained in the 1992-92 Subsistence Taking of Fish and Wildlife Regulations. Public comment included concern by subsistence hunters in the Hoonah area that competition from sport hunters was impairing their ability to obtain deer, opinion that the six deer bag limit established in the May 28, 1992 subpart D regulations reflects recent abundance of deer due to mild winters, and exceeds historical levels of subsistence or sport harvest, and lack of opposition to changes proposed for the Sitka Sound/Peril Straits portion of GMU-4.

Accordingly, the Board took action to restrict non-subsistence harvest of deer and to adjust seasons and bag limits for subsistence harvest in portions of GMU-4. These actions are effective for the 1992-93 harvest season only. Seasons and bag limits for the 1993-94 season will be considered by the Board along with any other proposed changes to the subpart D regulations according to a schedule to be separately published.

It is not practicable, necessary, or consistent with the public interest to provide for **Federal Register** notice and further public procedure prior to publication of this final rule, which implements the Board action taken on July 29, 1992. The deer harvest season under the May 28, 1992 regulations began on August 1, 1992. The Board was

unable to meet and consider changes to seasons and bag limits based upon the latest data collected in the spring of 1992 until late July. Public notice and an opportunity to comment upon the proposed changes was provided in potentially affected communities through newspaper publications and other means prior to the Board action. Action was necessary to assure the continued viability of game populations upon which subsistence and other hunters in the vicinity of GMU–4 depend, and to continue subsistence use of those populations.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, 36 CFR part 242 and 50 CFR part 100 are amended in identical fashion as follows:

36 CFR PART 242—[AMENDED]

50 CFR PART 100—[AMENDED]

1. The authority citation for 36 CFR part 242 and 50 CFR part 100 continues to read:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Subpart D is amended as follows:

1. In the table in § _____.25(m)(4) the listing for "Deer" in columns 1 and 2 (Bag Limits and Open Season) is revised to read: § _____.25 Subsistence Taking of Fish and Wildlife.

* * * * *

(m) * * *

(4) * * *

Bag limits	Open season
Deer:	
Unit 4—All drainages of Chichagof west of the drainage divide which begins at the southwest entrance of Gull Cove and extends southward to Point Leo. This includes all drainages into Slocum Arm, Lisianski Inlet, Idaho Inlet, and all offshore islands including the Inian Islands. Lemesurier Island is excluded. All of Admiralty Island and its associated offshore islands that lie within Unit 4. That portion of Baranof Island south of the divide from North Point to Kasnyku Bay southwest to North Cape of Whale Bay—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31.	Aug. 1—Jan. 31.
Unit 4—All drainages of Chichagof Island east of the drainage divide which begins at the southwest entrance of Gull Cove and extends southward to the divide between Trail River and Upper Tenakee Inlet and including all drainages into Chatham Straits north of the Kook Lake drainage. Lemesurier, Pleasant, and associated offshore islands are included—6 deer; however, antlerless deer may be taken only from Sept. 15—Jan. 31. For hunters who are not residents of GMU 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, or Wrangell, the limit is 3 deer. Federal public lands are closed beginning Nov. 1 to hunters who are not residents of GMU 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, or Wrangell.	Aug. 1—Jan. 31.
Unit 4—All drainages of Baranof Island north of the divide from North Point of Kasnyku Bay southwest to North Cape of Whale Bay; and all drainages of Chichagof Island draining into Peril Straits, Hoonah Sound, and Salisbury Sound east of Point Leo, and all offshore islands including Kruzof, Biorka, and Catherine—4 deer; however, antlerless deer may be taken only from Sept. 15—Dec. 31. Federal public lands are closed to the taking of deer by persons who are not residents of GMU 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, or Wrangell.	Aug. 1—Dec. 31.

* * * * *

Curtis V. McVee,

Chair, Federal Subsistence Board.

Michael A. Barton,

Regional Forester, USDA-Forest Service.

[FR Doc. 92–25989 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–4533–1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut: Single Source Revisions for Stone Connecticut Paperboard Corp. and Hartford Hospital

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of low-sulfur fuels to control the emissions of sulfur dioxide by the Stone Connecticut Paperboard Corp. and the Hartford Hospital. The intended effect of this action is to approve two Connecticut state orders which limit emissions in accordance with the provisions of subsection 22a–174–24(d) of Connecticut's Administrative Regulations for the Abatement of Air Pollution. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective January 19, 1993, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, (617) 565–3229.

SUPPLEMENTARY INFORMATION: On March 24, 1992, and April 23, 1992, the State of Connecticut submitted formal revisions to its State Implementation

Plan (SIP). The SIP revisions consist of two separate state orders issued by the Connecticut Department of Environmental Protection: State Order No. 1073B to the Stone Connecticut Paperboard Corp., and State Order No. 7016A to the Hartford Hospital.

Background Information: Stone Connecticut Paperboard Corp.

The Stone Connecticut Paperboard Corp. (also known as the Stone Container Co.) operates a facility located at 125 Depot Road in Uncasville, CT. The Stone Connecticut Paperboard Corp. operates a Riley Union Boiler and has a 77-foot stack. This stack is not sufficiently high to avoid aerodynamic downwash. In April 1989, a notice of violation was issued to the Stone Connecticut Paperboard Corp. as a result of a modeling study performed as part of a New Source Review required to issue a permit to the U.S. Naval Base in Groton, CT. This study showed that downwash from the Stone Connecticut Paperboard Corp. contributed to 3-hour and 24-hour violations of the SO_2 NAAQS. An agreement between the State of Connecticut and the Stone Connecticut Paperboard Corp. resulted in the issuing of State Order No. 1073. This order limits the Stone Connecticut Paperboard Corp. to the use of fuel oil with a sulfur content no greater than 0.49% (dry basis) by weight. A modeling study dated August 9, 1990 was conducted for the State of Connecticut. This study demonstrated that the use of fuel oil with a sulfur content of 0.49% (dry basis) by weight would reduce the plant's emission of sulfur dioxide to a level which would maintain the NAAQS in the New London, CT, area.

State Order No. 1073, as originally submitted, was not acceptable to EPA, since it contained a provision which would allow the Stone Connecticut Paperboard Corp. to return to the use of 1% sulfur fuel without the approval of EPA. Consequently, the Order did not adequately protect the NAAQS. This problem was brought to the attention of the Connecticut Department of Environmental Protection, and in response, an amendment, State Order No. 1073A, was issued. While EPA was processing State Order No. 1073A, Stone Connecticut Paperboard Corp. decided to convert its facility to natural gas. Connecticut then withdrew State Order No. 1073A, and on April 23, 1992, submitted State Order No. 1073B. This order requires Stone Connecticut Paperboard Corp. to use natural gas when available, allowing the use of low-sulfur oil only when natural gas is unavailable.

Background Information: The Hartford Hospital

The Hartford Hospital, at 85 Seymour Street, Hartford, CT, operates five (5) Bigelow Watertube Boilers to provide steam for its facility. The Hartford Hospital has entered into a contractual agreement with the CCF–1 Corp. of Meridan, CT, allowing CCF–1 to construct a cogeneration facility on land leased by the Hospital. CCF–1 will provide the Hospital with some, but not all of the steam it needs. The Hospital must, therefore, retain its own steam generation facility. Since full operation of both facilities could lead to a violation of the NAAQS, a notice of violation was issued in January, 1989. A modeling study dated December 28, 1989, was performed by Environmental Risk Limited. In response to the results of this study, State Order No. 7016 was issued.

State Order No. 7016 places two types of restrictions on the Hartford Hospital. It limits the allowable fuel oil sulfur content to 0.3% sulfur by weight (dry basis) for the Hartford Hospital. In addition, it limits Hartford Hospital's maximum oil firing rate. These rates are: 555 gallons per hour if CCF–1 is operating at full capacity; 1125 gallons per hour if CCF–1 is not operating or in the process of starting up or shutting down its turbines. The restrictions are discussed in more detail in State Order No. 7016A. EPA was unable to approve State Order No. 7016, since it allowed Hartford Hospital to use steam pressure as a measure of the amount of steam used. EPA requested a change to monitor steam load instead of steam pressure. Connecticut revised State Order No. 7016, and resubmitted it as State Order No. 7016A. The restrictions imposed by State Order No. 7016A will remain in force until the Hartford Hospital is able to demonstrate that a relaxation of these restrictions will not cause violations of the NAAQS, and the demonstration is approved as a SIP revision by EPA.

Enforcement

State Orders Nos. 1073B and 7016A each contain requirements that the affected companies keep records of each purchase of fuel. In addition the Hartford Hospital must maintain records of hourly steam load and fuel usage for each of the 5 boilers. These records will allow the state to monitor compliance.

Each State Order also contains a schedule of fees which the affected company must pay if a violation occurs, as well as the name and address of the individual responsible for collecting these payments on behalf of the State. EPA has legal authority to enforce these orders pursuant to federal law.

EPA has reviewed State Order No. 1073B and State Order No. 7016A and has determined that the restrictions in sulfur content and oil firing rate are sufficient to maintain the NAAQS in the vicinity of the Stone Connecticut Paperboard Corp. and the Hartford Hospital.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on January 19, 1993.

Final Action

EPA is approving Connecticut State Orders No. 1073B and 7016A as revisions to Connecticut's SIP. The provisions of State Orders Nos. 1073B and 7016A limit the Stone Connecticut Paperboard Corp. and Hartford Hospital, respectively, to the use of fuels with sulfur content which is sufficiently low to maintain Ambient Air Quality Standards in the New London and Hartford areas.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because

the federal SIP-approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 30, 1992.

Paul G. Keough,

Acting Regional Administrator.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.370 is amended by adding paragraph (c)(59) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(59) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on March 24 and April 23, 1992.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated April 14, 1992, submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 1073B and attached compliance timetable for the Stone Connecticut Paperboard Corporation of Uncasville, CT. State Order No. 1073B was effective on February 14, 1992.

(C) Letter from the Connecticut Department of Environmental Protection dated March 24, 1992, submitting a revision to the Connecticut State Implementation Plan.

(D) State Order No. 7016A and attached compliance timetable for the Hartford Hospital of Hartford, CT. State Order No. 7016A was effective on February 5, 1992.

(ii) Additional materials.

(A) Memorandum dated August 17, 1989, approving the modeling analysis for the Stone Container Co.

(B) Modeling Study dated August 9, 1989, for the Stone Container Co.

(C) State Order No 1073A, dated June 12, 1990, and effective July 9, 1990.

(D) Memorandum dated January 3, 1990, approving the modeling analysis for the Hartford Hospital.

(E) Modeling study dated December 28, 1989, for the Hartford Hospital.

* * * * *

[FR Doc. 92–28198 Filed 11–19–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 441

[BPD–485–F]

RIN 0938–AD69

Medicaid Program; Prohibitions on FFP for Educational and Vocational Training for Institutionalized Individuals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises and clarifies the meaning of the prohibition against the use of Federal financial participation (FFP) for vocational training and educational activities in intermediate care facilities for the mentally retarded (ICFs/MR) and in psychiatric facilities or programs providing psychiatric services to individuals under age 21. It resolves issues that have been raised by the States and courts regarding the method and criteria that have been used by HCFA to determine which services are not eligible for FFP because of the educational and vocational training services exclusion.

EFFECTIVE DATE: These regulations are effective December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Martha Kuespert (410) 966–1782.

SUPPLEMENTARY INFORMATION:

I. Background

Medicaid regulations have contained a provision prohibiting payment for educational and vocational services in intermediate care facilities for the mentally retarded (ICFs/MR) since 1974, when initial regulations for the ICF/MR program were published. The initial regulations implementing the psychiatric services benefit for those under age 21 also included the educational and vocational exclusion. This exclusion is found at 42 CFR 441.13(b). The exclusion was based on the fact that the Medicaid program is fundamentally a medical assistance program that has as its primary purpose the provision of medical care and services (which are defined in section 1905(a) of the Social Security Act (the Act)). It was also based on the principle of Medicaid as the "payor of last resort" under sections 1902(a)(25) and 1902(a)(17)(B) of the Act, which HCFA believed obligated State education agencies, not Medicaid, to pay for services related to special education. The exclusion was explained

in a 1978 Medicaid instruction (HCFA Action Transmittal 78–104), which stressed the need to ensure that Medicaid payment is made only for "medical assistance" and not for services covered as educational services under the Education for All Handicapped Children Act of 1975 (Pub. L. 94–142) or for vocational training services. While the issuance stated that there is a distinction between medical assistance and educational or vocational services and stressed the need to avoid duplicate payments, it did not clearly establish the basis for the distinction. Questions concerning decisions by the Departmental Appeals Board (among them Decision Numbers 367, 438, and 777) and audit activities conducted by the Office of Inspector General (reported under audit control numbers 01–20201, 01–40212, 04–50205, 04–50210, and others) led us to conclude that there was a need for a clearer interpretation of the regulation to provide criteria to distinguish ICF/MR services from "educational services" and "vocational training." Therefore, in September 1985, we issued at section 4396 of part 4 of the State Medicaid Manual, new instructions (Transmittal No. 16) to assist in differentiating educational services from ICF/MR services reimbursable under the Medicaid program. In September 1986, a parallel instruction (Transmittal No. 21) relating to vocational services was issued at section 4397 of the Manual. These issuances were developed with assistance from a Technical Advisory Group composed of State Medicaid representatives.

Our instructions at section 4396 of the State Medicaid Manual recognized that many of the services required to be provided to children under Federal and State education statutes are also services that are covered under the Medicaid program. Such services, in our view, would only be covered under Medicaid if the State educational agencies were not obligated by law to pay for them. We adopted the approach that all services described in the Individualized Education Plan (IEP) and all services required under State and Federal education laws were excluded from Medicaid reimbursement because these services are the responsibility of the State.

The instruction also made it clear that Federal financial participation (FFP) was not available for traditional educational activities such as training in academic subjects on the basis of the broader authority in section 1905(a) relating to the medical and remedial orientation of the Medicaid program. This aspect of the instruction was not controversial.

Several factors have led us to reevaluate our policy on the educational and vocational exclusion. First, in *Commonwealth of Massachusetts* v. *Heckler*, 616 F. Supp. 687 (D. Mass. 1985), the court rejected HCFA's position that FFP is unavailable for services that are covered by State education statutes. Accordingly, HCFA's policy of disallowing certain costs solely because they were included in a client's IEP was invalidated. The court concluded that determination of whether a service is educational (and therefore not eligible for FFP) should rest on the nature of the service rather than on the State's method of administering the service. In *Commonwealth of Massachusetts* v. *Bowen*, 816 F.2d 796 (1st Cir. 1987), the First Circuit Court affirmed the finding of the district court. Following an appeal to the United States Supreme Court on a jurisdictional issue (*Bowen* v. *Massachusetts*, 487 U.S. 879, 108 S.Ct. 2722 (1988)), the district court opinion was upheld.

Second, the Education of the Handicapped Act Amendments of 1986 (Pub. L. 99–457) make it difficult to employ the "payor of last resort" principle outlined above. These amendments indicate that funds provided under Pub. L. 94–142 would not be used to satisfy a financial commitment for services that would have been paid for by other Federal, State, and local agencies (including health agencies) if these services were not provided as part of the handicapped child's IEP.

Also, section 1903 of the Act has been amended by section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360). As amended, section 1903 includes a statement that nothing in title XIX—

> shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) for medical assistance for *covered services* [emphasis added] furnished to a handicapped child because such services are included in the child's individualized education program established pursuant to part B of the Education of the Handicapped Act or furnished to a handicapped infant or toddler because such services are included in the child's individualized family service plan adopted pursuant to part H of such Act.

The intent of these amendments is to ensure that services that would ordinarily be provided or paid for by other agencies for handicapped children would be continued. The congressional committee report that accompanied the change states explicitly the committee's intent that Medicaid cover the "related services" it had previously denied under the educational services exclusion (H.R. Rep. No. 661, 100th Cong., 2nd Sess. 268–69 (1988)).

Finally, we note that, in its report on the FY 1991 "Appropriations for Labor, HHS, Education, and Related Agencies" (S. Rep. No. 516, 101st Cong., 2d Sess. 180 (1990)), the Senate Appropriations Committee expressed concern about State Medicaid programs refusing to pay providers for services that were otherwise covered under the State plan. In response to this concern, HCFA assured the Committee that it was working to ensure proper payment of benefits under Medicaid. This rule is part of the effort to ensure proper payment.

II. Provisions of the Proposed Rule

On February 21, 1990, we published a proposed rule in the **Federal Register** (55 FR 6015). In it we proposed to revise the regulations concerning the prohibition against the use of FFP for educational and vocational services as a result of the litigation in Massachusetts and in order to conform the regulations to the 1986 amendments to Public Law 94–142 and to the provisions of the Medicare Catastrophic Coverage Act of 1988.

Specifically, we proposed revising 42 CFR 441.13(b) to clarify the current prohibition against the use of FFP for vocational and educational activities in ICFs/MR and psychiatric facilities or psychiatric programs for those under 21. The proposed language stated that FFP is not available for formal educational services or vocational services for residents of ICFs/MR or for those receiving services from psychiatric facilities or programs that provide inpatient psychiatric services to individuals under age 21. The proposed rule stated that covered services include only those services that are medical or remedial in nature.

We proposed specifying that formal educational services are those relating to training in traditional academic subjects. We said that subject matter rather than setting, time of day, or class size would determine whether a service is educational, and that traditional academic subjects include, but are not limited to, science, history, literature, foreign languages, and mathematics.

We proposed that vocational services relate to organized programs that are directly related to the preparation of individuals for paid or unpaid employment. (This definition was adapted from 34 CFR 300.14(b)(3), the Department of Education regulations implementing Pub. L. 94–142.) We used

this definition because it clearly ties vocational services to employment, not to acquisition of normal health status. This is compatible with the statutory philosophy of Medicaid as a medical program rather than an educational program. As a side benefit, we hoped that the use of a single definition of vocational training by HCFA and the Department of Education would help eliminate confusion about the nature of covered services. We proposed specifying that examples of vocational services include, but are not limited to, sheltered workshops and supported employment.

Additionally, we proposed to provide an exception to the FFP limitation. We proposed specifying that services required to provide active treatment to residents would not be subject to the exclusion. Thus, FFP would be available for active treatment as defined at § 483.440(a) for ICF/MR residents and at § 441.154 for individuals under age 21 receiving inpatient psychiatric services.

III. Discussion of Comments

We received 42 timely items of correspondence in response to the February 21, 1990 proposed rule. The comments were primarily from State government agencies and departments, and providers of educational and vocational training. The specific comments and our responses to these comments are as follows:

Comment: One commenter requested that HCFA either rescind this rule or hold it in abeyance until completion of a 3-year HCFA-funded demonstration project to test the effect of receiving educational and vocational services on success in placement in a community setting. A few commenters asked that the rule on the exclusion of FFP for educational and vocational services be deleted.

Response: The exclusion on FFP for vocational and educational services with the clarification provided by this rule is necessary to ensure that Medicaid funding is limited to services covered under title XIX. Because we do not believe that the suggested demonstration project would have an impact on this issue, we have not provided for the delay.

Comment: A few commenters asked whether these rules applied to all individuals in ICFs/MR or only those clients who are under age 21.

Response: This rule applies to all services provided by ICFs/MR, regardless of age of the individuals to whom the services are provided.

Comment: Many commenters were concerned about the statement in the preamble of the notice of proposed rulemaking (NPRM) which cautioned that the degree of independence and self-reliance exhibited by an individual effectively using educational and vocational services should bring into question the propriety of his or her placement in an ICF/MR. Some commenters feared that this statement would have an adverse impact on services provided to ICF/MR clients and that it would foster arbitrary denials of eligibility for ICF/MR placement. Other commenters objected for different reasons, including a belief that this statement was unfair and without basis. One commenter asked what criteria would be used to determine whether an individual is ineligible for ICF/MR placement because of effective use of educational or vocational services.

Response: We understand commenter concern about this statement. We had intended for this statement to suggest that ICF/MR placement should be reconsidered for individuals who can successfully use educational and vocational services of the kind that are used by the general public. For example, appropriateness of ICF/MR placement should probably be reevaluated for an individual who is successful at learning history, foreign languages, or carpentry. We did not intend to limit needed active treatment services for ICF/MR clients or to tie ICF/MR eligibility to effective utilization of such services. We believe that the confusion resulting from this statement was due, in part, to our use of supported employment and sheltered workshop services as examples of vocational services. Therefore, we have removed the sheltered workshop and supported employment as examples of vocational services. The new example of vocational services provided is time-limited vocational training provided as a part of a regularly scheduled class available to the general public. We believe that this new example will help to resolve commenter concern.

Comment: A number of commenters expressed confusion or dismay about the statement in the preamble of the NPRM which said that Medicaid is primarily a medical program, not an educational program. Some commenters were confused by a statement that indicated that only those services that are medical or remedial in nature are covered. Commenters posed many specific questions about the issue of medical and remedial services.

Response: We continue to assert that Medicaid is primarily a medical program rather than an educational program. There are other Federal programs whose purpose is education. As stated previously in this preamble, this rule is designed to ensure that payment for educational and vocational services is not made by the Medicaid program. We would, however, like to clarify our statement indicating that medical and remedial services are the only covered services. This statement was made in the context of a discussion on the general exclusion of FFP for educational and vocational services and did not address the application of this general principle to the services in question. Educational and vocational services which are part of active treatment (see 42 CFR 483.440) are not excluded from FFP. They would, by virtue of being included in active treatment services, be deemed to be medical or remedial under the law.

Comment: Some commenters requested that we allow FFP for all vocational and educational services provided to individuals in ICFs/MR. With this in mind, a commenter suggested broadening the definition of educational services provided in the NPRM. A few commenters suggested altering the definition of vocational services provided in the NPRM.

Response: As we indicated earlier in this preamble, a primary purpose of this rule is to ensure that educational and vocational services are paid by the appropriate funding source. Unless educational and vocational services are part of active treatment, we believe that the responsibility to pay for them does not lie with the Medicaid program. We believe that the definitions of educational and vocational services are clear as stated in the NPRM, and we note (as stated in the NPRM) that we have used the definition of vocational services developed by the Department of Education (34 CFR 300.14(b)(3)) in an effort to assist in eliminating confusion on the nature of covered services.

Comment: One commenter believed that HCFA is in conflict with Federal policy by not providing FFP for vocational services because Federal regulations at 34 CFR 363.3 define certain handicapped individuals as eligible for supported employment.

Response: Federal regulations at 34 CFR 363.3 are Department of Education regulations, not HCFA regulations, and define individuals eligible for funds from a program of the Department of Education, not Medicaid. HCFA does not pay for services for which the Department of Education (or any other entity) has responsibility unless directed to do so by a specific provision of law, such as section 1903(c) of the Act.

Comment: A commenter asked that supported employment be identified as the service of first choice for ICF/MR clients. Another commenter asked us to

define those services essential for providing active treatment.

Response: Because individual needs differ, we believe it would be inappropriate for us to make a blanket determination about the suitability of supported employment for all ICF/MR clients or to mandate specific services that must constitute active treatment.

Comment: One commenter asked whether certain services related to vocational services are eligible for FFP when the vocational services themselves are not if the related services are in an individual's individual habilitation plan (IHP).

Response: The nature of the related services, rather than whether they are in the client's IHP, determines whether FFP is available.

Comment: A commenter asked for specific guidance on when FFP is available for educational and vocational services provided to handicapped individuals who do not reside in ICFs/MR and indicated that the NPRM could cause confusion for school districts, which might apply this regulation to services provided to children who are not ICF/MR residents. A few commenters believed that the NPRM indicated that FFP is always available for educational and vocational services and that the rule should be revised to state this more clearly.

Response: We do not believe that there is any reason for school districts to be confused by this rule since it is clearly labeled as applying to services provided to ICF/MR clients and individuals under 21 in inpatient psychiatric facilities. As indicated by the language in the text of the regulation, FFP is not always available for educational and vocational services when provided to ICF/MR clients. In fact, the regulation clearly indicates that FFP is not available for educational and vocational services provided to ICF/MR clients unless the services are part of active treatment. We note that we have plans to issue an instruction to clarify availability of FFP for educational and vocational services provided to handicapped individuals who are not ICF/MR clients in the future.

Comment: A few commenters thought that this regulation exhibited lack of support for educational and vocational programs or that it went against various goals of the Department of Health and Human Services or other groups. One commenter expressed a belief that this regulation provided a disincentive to provide vocational services to ICF/MR clients.

Response: This regulation is designed to help ensure proper payment under the Medicaid program. It is not intended to reflect a judgment about vocational programs or their funding sources and does not contradict any Department of Health and Human Services goals.

Comment: A commenter believed that HCFA should develop regulations requiring school systems to follow certain time frames in responding to requests for educational services.

Response: HCFA does not have jurisdiction or authority over school systems provision of educational services, so we have not developed the regulations requested by this commenter.

Comment: A few commenters believed that the policy for payment of educational and vocational services should be the same for services provided to home and community based services waiver recipients and ICF/MR clients.

Response: The statutory authority for FFP for home and community based services waivers is different than that for ICFs/MR, and we do not believe that the policy of payment for educational and vocational services provided to waiver recipients is appropriate for services provided to ICF/MR clients. At the inception of the home and community-based services waiver program in 1981, FFP was precluded for vocational and educational services under home and community-based services waivers. This policy was published formally in the Federal Register on March 13, 1985 in our final rules (50 FR 10026) implementing the home and community-based services program. Subsequently, section 9502(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) added section 1915(c)(5) to the Act to specifically provide that certain prevocational, educational, and supported employment services could be included within the scope of habilitation services which may be provided to individuals discharged from a skilled nursing facility (SNF) or ICF into a home and community-based services waiver. Section 4118(j) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) further amended section 1915(c) of the Act to indicate that the expanded habilitation services could be provided to individuals discharged from a nursing home into the waiver without regard to whether these individuals were receiving institutional services immediately before their participation in the waiver. Thus, there is clear statutory authority for the provision of prevocational, educational, and supported employment services under a home and community-based services waiver program.

Comment: A commenter believed that the only services which should not be eligible for FFP are those educational services provided under the Education of the Handicapped Act (Pub. L. 94–142) and those vocational services provided under section 110 of the Rehabilitation Act. One commenter believed that HCFA should ensure that reimbursement systems for vocational services mesh.

Response: Educational and vocational services are not eligible for FFP because we do not believe they fit within the definition of "medical assistance" in the Medicaid law. It is this fact, rather than the availability of funds from other sources, that led us to determine that FFP is not available for educational and vocational services.

Comment: A commenter believed that this regulation would improperly cause Medicaid to pay for special educational services which are the responsibility of school districts.

Response: The Education of the Handicapped Act Amendments of 1986 (Pub. L. 99–457) indicate that Federal education funds under Public Law 94–142 may not be used to pay for services that would be paid for by other agencies if the services were not provided as part of a child's individual education plan (IEP). However, educational and vocational services that are part of active treatment can be covered under Medicaid, and we therefore believe that FFP must be available for them.

Comment: A few commenters expressed confusion about the statement in the preamble of the NPRM that indicated that FFP is available for educational and vocational services required to provide active treatment because the regulations for active treatment do not list required elements.

Response: In this context, "required" does not mean that there are certain specific services required to provide active treatment; it means whatever services are needed to provide active treatment.

Comment: A couple of commenters asked that we address whether "pre-academic" activities are included in the exclusion from FFP.

Response: From commenters' descriptions of pre-academic activities (for example, instruction in shapes and colors), it appears that such activities are not included in the definition of educational services and would not be subject to the FFP exclusion.

Comment: A number of commenters requested assistance in determining which services are educational and vocational in nature. One commenter

asked that HCFA issue interpretive guidelines along with these regulations.

Response: The language in the regulations is detailed, and we do not believe that further clarification is needed. We do, however, plan to issue instructions relating to this regulation.

Comment: A few commenters believed that Medicaid should pay for any service directed toward the acquisition of the behaviors necessary for clients to function with as much self-determination and independence as possible. Some commenters questioned whether such services would be funded.

Response: As indicated in 42 CFR 483.440, active treatment includes specialized and generic training, treatment, health services, and related services described in 42 CFR 483, subpart I. While one of the goals of active treatment is the acquisition of the behaviors necessary to function with as much self-determination and independence as possible, it is possible that certain services intended to help meet this goal would not be part of active treatment or any other covered service. FFP is available only for active treatment and other covered services.

Comment: A commenter asked that this regulation be rewritten to state goals of ICF/MR treatment and encourage a broad interpretation of active treatment.

Response: This regulation is intended only to reflect a Medicaid payment exclusion. Regulations relating to ICF/MR services can be found in 42 CFR part 483, subpart I.

Comment: A commenter asked that we state whether FFP is available for behavior management necessary for active treatment.

Response: If behavior management is provided in accordance with the requirements of 42 CFR 483.440, which sets forth the ICF/MR conditions of participation regarding active treatment services, then FFP is available for it.

IV. Provisions of this Final Rule

The provisions of this final rule restate the provisions of the February 21, 1990 proposed rule with two changes in § 441.13(b). First, we have deleted sheltered workshops and supported employment as examples of vocational services. Second, we have added time-limited vocational training provided as a part of a regularly scheduled class available to the general public as an example of vocational services.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule clarifies the prohibition against the use of FFP for educational and vocational services in ICFs/MR and in psychiatric facilities or in programs furnishing inpatient psychiatric services to individuals under age 21. Recent court decisions and statutory changes have changed previous policy. This final rule requires coverage of certain medical and remedial services that previously were prohibited from FFP if they were part of an IEP. We believe any cost or savings associated with this final rule will be minimal.

This final rule does not meet the $100 million criterion nor does it meet the other E.O. 12291 criteria. Therefore, it is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all SNFs, NFs, and ICFs/MR to be small entities. Individuals and States are not considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the FRA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and that has fewer than 50 beds.

We believe that Medicaid coverage for these services will have little, if any, effect on small entities and on small rural hospitals. We are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

VI. Information Collection Requirements

This rule contains no information collection requirements; therefore, the rule does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects in 42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.13 is amended by revising the section heading and paragraph (b) to read as follows:

§ 441.13 Prohibitions on FFP: Institutionalized individuals.

* * * * *

(b) With the exception of active treatment services (as defined in § 483.440(a) of this chapter for residents of ICFs/MR and in § 441.154 for individuals under age 21 receiving inpatient psychiatric services), payments to institutions for the mentally retarded or persons with related conditions and to psychiatric facilities or programs providing inpatient psychiatric services to individuals under age 21 may not include reimbursement for formal educational services or for vocational services. Formal educational services relate to training in traditional academic subjects. Subject matter rather than setting, time of day, or class size determines whether a service is educational. Traditional academic subjects include, but are not limited to, science, history, literature, foreign languages, and mathematics. Vocational services relate to organized programs that are directly related to the preparation of individuals for paid or unpaid employment. An example of vocational services is time-limited vocational training provided as a part of a regularly scheduled class available to the general public.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance Program)

Dated: April 22, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 23, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-28097 Filed 11-19-92; 8:45 am]

BILLING CODE 4120-01-M

42 CFR Part 442

[HSQ-183-F]

RIN 0938-AF31

Medicaid Program; Elimination of Certain Written Documentation Pertaining to Medicaid Long-Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule deletes a requirement in Medicaid regulations pertaining to State survey agencies, which certify facilities as meeting the requirements for participation in the Medicaid program. Specifically, we are deleting the requirement that State survey agencies, when certifying facilities with deficiencies, must provide written documentation that the deficiencies do not jeopardize resident health and safety or seriously limit the facility's capacity to furnish adequate care. Because there are already other written requirements for documentation of these deficiencies, this revision eliminates an unnecessary administrative burden, while ensuring resident health and safety.

EFFECTIVE DATE: These regulations are effective on November 20, 1992.

FOR FURTHER INFORMATION CONTACT: Irene Gibson, (410) 966-6768.

SUPPLEMENTARY INFORMATION:

I. Background

Federal grants to the States for the Medicaid program are authorized under title XIX of the Social Security Act (the Act) to provide medical assistance to certain persons with low income. The Medicaid program is jointly financed by the Federal and State governments and administered by the States. State Medicaid agencies conduct their programs in accordance with requirements set forth in section 1902 of the Act.

Under the Medicaid program, Medicaid agencies can enter into provider agreements only with certain facilities. (A provider agreement is an agreement between a Medicaid agency and any individual or entity furnishing Medicaid services to an eligible Medicaid recipient.) The facilities with which Medicaid agencies may enter into provider agreements are those that meet specific requirements for participation in the Medicaid program. To determine whether a facility meets the requirements of participation in the Medicaid program, the Medicaid agencies enter into agreements with State survey agencies to survey the facility. The State survey agencies certify compliance if the facility meets the applicable requirements of participation. After certifying compliance, the State survey agencies periodically survey the facility to ascertain its continued compliance with these requirements.

To be certified as meeting all requirements of participation in the Medicaid program, long term care facilities must be in compliance with two levels of requirements of participation set forth in 42 CFR part 483. For intermediate care facilities for the mentally retarded (ICFs/MR), the levels are conditions of participation and standards. For nursing facilities (NFs), the levels are referred to as Level A and Level B requirements. Conditions of participation or Level A requirements have traditionally been based directly on statutory requirements. A standard level or Level B requirement is a subcomponent of a broader condition level or Level A requirement. When a Level B requirement is not met, the deficiency is not considered as severe as a Level A deficiency because it constitutes only part of the higher, broader Level A requirement. However, because of recent Congressional mandates concerning nursing home reform, we intend to publish survey, certification, and enforcement regulations that will eliminate the Level A/Level B distinction for nursing homes and replace the hierarchy with one level of requirements. The hierarchy remains for ICFs/MR.

Failure to meet a condition of participation or Level A requirement is a serious violation called a condition level deficiency. A condition level deficiency may pose immediate and serious jeopardy to resident health and safety and thereby constitutes the most severe type of condition level deficiency. Of somewhat lesser severity is the type of condition level deficiency that inhibits the facility's capacity to give adequate care.

In the first instance, when the deficiency jeopardizes resident health and safety and is not corrected immediately, the facility's provider agreement is terminated within 23 days. Although the State or HCFA must terminate a facility within 23 days, the time period could be considerably less depending on the specific situation. There are no time periods specified for notice of termination to Medicaid NFs. If necessary, the State or HCFA can terminate a facility immediately. HCFA and the State continually monitor immediate and serious jeopardy situations to ensure that no harm comes to a facility's residents while a facility goes through the termination process.

In the second instance, if the deficiency does not immediately and seriously jeopardize resident health and safety, but inhibits a facility's capacity to give adequate care, and the deficiency is not corrected, termination can still occur, but the provider has more time to correct deficiencies. In this case, the facility's provider agreement is terminated within 90 days if compliance is not achieved or if other remedies, where allowed by law, are not used. There are no specific time requirements for notifying providers when a Medicaid NF or ICF/MR is terminated. Ninety days is the maximum time period allowed for the termination process, but the time period can be shorter if appropriate. Part of the 90-day process includes a revisit by the State or HCFA to determine if the facility has corrected its deficiencies or has made substantial progress toward correction. In any case, there is dialogue between the State (or HCFA) and the facility to ensure that a facility's residents are not in any immediate jeopardy.

Failure to meet a standard or Level B requirement is less serious than either type of condition level deficiency and is called a standard level deficiency. This deficiency neither immediately and seriously jeopardizes resident health and safety nor seriously inhibits the facility's capacity to give adequate care. (We note that once we have published final regulations for nursing home survey, certification, and enforcement requirements that fully implement the provisions of nursing home reform, the regulations will dispense with the Level A and Level B hierarchy. Although the implementation of the provisions of nursing home reform will make this aspect of § 442.105(a) moot for nursing homes, we are changing § 442.105(a) because of the regulations continuing applicability to ICFs/MR.)

The regulations set forth at § 442.110 specify that if a State survey agency determines during a survey that a facility is not in compliance with one or more requirements of participation, but that these deficiencies neither immediately and seriously jeopardize

resident health and safety nor seriously inhibit the facility's capacity to give adequate care (that is, there are standard level or Level B deficiencies), the facility can participate in HCFA programs for up to 12 months as long as the facility has developed a plan of correction approved by the State survey agency. (Requirements for certifying a facility with Level B deficiencies are set forth at §§ 442.105(b) and 442.110.) The plan of correction describes the actions the facility must take to correct deficiencies, and specifies the date by which those deficiencies will be corrected. If the facility fails to implement the plan of correction completely, the State Medicaid agency enforces the automatic cancellation clause in the provider agreement as specified at § 442.110.

The regulations set forth at § 442.105 specify the general provisions for the certification of facilities with standard level or Level B deficiencies. These regulations specify the circumstances under which a State survey agency may certify a facility as meeting the requirements to participate in the Medicaid program despite the existence of standard level or Level B deficiencies. The first criterion, found at § 442.105(a), is that the facility's deficiencies do not jeopardize resident health and safety or seriously limit the facility's capacity to give adequate care. Section 442.105(a) also requires that the State survey agency maintain a written justification of the fact that these deficiencies do not jeopardize resident health and safety or inhibit the facility's ability to give adequate care.

II. Provisions of this Final Rule

We believe that developing and maintaining separate or additional documentation required under § 442.105(a) is an unnecessary administrative burden on State survey agencies. To eliminate this unnecessary burden, while ensuring resident health and safety, we are deleting the last sentence in § 442.105(a) "The agency must maintain a written justification of these findings."

The State survey agencies are required to complete the "Statement of Deficiencies and Plan of Correction" form (HCFA 2567), as specified in part 2, section 2728 of the State Operations Manual. The HCFA 2567 describes deficiencies in enough detail to provide supporting evidence as to whether or not deficiencies, either individually or in combination, jeopardize resident health and safety or seriously limit the facility's capacity to give adequate care.

The requirement in the regulations that the State survey agency maintain additional justification of its findings was instituted before the enactment of Public Law 100–203 and the promulgation of revised conditions of participation for ICFs/MR, published as a final rule entitled "Conditions for Intermediate Care Facilities for the Mentally Retarded" in the **Federal Register** on June 3, 1988 (53 FR 20448). The passage of the nursing home provisions of Public Law 100–203 resulted largely from recommendations contained in the Institute of Medicine's (IOM) 1986 report of its study of the regulation of nursing homes. (The IOM study and report are discussed at length in a proposed rule entitled "Conditions of Participation for Long Term Care Facilities" published in the **Federal Register** on October 16, 1987 (52 FR 38582).) The IOM suggested making the participation requirements and the survey, certification, and enforcement systems more outcome-oriented and less focused on facility policies and process. Although the IOM did not specifically address ICFs/MR, we adopted the outcome-oriented approach for ICF/MR requirements, published in the **Federal Register** on June 3, 1988 (53 FR 20448). We also adopted the outcome-oriented approach for the skilled nursing facility (SNF) and NF requirements (effective October 1, 1990) established by sections 4202 and 4203 of Public Law 100–203 and published in the **Federal Register** as a final rule with comment period on February 2, 1989 (54 FR 5316), as a final rule on September 26, 1991 (56 FR 48826), and as a final rule making technical corrections on September 23, 1992 (57 FR 43922). Since these requirements are outcome-oriented, any properly completed HCFA 2567 shows how deficiencies caused or had the potential to cause negative outcomes, even to the point of immediate and serious threat to resident health and safety. Therefore, the severity of the deficiencies is self-evident on the HCFA 2567.

We also believe that a State survey agency's acceptance and monitoring of the facility's plan of correction is evidence that the facility meets the intent of § 442.105(a), thereby making it appropriate for the State survey agency to certify a facility for Medicaid purposes, despite the existence of standard level or Level B deficiencies. The State survey agency's acceptance and monitoring of a plan of correction constitutes justification that the deficiencies, individually or in combination, do not jeopardize resident health and safety nor seriously limit the facility's capacity to give adequate care.

Further, the State survey agency's completion of the "Certification and Transmittal" form (HCFA 1539) assures that no condition level deficiencies exist. The State survey agency makes its certification to us by means of this form. The HCFA 1539 documents that the facility has been surveyed and contains the official certification of compliance or noncompliance. The HCFA 1539 indicates that the facility is either in compliance with program requirements, not in compliance with program requirements, or in compliance with requirements based on an acceptable plan of correction or approved waivers. For a facility participating in Medicaid with a plan of correction, § 442.105(a) establishes as criteria the nonexistence of deficiencies that jeopardize resident health and safety or inhibit the facility's capacity to give adequate care. Since a facility must meet the criteria set forth at § 442.105(a) to participate in Medicaid with a plan of correction, condition level deficiencies cannot exist for a plan of correction to be approved as a substitute for actual compliance. A properly completed HCFA 1539 clearly rules out that deficiencies exist that would either immediately and seriously jeopardize resident health and safety or seriously inhibit the facility's capacity to give adequate care.

To summarize, we believe that the HCFA 2567 contains sufficient documentation to prove that a facility's deficiencies do not immediately and seriously jeopardize resident health and safety or inhibit the facility's capacity to give adequate care. HCFA's establishment of its resident outcome-related survey and certification process and participation requirements supports the sufficiency of the documentation on the HCFA 2567. Furthermore, we believe that a State survey agency's acceptance and monitoring of the facility's plan of correction constitutes justification that the deficiencies, either alone or in combination, do not immediately or seriously jeopardize resident health and safety or inhibit the facility's capacity to give adequate care. Additionally, the HCFA 1539 indicates that the facility is certified in compliance with program requirements, not in compliance with program requirements, or in compliance with requirements based on an acceptable plan of correction or approved waivers. For a facility participating in Medicaid with a plan of correction, § 442.105(a) establishes as criteria the nonexistence of deficiencies that jeopardize resident health and safety or inhibit the facility's capacity to give adequate care. Therefore, if the HCFA 1539 indicates compliance based on an approved plan of correction, the survey agency has ruled out the existence of condition level deficiencies

because of the provision at § 442.105(a), and has documented the form accordingly.

III. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposal. The rule includes a reference to the legal authority under which it is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. The proposed rulemaking procedures can be waived when an agency finds that it is impractical, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the final rule.

This final rule deletes the last sentence from § 442.105(a), "The agency must maintain a written justification of these findings." As described at length in this preamble, we have several mechanisms that obviate the requirement set forth at § 442.105(a) for written documentation that a deficiency does not immediately or seriously jeopardize resident health and safety or inhibit the facility's capacity to give adequate care. These mechanisms, as provided in the survey and certification process, include requirements for written documentation for the "Statement of Deficiencies and Plan of Correction" form (HCFA 2567) and for the "Certification and Transmittal" form (HCFA 1539), which indicate that a facility is certified to be in compliance with program requirements or is in compliance with program requirements based on an approved plan of correction or approved waivers. As explained in this preamble, an approved plan of correction or an approved waiver apply only to standard level or Level B deficiencies, which, by definition, cannot be deficiencies causing immediate and serious threat to the health and safety of the facility's residents nor deficiencies seriously inhibiting the facility's capacity to give adequate care. We are not requesting public comment on the deletion of the last sentence set forth at § 442.105(a) because the full intent of the regulation is already being enforced. Accordingly, we find that there is good cause to waive proposed rulemaking.

We also normally provide a delay of 30 days in the effective date for documents such as this. If adherence to this procedure would be impractical, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. We find good cause to waive the usual 30-day delay for the provisions scheduled to take effect upon the publication of this final rule because the full intent of these provisions is already in effect, as explained in the preceding paragraph.

IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all NFs and ICFs/MR to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule will benefit survey agencies by reducing the unnecessary administrative function of providing written documentation that a deficiency neither immediately and seriously jeopardizes resident health and safety nor seriously inhibits the facility's capacity to give adequate care. We believe the time and money saved as a result of the final rule will be minimal.

This final rule does not meet the annual $100 million criterion nor do we believe that it meets the other Executive Order 12291 criteria. Therefore, this final rule is not a major rule under Executive Order 12291 and regulatory impact analysis is not required.

Further, we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

V. Information Collection Requirements

This final rule contains no information collection requirements. Consequently, this final rule need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

List of Subjects in 42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, 42 CFR Part 442 is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 442—CONDITIONS FOR PAYMENT FOR NURSING FACILITY SERVICES AND FOR INTERMEDIATE CARE FACILITY SERVICES FOR THE MENTALLY RETARDED

1. The authority citation for Part 442 continues to read as follows:

Authority. Section 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

§ 442.105 [Amended]

2. Section 442.105(a) is amended by removing the last sentence, which reads, "The agency must maintain a written justification of these findings."

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: July 1, 1991.

Gail R. Wilensky,

Administration, Health Care Financing Administration.

Approved: May 5, 1992.

Louis W. Sullivan

Secretary.

[FR Doc. 92-28196 Filed 11-19-92; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 11

RIN 3067-AC04

Collection of Debts by the Government Under the Debt Collection Acts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule reflects the increase in the authority of FEMA to settle, compromise, or terminate collection efforts on debts from $20,000 to $100,000 or any higher limits prescribed by the Attorney General of the United States. Changes in the rule reflect organizational changes within FEMA mandated by the Chief Financial Officers Act. The regulation also implements collection of debts owed FEMA by taking offsets against federal income tax refunds that would otherwise be paid to debtors.

EFFECTIVE DATE: This regulation takes effect on December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Buck, Office of Financial Management, Financial Controls Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4091.

SUPPLEMENTARY INFORMATION: This rule makes minor changes to the existing FEMA Debt Collection Regulation, 44 CFR part 11, subpart C, which was published as a final rule at 49 FR 38267, September 28, 1984, and amended at 53 FR 47210, November 22, 1988. These changes implement an amendment to the Debt Collection Act of 1982, 31 U.S.C. 3720A. This amendment authorized federal agencies to collect debts by taking offsets against federal income tax refunds that would otherwise be paid to debtors. The changes also reflect changes in FEMA internal organization resulting from implementation of the Chief Financial Officers Act. The rule increases FEMA's authority to suspend, compromise or terminate debt collection efforts without having to secure approval of the Department of Justice. The limits of a federal agency's authority to settle, compromise or terminate collection efforts had been increased from $20,000 to $100,000 or such higher limit prescribed by the Attorney General of the United States.

Section 11.30(a)(2) is changed to raise the limit of FEMA's authority to compromise, suspend or terminate collection efforts on debts (without having to refer the matter to the U.S. Department of Justice) from a $20,000 to $100,000 or such higher amount as the Attorney General of the United States may prescribe. This limit is increased in accordance with recent amendments to the Debt Collection Act, 31 U.S.C. 3711.

Section 11.30(b) is amended to change references from the FEMA Comptroller to the FEMA Chief Financial Officer who now performs all FEMA debt collection functions. This subsection also reflects increases in FEMA's authority to compromise, suspend or terminate debt collection efforts on debts where collection in full appears unlikely. This subsection adds a definition of "employee" for salary and retirement pay offset purposes prescribed in Section 11.45. "Employee" includes those persons defined in 5 U.S.C. 2105, members of and retirees from the uniformed services of the United States, and employees and retirees from the United States Postal Service and Postal Rate Commission.

Section 11.30(b)(6) is changed to substitute the term "Office of Financial Management" for the term "Office of Comptroller". The same change is made in Section 11.52(c).

Section 11.32 is changed to reflect the statutory increase of FEMA's authority to compromise, suspend or terminate debt collection efforts.

Section 11.34(a) is changed to establish the debt collection authority of the FEMA Chief Financial Officer who performs all the Agency's financial functions, including FEMA debt collection.

Section 11.34(c) is changed to substitute "Office of Financial Management" where "Office of Comptroller" appears. The Office of Financial Management exercises all the financial management functions of the Agency. The Chief Financial Officer, as Agency Collections Officer (ACO), may delegate authority to settle, compromise or terminate collection efforts on debts of $10,000.00 or less. However, the ACO must personally approve the compromise, suspension or termination of collection efforts on debts exceeding $10,000,00.

Section 11.41(c) is changed to provide an additional reference to revocation of eligibility for federal payments under the Federal Government-wide "common rule" non-procurement debarment under part 17 of this title. Failure to pay a single, large debt or several smaller debts is ground for such debarment.

Section 11.42(a) is changed to provide that penalty charges shall be assessed on unpaid interest as well as on unpaid principal. This change reflects advice given FEMA by the General Accounting Office in opinion B-222845, dated December 9, 1987.

Section 11.43(a) is changed to raise the offset statute of limitations from six years to ten years as prescribed in the Federal Claims Collection Standards, 4 CFR 102.3(b)(3), promulgated by the U.S. Department of Justice and the General Accounting Office.

Section 11.43 is changed to add subsection (f) stating that federal income tax refunds shall be handled under §§ 11.61 through 11.65 of this title. Debtors' rights under the federal income tax refund offset program differ from rights of debtors subject to administrative offset. Income tax refund offsets are administered under a different section of the Debt Collection Act, 31 U.S.C. 3720A, while administrative offset procedures are under 31 U.S.C. 3716.

Section 11.44(a) is changed to include a cross-reference to offsets taken under the Federal government-wide "common rule" grant debarment under § 17.52(a) of this title.

Section 11.45(a), last sentence is amended to add, after the reference to 5 CFR 550.1101 through 550.1106, a reference to 5 CFR Part 845 and 5 CFR 831.1301 *et seq.*

Section 11.45(d) is changed to provide that "disposable pay" is defined in the Office of Personnel Management regulation, 5 CFR 550.1101 *et seq.*, relating to federal salary offset.

Section 11.45(d) is changed to provide that federal employee debts arising from travel advances and from permanent change of station moves may be collected by administrative offset procedures of 31 U.S.C. 3716 and 44 CFR 11.43 rather than under the federal salary offset procedures prescribed in 44 CFR 11.45. Even though offsets for such debts are taken from Federal Government salaries, the federal employee debtor would have different rights when contesting the validity of the debt. This follows guidance given by the General Accounting Office in 64 Comp. Gen. 142 (1984).

Section 11.48(a) is changed to provide that interest on debts owed by States and local governments shall be assessed at rates equivalent to those paid by the U.S. Treasury to borrow on the open market. The Debt Collection Act of 1982 provides at 31 U.S.C. 3701(c) that the definition of "person" subject to interest charges under 31 U.S.C. 3716 does not include States or units of general local government. The General Accounting Office has held that, in the absence of statute, principles of common law would apply. These principles mandate that delinquent debtors are subject to

assessment of reasonable rates of interest on past due principal. See Comptroller General's Decisions B–212222, dated August 12, 1983 and January 5, 1985.

Section 11.48(d) is changed to include administrative costs of preparing and mailing follow-up letters and of making telephone calls as part of administrative costs.

Section 11.48(g) is changed to provide that partial payments as well as installment payments shall be applied first to penalty and administrative charges, then to accrued interest, and finally to payment of principal. This follows common law rules on application of partial payments on debts.

Sections 11.50(c), 11.51(c) and 11.60 are changed to raise the authority of the Agency Collections Officer to compromise, settle or terminate debts from $20,000 to $100,000 or such other limit prescribed by the Attorney General of the United States under 31 U.S.C. 3711(a)(2).

Sections 11.61 through 11.65 are added to provide for collecting FEMA's delinquent debts by the Internal Revenue Service (IRS) taking offset against federal income tax refunds that would otherwise be made to the delinquent debtor. These regulations comply with requirements of 31 U.S.C. 3720A and IRS regulations, 26 CFR 301.6402–6T, implementing that statute. Section 11.61 provides definitions used in FEMA's federal income tax refund offset program, information being provided by FEMA to IRS and characteristics of debts being collected under the refund offset program. Section 11.62 provides for assessment of administrative charges against the debtor/taxpayer under the income tax refund offset program. Section 11.63 provides for notice to the taxpayer/debtor prior to the offset being taken and for advising him/her of rights to request a review of the debt within FEMA. Section 11.64 provides procedures used by FEMA in conducting the review within the Agency when the taxpayer/debtor requests such a review on the validity or the amount of the debt. Section 11.65 provides for a stay of federal income tax refund offset while the administrative review is being conducted.

Since this rule makes minor changes to the existing rule which implements rules of other agencies which have been subject to public comments, therefore, notice and public comment are not necessary. The changes are promulgated as a final rule rather than as a proposed rule.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule states how FEMA will administer debt collection internally, defines the Chief Financial Officer's authority to settle, compromise, or terminate debt collection efforts, and is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12887, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 11

Administrative practice and procedures, Claims. Accordingly, 44 CFR part 11 is amended as follows:

PART 11—CLAIMS

1. The authority citation for part 11 is revised to read:

Authority: 28 U.S.C. 2672; 28 CFR 14.11; 5 U.S.C. 301; 31 U.S.C. 3701 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp. p. 376.

2. Section 11.30 is revised to read as follows:

§ 11.30 Scope of regulations.

(a) *Scope.* This regulation implements policies used by FEMA to collect debts under the Debt Collection Act of 1982, as amended, 31 U.S.C. 3701 *et seq.* As amended, this Act:

(1) Requires the Director or designee to attempt collection of all debts owed to the United States for money or property arising out of activities of the Agency; and

(2) Authorizes the Director or his designee, for debts not exceeding $100,000 or such higher limit prescribed by the Attorney General of the United States, under the provisions of 31 U.S.C. 3711(a)(2), exclusive of interest, penalty, and administrative charges, to compromise such debts or terminate collection action where it appears that no person is liable on such debt or has the present or prospective financial ability to pay a significant sum thereon or that the cost of collecting such debt is likely to exceed the amount of the recovery.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Office* means any of the following:

(i) United States Fire Administration.

(ii) Federal Insurance Administration.

(iii) National Preparedness Directorate.

(iv) State & Local Programs & Support Directorate.

(v) U.S. Fire Academy/National Emergency Training Center.

(vi) Office of Financial Management, which for purposes of this subpart shall include all FEMA Headquarters elements not included in paragraphs (b)(1)(ii) through (b)(1)(iv) of this section.

(vii) FEMA Special Facility.

(2) *Employee* means those persons defined in 5 U.S.C. 2104, members of and retirees from the uniformed services of the United States and employees of and retirees from the United States Postal Service and the Postal Rate Commission.

§ 11.32 [Amended]

3. Section 11.32 is amended by removing the term "$20,000" wherever it appears, and in its place inserting "$100,000 or such higher limit prescribed by the Attorney General in accordance with 31 U.S.C. 3711(a)(2)".

4. The section heading of § 11.34 and § 11.34(a) introductory text, (a)(1) introductory text, and (c) are revised to read as follows:

§ 11.34 Referral of debts to the Chief Financial Officer, Federal Emergency Management Agency.

(a) Authority of the Chief Financial Officer (CFO), Federal Emergency Management Agency.

(1) The Chief Financial Officer, Federal Emergency Management Agency, is designated as the Agency Collections Officer (ACO). In this capacity he or she shall exercise such powers and perform duties of the Director in collecting debts owed FEMA. In this regard, the ACO may, after consultation with the Office of the

General Counsel, compromise, suspend or terminate collection action on the debts owed the Agency, not exceeding $100,000, or such higher limit prescribed by the Attorney General in accordance with 31 U.S.C. 3711(a)(2), exclusive of interest, except as provided in § 11.35 and paragraph (b) of this section. In addition, the CFO is delegated all authority which may be exercised by the Director, Federal Emergency Management Agency in relation to:

* * * * *

(c) *Delegation.* The ACO may delegate his or her authority in the FEMA debt collection program and under this subpart to a Deputy or to others in the FEMA Office of Financial Management. However, the ACO must personally approve any compromise, suspension or termination of collection efforts on debts exceeding $10,000.00.

5. Section 11.41 is amended by adding paragraph (c) to read as follows:

§ 11.41 Suspension or revocation of eligibility.

* * * * *

(c) Failure by a recipient of FEMA financial or nonfinancial assistance to pay a substantial debt or a number of outstanding debts being collected under this subpart may be ground for Government-wide debarment and suspension as described in 44 CFR 17.305(c)(3).

6. The last sentence of § 11.42(a) is revised to read as follows:

§ 11.42 Demand for payment of debts.

(a) *Initial demand.* * * * The debtor shall also be advised that if any portion of the debt remains unpaid for 90 days after the due date, without a repayment schedule satisfactory to the Agency being arranged, then additional penalties, as described in 31 U.S.C. 3717(e)(2), of 6 percent per year shall be charged on the unpaid balance of principal and interest.

* * * * *

7. The last sentence § 11.43(a) is revised and paragraph (f) is added to read as follows:

§ 11.43 Collection from non-Government entities by administrative offset.

(a) *General.* * * * Further, administrative offset procedures shall not be used on debts more than 10 years after the Government's right to collect the debt first accrued unless facts material to the Government's right to collect the debt were not known and could not have been known by the officials of the Government who were charged with responsibility to discover and collect the debt.

* * * * *

(f) The procedures described in this section do not apply to collecting a debt by taking offsets against federal income taxes that would otherwise be paid to the debtor. (See §§ 11.61 through 11.65 of this subpart below.)

8. A new sentence is added after the second sentence of § 11.44(a) introductory text as follows:

§ 11.44 Collection of debts from Federal agencies or States or units of general local government by common law offset.

(a) * * * Offset may also be taken against States and units of general local government under provisions of 44 CFR 13.52(a)(1). * * *

* * * * *

9. Section 11.45 is amended by inserting in paragraph (A) a comma after the words "5 CFR 550.1101 through 550.1106" and inserting "5 CFR Part 845, 5 CFR 831.1301 et seq." before the phrase "and the procedures described below."; by adding a sentence at the end of paragraph (d); and adding paragraph (g) to read as follows:

§ 11.45 Collection by salary offset.

* * * * *

(d) * * * Disposable pay is defined in 5 CFR 550.1103 and 5 CFR 581.105(b) through (f).

* * * * *

(g) Debts arising from travel advances provided under 5 U.S. C. 5705 and for travel and transportation expenses for transferred employees under 5 U.S.C. 5724 may be collected by taking offsets in accordance with 44 CFR 11.43.

10. Section 11.48 is amended by adding a new sentence between the first and second sentences in paragraphs (a) and (d) and by revising paragraph (g) to read as follows:

§ 11.48 Interest and penalties.

(a) * * * Interest shall be assessed on debts owed by states and units of general local government at rates equivalent to rates paid by the United States Treasury to borrow money on the open financial markets. * * *

* * * * *

(d) * * * Costs of preparing and mailing follow-up debt collection letters shall also be included. * * *

* * * * *

(g) *Installment collections or partial payments.* When a debtor pays a debt either partially or in installments, the payments shall first be applied to administrative costs and penalty charges, second to accrued interest, and third to principal. Partial payments shall be deemed to be made when received at the FEMA office designated to receive the payments.

11. The last sentence of § 11.50(c) is revised to read as follows:

§ 11.50 Standards for compromise of debts.

* * * * *

(c) * * * Debts exceeding $100,000 or such other limit prescribed by the Attorney General in accordance with 31 U.S.C. 3711(a)(2) may be compromised only after approval by the Department of Justice in accordance with 4 CFR 103.1(b).

12. The heading and the first sentence of § 11.51(c) are revised to read as follows:

§ 11.51 Standards for suspension or termination of collection.

* * * * *

(c) *Debts exceeding $100,000.* Debts exceeding $100,000 or higher limits prescribed by the Attorney General in accordance with 31 U.S.C. 3711(a)(2) (exclusive of interest, penalty charges and administrative charges) shall not be compromised by FEMA unless the proposed compromise has been referred for approval by the Department of Justice in accordance with 4 CFR 104.1(b). * * *

* * * * *

§ 11.52 [Amended]

13. The first full sentence of § 11.52(c) is amended to substitute the words "Office of Financial Management" for the words "Office of the Comptroller".

§ 11.60 [Amended]

14. Section 11.60 is amended by substituting the phrase: "$100,000 or such higher limit prescribed by the Attorney General in accordance with 31 U.S.C. 3711(a)(2)" whenever the dollar figure "$20,000" appears.

15. New §§ 11.61 through 11.65 are added as follows:

§ 11.61 Referral of delinquent debts to Internal Revenue Service.

(a) FEMA may refer delinquent debts to the Internal Revenue Service (IRS) in accordance with 31 U.S.C. 3720A and the IRS implementing regulation, 26 CFR 301.6402–6T.

(b) The following definitions apply to §§ 11.61 through 11.65:

Delinquent debt is a debt owed FEMA which has been unpaid for 65 days or more following the mailing of the initial bill for collection (BFC) and for which no repayment plan has been accepted by FEMA.

Memorandum of Understanding (MoU) is an agreement entered into by the IRS, the U.S. Department of the Treasury's Financial Management Service (FMS), and FEMA for collecting

delinquent debts owed FEMA by offset against income tax refunds.

(c) FEMA will provide information to the IRS within time limits prescribed by the IRS and in accordance with the MoU. This information is to enable the Commissioner of the IRS to make a final determination as to FEMA's participation in the tax refund offset program.

(1) Information submitted to the IRS shall include a description of:

(i) The size and age of FEMA's inventory of delinquent debts;

(ii) The prior collection efforts that the inventory reflects; and

(iii) The quality controls FEMA maintains to assure that any debt that FEMA may submit for tax refund offset will be valid and enforceable.

(2) In accordance with time limits established by the IRS, FEMA will submit test magnetic media to the IRS in such form and containing such data as the IRS may specify. FEMA may use the electronic data transmissions facilities of other federal agencies in transmitting test data or for referral of debts to the IRS.

(d) FEMA shall establish a collect call or toll-free telephone number that the IRS will furnish to individuals whose refunds have been offset to obtain information from FEMA concerning the offsets taken.

(e) Income tax refund offset procedures described in §§ 11.61 through 11.65 shall apply to debts owed the United States which are past due and legally enforceable; and

(1) Except in the case of a judgment debt that has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the federal salary offset provisions of 5 U.S.C. 5524(a)(1);

(3) Are ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by FEMA using administrative offset under 31 U.S.C. 3716(a) against amounts payable to the debtor by or on behalf of FEMA;

(4) With respect to which FEMA has given the taxpayer/debtor at least 65 days from the date of mailing of the notification (described in § 11.63 of this part) to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence and reasons presented by such taxpayer/debtor and has determined that an amount of such debt is past due and legally enforceable;

(5) Has been disclosed by FEMA to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c or unless the amount of the debt does not exceed $100.00;

(6) With respect to which FEMA has notified or has made a reasonable attempt to notify the taxpayer/debtor that the debt is past due and, unless repaid within 65 days of the mailing of the notification, the debt will be referred to the IRS for offset against any overpayment of tax;

(7) Is at least $25.00; and

(8) Meets all other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations codified at 26 CFR 301.6402–6T relating to the eligibility of a debt for tax refund offset have been satisfied.

§ 11.62 Administrative charges incurred in referrals for income tax refund offset.

In accordance with 44 CFR 11.48(d), all administrative charges incurred in connection with the referral of the debts to the IRS shall be assessed on the debt and thus increase the amount of the offset. Assessed administrative charges will include, but not be limited to, a pro-rata share of charges made by the IRS in accordance with the IRS–FEMA–MoU.

§ 11.63 Notice to debtor before offset.

A request for offset against an IRS tax refund will be made only after FEMA makes a determination that a debt is owed FEMA and, not less than 65 days prior to referring such debt to the IRS, provides a Notice of Intent to Use IRS Income Tax Refund Offset which will state that:

(a) Debtor owes FEMA an amount due; and

(b) The debt is past due; and

(c) Unless the debt is repaid within 65 days of the date of FEMA's mailing, the Notice of Intent to use IRS Income Tax Refund Offset, FEMA intends to collect the debt by requesting the IRS to take offset to reduce a federal tax refund by the amount of the debt and all accumulated interest and other charges; and

(d) Debtor has an opportunity to present evidence, within 65 days of mailing of the Notice of Intent to Use IRS Income Tax Refund Offset, that all or a part of the debt is not due. A debtor wishing to present evidence shall send it to the Deputy Agency Collections Officer, Office of Financial Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; and

(e) Debtor may arrange to inspect and copy records relating to the debt by mailing a request to the Deputy Agency Collections Officer at the address above; and

(f) If the debtor submits evidence described in paragraph (d) of this section then the debt shall not be referred to the IRS until such evidence is fully considered by the Agency Collections Officer (ACO). If no reply is received from the debtor within 65 days of mailing of the notice, FEMA may refer the debt to the IRS after reviewing the file and determining that the debt is due; and

(g) The debt will be referred to the IRS only after the ACO, after reviewing the debt collection files and the debtor's evidence, if any, has determined that the debt is due. If the debtor has submitted evidence in accordance with paragraph (f) of this section, FEMA shall notify the debtor of the ACO's final determination.

(h) If the debtor has questions concerning the debt or procedures being used, contact may be made with a specified FEMA employee whose work address and telephone will be provided in the Notice of Intent to Use IRS Income Tax Refund Offset.

§ 11.64 Review within Federal Emergency Management Agency.

(a) Notification by debtor. A debtor receiving Notice of Intent to Use IRS Income Tax Refund Offset has the right to present evidence and arguments within 65 days of mailing of the Notice of Intent to Use IRS Income Tax Refund Offset that all of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for review of evidence to the Deputy Agency Collections Officer at the address provided in § 11.63(d); and

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; and

(3) Include in the request any documents which the debtor wishes to be considered, or state that additional information will be submitted within the remainder of the 65-day period.

(b) Submission of evidence. The debtor may submit evidence that all or part of the debt is not past-due or legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within the 65-day period may result in a referral of the debt to the IRS with only a review by the ACO that the records show that the debt is actually due FEMA.

(c) Review of the evidence. FEMA will consider all evidence, reasons and arguments submitted by the debtor, if any, relating to the debt. Within 30 days of receipt of debtor's evidence, if feasible, FEMA will notify the debtor

whether FEMA has sustained, amended or canceled its determination that the debt is past-due or legally enforceable, in whole or in part.

(1) Attached to the notification will be a written decision setting forth the supporting rationale for the determination.

(2) FEMA will complete its review and determination and mail to the debtor the notification within 30 days of receipt of debtor's submission of evidence and arguments, if feasible.

(3) The ACO may delegate his or her responsibilities in reviewing the files and evidence and for making determinations under this section to member(s) of his or her staff.

§ 11.65 Stay of offset.

If the debtor notifies FEMA that he or she is exercising rights described in § 11.64 and submits evidence within time limits specified in § 11.64(b), any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends FEMA's original decision.

Dated: October 28, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92-28262 Filed 11-19-92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 65 and 69

[CC Docket No. 91-213; FCC 92-442]

Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a Report and Order that established an interim rate structure and pricing plan for transport. The Commission initiated this proceeding to determine what rate structure should replace the "equal charge per unit of traffic" rule that was originally mandated by the Modification of Final Judgment. The Commission's action in this proceeding is intended to facilitate more cost-based pricing and greater efficiency in the provision of transport.

EFFECTIVE DATES: Decisions in this Report and Order concerning implementation of the interim rate structure and pricing plan, including the amendments to parts 61, 65, and 69, are effective February 18, 1993.

FOR FURTHER INFORMATION CONTACT: Suzanne Tetreault, (202) 632-6363, or Melissa Newman, (202) 632-9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 92-442, adopted September 17, 1992 and released October 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Public reporting burdens for the collections of information are estimated to average 77.5 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information Resources Branch, room 416, Paperwork Reduction Project (3060-0298), Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0298) Washington, DC 20503.

Summary of the Report and Order

1. In August 1991, the Commission issued an Order and Notice of Proposed Rulemaking addressing the transport rate structure. Transport Rate Structure and Pricing, CC Docket No. 91-213, Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 5341 (1991), 56 FR 51869 (Oct. 16, 1991). The Commission concluded that the "equal charge per unit of traffic" rule, which was originally mandated by the Federal District Court overseeing the AT&T divestiture in the Modification of Final Judgment should be changed. The Commission required local exchange carriers (LECs) to maintain the equal charge rate structure pending further agency action, and instituted a proceeding on transport rate structure and pricing issues.

2. The Commission has adopted an interim rate structure for transport that consists of four rate elements. A flat-rate entrance facilities charge will cover transport from the interexchange carrier or other customer's point-of-presence to the serving wire center (SWC). A flat-rate direct-trunked transport element will apply for transport from the SWC to an end office for traffic requiring no tandem switching. A usage-based tandem-switched transport element will apply for transport from the SWC to an end office of traffic that is switched at a tandem. The tandem-switched transport element will include both an interoffice transmission charge and a tandem charge. The tandem charge will initially recover twenty percent of the current part 69 tandem revenue requirement. Finally, a usage-sensitive interconnection charge will be paid by all interstate access customers that interconnect with the LEC switched access network. With limited exceptions, all LECs are required to implement this new rate structure on or about November 1, 1993. The interim transport regime will remain in place through October 31, 1995, when it will be replaced by long-term rate structure and pricing rules adopted after the Commission receives comment on a Further Notice of Proposed Rulemaking.

3. The Commission will not require FCC-approved centralized equal access providers or LECs participating in such arrangements to make any change in their rate structures or pricing, except to offer entrance facilities on a flat-rate basis. In addition, if a LEC lacks recording facilities to bill for direct-trunked transport at certain end offices, it must adopt the interim rate structure, but is not required to provide direct-trunked transport to and from such end offices.

4. Under the interim rate structure, the LECs will be permitted, but not required, to charge distance-sensitive rates for entrance facilities, direct-trunked transport, and tandem-switched transport. In applying distance-sensitive rates, the LECs must measure mileage for both direct-trunked and tandem-switched transport as airline mileage between the SWC and the end office.

5. The Commission also adopted pricing rules to govern initial and subsequent transport rates for both price cap and rate-of-return carriers. First, the Commission established a presumption of reasonableness for rates under the interim rate structure that are based on special access rates consistent with a DS3-to-DS1 ratio of at least 9.6 to 1. Part 69.108 was added to establish a DS3-to-DS1 benchmark ratio calculated as the ratio of (1) the total charge for a one mile channel termination, ten miles of interoffice transmission, and one DS3 multiplexer using the telephone company's DS3 special access rates to (2) the total charge for a one mile channel termination plus ten miles of interoffice transmission using the telephone company's DS1 special access

rates. Under part 69.108, transport rates will generally be presumed reasonable if they are based on special access rates with a DS3-to-DS1 benchmark ratio of 9.6 to 1 or higher. Transport rates that are not presumed lawful as described above will generally be suspended and investigated in the absence of a "substantial cause" showing.

6. The Commission amended its part 69 pricing rules governing initial transport rates for both price cap and rate-of-return carriers. For initial transport rates, entrance facilities charges and direct-trunked transport charges will generally be presumed reasonable if they are based on special access charges that are consistent with the 9.6-to-1 benchmark ratio. Part 69.110 was added to provide a presumption of reasonableness if entrance facilities rates are set at the same level as special access channel termination rates for equivalent voice grade, DS1, and DS3 services, without term or volume discounts, subject to the 9.6-to-1 benchmark. Part 69.112 was amended to provide a presumption of reasonableness if rates for direct-trunked transport are set at the same level as the special access interoffice rates for equivalent voice grade, DS1, and DS3 services, without term or volume discounts, and subject to the benchmark analysis. Part 69.111 was amended to provide a presumption of reasonableness if the per-minute interoffice tandem-switched transport charge is calculated to equal a per-minute equivalent of direct-trunked transport rates for a weighted average of DS1 and DS3 circuits in the LEC interoffice network between the tandem and end offices. Part 69.111 was also amended to provide that the per-minute tandem charge should be calculated so as to recover twenty percent of the current tandem revenue requirement. Part 69.124 was added to require that for rate-of-return carriers, the interconnection charge will be computed each year by subtracting projected entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signaling transport revenues from the part 69 transport revenue requirement, and dividing by the projected total transport minutes. For price cap carriers, the interconnection charge will be set initially to comply with the price cap rate restructure requirement of revenue neutrality.

7. For rate-of-return carriers, the same rules that govern initial transport prices will also govern subsequent rates during the two-year interim period. For price cap carriers, the Commission adopted modified price cap rules to govern changes in transport rates during the interim period. For price cap carriers, the Commission has put direct-trunked and tandem-switched transport into separate service categories. The entrance facilities charge will be in the same service category as direct-trunked transport. The Commission also determined that direct-trunked transport will be subject to a five percent pricing band, but the tandem-switched transport service category will be subject to a two percent band for price increases and the usual five percent band for price decreases. In addition, the Commission determined that the interconnection charge should be in a separate service category and subject to a zero percent upward pricing band.

8. The Commission directed all LECs, except those exempted from implementation of the new rate structure, to file tariffs on August 2, 1993, with the expectation that the new rate structure will become effective on or about November 1, 1993.

9. The Commission concluded that common channel signalling (CCS) transport between an interexchange carrier's CCS network and a LEC STP is a form of switched transport. The Commission created an additional transport rate element, Dedicated Signalling Transport. Dedicated Signalling Transport will have two subelements. The signalling link will be subject to a flat rate charge set at the same levels as special access rates for equivalent facilities. The charge may be distance-sensitive. The STP port termination will be subject to a flat rate set in accordance with the price cap new services rules, or with proper cost support provided by rate-of-return LECs. The interconnection charge will not apply to Dedicated Signalling Transport. LECs that already have tariffs in place for CCS transport are not required to make any changes in their rate levels so long as their rates are in accord with the rate structure set forth in this order.

10. For price cap purposes, Dedicated Signalling Transport will be in the same basket and service category as direct-trunked transport. For rate-of-return LECs, the Commission amended the part 69 rules to provide that the signalling link charges be set each year at the same level as special access rates for equivalent facilities, and the STP port termination charge be set in accordance with the Commission's cost support requirements.

11. The Commission denied the Petition for Waiver filed on December 19, 1991 by GTE, in which GTE proposed to offer a dedicated access transport service (DATS) on an interim basis at specific end office locations in southern California.

Ordering Clauses

1. Accordingly, *it is ordered* that pursuant to authority contained in sections 1, 4(i) and (j), 201–205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201–205, 218, 220, and 403, part 69 is amended as set forth below.

2. *It is further ordered* that the rules and requirements set forth herein concerning the rate structure and pricing of local transport are adopted.

3. *It is further ordered* that all LECs shall file tariffs incorporating the rate structures set forth herein by August 2, 1993, with an effective date of November 1, 1993.

4. *It is further ordered* that WilTel's Petition for Rulemaking *is granted to the extent indicated herein.*

5. *It is further ordered* that GTE's Petition for Waiver of the Part 69 Rules *is denied.*

6. *It is further ordered* that the Motion for Leave to File Late by One-2-One Communications is *granted.*

7. *It is further ordered* that the decisions and rules adopted herein *shall be effective* ninety days after publication of this Report and Order in the **Federal Register.**

List of Subjects in 47 CFR Parts 61, 65 and 69

Communications common carriers; Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendments to the Code of Federal Regulations

Part 61 of title 47 of the Code of Federal Regulations is amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203, unless otherwise noted.

2. Section 61.42 is amended by revising paragraphs (e)(1)(iii) and by adding paragraphs (e)(1)(iv) and (e)(1)(v) to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(e)(1) * * *

(iii) Entrance facilities, direct-trunked transport, and dedicated signalling

transport, as described in §§ 69.110, 69.112, and 69.125 of this chapter, respectively.

(iv) Tandem-switched transport, as described in § 69.111 of this chapter.

(v) Interconnection charge, as described in § 69.124 of this chapter.

3. In § 61.47, paragraph (e) is redesignated as (e)(1), and paragraphs (e)(2) and (e)(3) are added to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(e) * * *

(2) Notwithstanding paragraph (e)(1) of this section, the upper pricing band for the tandem-switched transport service category shall limit the annual upward pricing flexibility for this service category, as reflected in its SBI, to two percent, relative to the percentage change in the PCI for the traffic sensitive switched interstate access basket, measured from the last day of the preceding tariff year. The lower pricing band for the tandem-switched transport service category shall limit the annual downward pricing flexibility for this service category, as reflected in its SBI, to five percent, relative to the percentage change in the PCI for the traffic sensitive switched interstate access basket, measured from the last day of the preceding tariff year.

(3) Notwithstanding paragraph (e)(1) of this section, the upper pricing band for the interconnection charge service category shall limit the annual upward pricing flexibility for this service category, as reflected in its SBI, to zero percent, relative to the percentage change in the PCI for the traffic sensitive switched interstate access basket, measured from the last day of the preceding tariff year. There shall be no lower pricing band for the interconnection charge.

* * * * *

4. Section 61.48 is amended by adding paragraphs (g) and (h) to read as follows:

§ 61.48 Transition rules for price cap formula calculations.

* * * * *

(g) Local exchange carriers subject to price cap regulation shall set initial rates for entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport, to be filed with an effective date of November 1, 1993, according to the requirements set forth in §§ 69.110, 69.111, 69.112, and 69.125 of this chapter, respectively.

(h) Local exchange carriers subject to price cap regulation shall set the initial upper limit for the interconnection charge, to be filed with an effective date of November 1, 1993, according to the requirements set forth in § 69.124 of this chapter.

Part 65 of title 47 of the Code of Federal Regulations is amended as follows:

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

1. The authority citation for part 65 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 65.702 is amended by adding a last sentence to paragraph (b) to read as follows:

§ 65.702 Measurement of interstate service earnings.

* * * * *

(b) * * * The access service categories shall be: an aggregated category consisting of Special Access, § 69.115, Connection Charges for Expanded Interconnection, § 69.121, and Contribution Charges for Special Access and Expanded Interconnection, § 69.122; Common Line, §§ 69.104–69.105; Local Switching, § 69.106, Transport §§ 69.108, 69.110–69.112, 69.124, 69.125, and Information, § 69.109. The Billing and Collection access element shall not be included in any access service category for purposes of this part. The Commission will also separately review exchange carrier overall interstate earnings subject to this part for determining compliance with the maximum allowable rate of return determined by § 65.700(b).

* * * * *

Part 69 of title 47 of the Code of Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended 47 U.S.C. 154, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.1 is amended by revising paragraph (c) to read as follows:

§ 69.1 Application of access charges.

* * * * *

(c) The following provisions of this part shall apply to telephone companies subject to price cap regulation only to the extent that application of such provisions is necessary to develop the nationwide average carrier common line charge and for purposes of reporting pursuant to §§ 43.21 and 43.22 of this chapter: §§ 69.3(f), 69.105(b)(4), 69.105(b)(5), 69.106(b), 69.107(b), 69.107(c), 69.109(b), 69.114(b), 69.114(d), 69.205(e), 609.301 through 69.310, and 69.401 through 69.412. The computation of rates pursuant to these provisions by telephone companies subject to price cap regulation, as that term is defined in § 61.3(v) of this chapter, shall be governed by the price cap rules set forth in part 61 of this chapter and other applicable Commission Rules and orders.

3. In § 69.2, paragraph (nn) through (ss) are added to read as follows:

§ 69.2 Definitions.

* * * * *

(nn) Dedicated Signalling Transport means transport of out-of-band signalling information between an interexchange carrier or other person's common channel signalling network and a telephone company's signalling transport point on facilities dedicated to the use of a single customer.

(oo) Direct-Trunked Transport means transport from the serving wire center to the end office on circuits dedicated to the use of a single interexchange carrier or other person, without switching at the tandem.

(pp) End Office means the telephone company office from which the end user receives exchange service.

(qq) Entrance Facilities means transport from the interexchange carrier or other person's point of demarcation to the serving wire center.

(rr) Serving Wire Center means the telephone company central office designated by the telephone company to serve the geographic area in which the interexchange carrier or other person's point of demarcation is located.

(ss) Tandem-Switched Transport means transport from the serving wire center to the end office that is switched at a tandem switch. Tandem-switched transport consists of circuits dedicated to the use of a single interexchange carrier or other person from the serving wire center to the tandem (although this dedicated link will not exist if the serving wire center and the tandem are located in the same place) and circuits used in common by multiple interexchange carriers or other persons from the tandem to the end office.

4. Section 69.4 is amended by revising paragraph (b) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(b) Except as provided in subpart C of this part, in §§ 69.4 (c), (d), (e), and (f),

and in § 69.118, the carrier's carrier charges for access service filed with this Commission shall include charges for each of the following elements:

(1) Limited pay telephone;
(2) Carrier common line;
(3) Local switching;
(4) Information;
(5) Tandem-switched transport;
(6) Direct-trunked transport;
(7) Special access; and
(8) Entrance facilities

5. Section 69.108 is added to read as follows:

§ 69.108 Transport rate benchmark.

(a) For transport charges computed in accordance with this subpart, the DS3-to-DS1 benchmark ratio shall be calculated as follows: the local telephone company shall calculate the ratio of:

(1) The total charge for a one mile channel termination, ten miles of interoffice transmission, and one DS3 multiplexer using the telephone company's DS3 special access rates to;

(2) The total charge for a one mile channel termination plus ten miles of interoffice transmission using the telephone company's DS1 special access rates.

(b) Transport rates will generally be presumed reasonable if they are based on special access rates with a DS3-to-DS1 benchmark ratio of 9.6 to 1 or higher.

(c) If a local telephone company's transport rates are based on special access rates with a DS3-to-DS1 benchmark ratio of less than 9.6 to 1, those transport rates will generally be suspended and investigated absent a substantial cause showing by the local telephone company. Alternatively, the local telephone company may adjust its transport rates so that the DS3-to-DS1 ratio calculated as described in paragraph (a) of this section of those rates is 9.6 or higher. In that case, rates that depart from existing special access rates so as to be consistent with the benchmark will be presumed reasonable only so long as the ratio of projected revenue recovered through the interconnection charge to the projected revenue recovered through facilities-based charges is the same as it would be if the telephone company's existing special access rates were used.

6. Section 69.110 is added to read as follows:

§ 69.110 Entrance facilities.

(a) A flat-rated entrance facilities charge expressed in dollars and cents per unit of capacity shall be assessed upon all interexchange carriers and other persons that use telephone company facilities between the interexchange carrier or other person's point of demarcation and the serving wire center through October 31, 1995.

(b)(1) For carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, initial entrance facilities charges based on special access channel termination rates for equivalent voice grade, DS1, and DS3 services as of September 1, 1992, adjusted for changes in the price cap index calculated for the July 1, 1993 annual filing for carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, generally shall be presumed reasonable if the benchmark defined in § 69.108 is satisfied. Entrance facilities charges may be distance-sensitive. Mileage shall be measured as airline mileage between the point of demarcation and the serving wire center.

(2) For rate of return carriers, entrance facilities charges based on special access channel termination rates for equivalent voice grade, DS1, and DS3 services generally shall be presumed reasonable if the benchmark defined in § 69.108 is satisfied. Entrance facilities charges may be distance-sensitive. Mileage shall be measured as airline mileage between the point of demarcation and the serving wire center.

(c) If the telephone company employs distance-sensitive rates:

(1) A distance-sensitive component shall be assessed to recover the costs of the transmission facilities, including any intermediate transmission circuit equipment between the end points of the entrance facilities; and

(2) A nondistance-sensitive component shall be assessed to recover the costs of the circuit equipment at the ends of the transmission links.

(d) Telephone companies shall apply only their shortest term special access rates in setting entrance facilities charges. Telephone companies shall not offer entrance facilities based on volume discounts for multiple DS3s or any other service with higher volume than DS3 through October 31, 1995.

7. Section 69.111 is revised in its entirety to read as follows:

§ 69.111 Tandem-Switched Transport and Tandem Charge.

(a) Tandem-Switched transport shall consist of two rate elements, a transmission charge and a tandem switching charge.

(b) A tandem-switched transmission charge expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers and other persons that use telephone company tandem-switched transport facilities through October 31, 1995. Tandem-switched transmission charges generally shall be presumed reasonable if the local telephone company bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links, calculated using a loading factor of 9000 minutes per month per voice-grade circuit. Tandem-switched transport transmission charges that are not presumed reasonable generally shall be suspended and investigated absent a substantial cause showing by the local telephone company. Tandem-switched transport transmission charges may be distance-sensitive. Mileage shall be measured as airline mileage between the serving wire center and end office.

(c) If the telephone company employs distance-sensitive rates:

(1) A distance-sensitive component shall be assessed to recover the costs of the transmission facilities, including intermediate transmission circuit equipment between the end points of the interoffice circuit; and

(2) A nondistance-sensitive component shall be assessed to recover the costs of the circuit equipment at the end of the interoffice transmission links.

(d) A tandem switching charge expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers and other persons that use telephone company tandem switching facilities.

(e) Through October 31, 1995, the tandem charge shall be set to recover twenty percent of the projected annual part 69 interstate tandem revenue requirement for COE Category 2, tandem switching, as described in § 36.124 of the Commission's rules.

(f) All telephone companies, except centralized equal access providers as described in Transport Rate Structure and Pricing, CC Docket No. 91–213, FCC 92–442, 7 FCC Rcd 7006 (1992), shall provide tandem-switched transport service.

8. Section 69.112 is revised in its entirety to read as follows:

§ 69.112 Direct-Trunked Transport.

(a) A flat-rated direct-trunked transport charge expressed in dollars and cents per unit of capacity shall be assessed upon all interexchange carriers and other persons that use telephone company direct-trunked transport facilities through October 31, 1995.

(b)(1) For carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, initial direct-

trunked transport charges based on the interoffice charges for equivalent voice grade, DS1, and DS3 special access services as of September 1, 1992, adjusted for changes in the price cap index calculated for July 1, 1993 annual filing for carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, generally shall be presumed reasonable if the benchmark defined in § 69.108 is satisfied. Direct-trunked transport charges may be distance-sensitive. Mileage shall be measured as airline mileage between the serving wire center and end office.

(b)(2) For rate of return carriers, direct-trunked transport charges based on the interoffice charges for equivalent voice grade, DS1, and DS3 special access services generally shall be presumed reasonable if the benchmark defined in § 69.108 is satisfied. Direct-trunked transport charges may be distance-sensitive. Mileage shall be measured as airline mileage between the serving wire center and end office.

(c) If the telephone company employs distance-sensitive rates:

(1) A distance-sensitive component shall be assessed to recover the costs of the transmission facilities, including intermediate transmission circuit equipment, between the end points of the circuit; and

(2) A nondistance-sensitive component shall be assessed to recover the costs of the circuit equipment at the end of the transmission links.

(d) Telephone companies shall apply only their shortest term special access rates in setting direct-trunked transport rates. Telephone companies shall not offer direct-trunked transport rates based on volume discounts for multiple DS3s or any other service with higher volume than DS3 through October 31, 1995.

(e) Centralized equal access providers as described in Transport Rate Structure and Pricing, CC Docket No. 91–213, FCC 92–442, 7 FCC Rcd 7006 (1992), are not required to provide direct-trunked transport service. Telephone companies that do not have measurement and billing capabilities at their end offices are not required to provide direct-trunked transport service at those end offices without measurement and billing capabilities. All other telephone companies shall provide a direct-trunked transport service.

9. Section 69.113 is amended by revising paragraph (a) to read as follows:

§ 69.113 Non-premium charges for MTS-WATS equivalent services.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive access that is not deemed to be premium access as this term in defined in § 69.105(b)(1) in lieu of carrier charges that are computed in accordance with §§ 69.105, 69.106, 69.110, 69.111, 69.112, 69.118, 69.124, and 69.127.

* * * * *

10. Section 69.118 is revised to read as follows:

§ 69.118 Traffic sensitive switched services.

Notwithstanding §§ 69.4(b), 69.106, 69.109, 69.110, 69.111, 69.112, and 69.124, telephone companies subject to the BOC ONA Order, 4 FCC Rcd 1 (1988), shall, and other telephone companies may, establish approved Basic Service Elements as provided in amendments of part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89–79, FCC 91–186, 6 FCC Rcd 4524 (1991). Telephone companies shall take into account revenues from the relevant Basic Service Element or Elements in computing rates for the Local Switching, Entrance Facilities, Tandem-Switched Transport, Direct-Trunked Transport, Interconnection Charge, and/or Information elements.

11. Section 69.124 is added to subpart B to read as follows:

§ 69.124 Interconnection charge.

(a) An interconnection charge expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers and upon all other persons interconnecting with the telephone company switched access network, except as provided in paragraph (c) of this section.

(1) For rate-of-return carriers, the interconnection charge shall be computed by subtracting projected entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport revenues from the part 69 transport revenue requirement, and dividing by the projected total transport minutes.

(2) For carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, the interconnection charge shall be set initially to comply with the price cap rate restructure requirement of revenue neutrality.

(c) Centralized equal access providers as described in Transport Rate Structure and Pricing, CC Docket No. 91–213, FCC 92–442, 7 FCC Rcd 7006 (1992), are not required to access an interconnection charge.

12. Section 69.125 is added to subpart B to read as follows:

§ 69.125 Dedicated signalling transport.

(a) Dedicated signalling transport shall consist of two subelements, a signalling link charge and a signalling transfer point (STP) port termination charge.

(b) A flat-rated signalling link charge expressed in dollars and cents per unit of capacity shall be assessed upon all interexchange carriers and other persons that use facilities between an interexchange carrier or other person's common channel signalling network and a telephone company signalling transfer point or equivalent facilities offered by a carrier subject to price cap regulation as that term is defined in § 61.3(v) of this chapter. Signalling link charges may be distance-sensitive. Mileage shall be measured as airline mileage between the interexchange carrier's or other person's common channel signalling network and the telephone company's signalling transfer point. Signalling link rates shall be based on the interoffice charges for equivalent special access services. Carriers that have previously tariffed a signalling link service for signalling transport between the interexchange carrier's or other person's common channel signalling network and the carrier's STP are permitted to use the rates that are in place on September 1, 1992, adjusted for changes in the price cap index for the July 1, 1993 annual filing for carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter.

(c) A flat-rated STP port termination charge expressed in dollars and cents per port shall be assessed upon all interexchange carriers and other persons that use dedicated signalling transport.

13. Section 69.126 is added to subpart B to read as follows:

§ 69.126 Nonrecurring charges.

As of the effective date of the Report and Order in Transport Rate Structure and Pricing, CC Docket No. 91–213, FCC 92–442, 7 FCC Rcd 7006 (1992), telephone companies shall not assess any nonrecurring charges for service connection until May 1, 1994, when an interexchange carrier converts trunks from tandem-switched transport to direct-trunked transport or from direct-trunked transport to tandem-switched transport, or when an interexchange carrier orders the disconnection of overprovisioned trunks.

14. Section 69.127 is added to subpart B to read as follows:

§ 69.127 Transitional Equal Charge Rule.

The transport rate structure in effect August 1, 1991, shall be retained until the tariffs filed pursuant to the Report and Order in Transport Rate Structure and Pricing, CC Docket No. 91–213, FCC 92–442, 7 FCC Rcd 7006 (1992) become effective.

§ 69.210 [Removed]

15. Section 69.210 is removed.

16. Section 69.301 is amended by revising paragraph (a) to read as follows:

§ 69.301 General.

(a) For purposes of computing annual revenue requirements for access elements net investment as defined in § 69.2 (z) shall be apportioned among the interexchange category, the billing and collection category and access elements as provided in this subpart. For purposes of this subpart, local transport includes five elements: entrance facilities, direct-trunked transport, tandem-switched transport, dedicated signaling transport, and the interconnection charge. Expenses shall be apportioned as provided in subpart E of this part.

* * * * *

17. Section 69.305 is amended by revising paragraph (b) to read as follows:

§ 69.305 Carrier cable and wire facilities (C&WF).

* * * * *

(b) Carrier C&WF, other than WATS access lines, not assigned pursuant to paragraph (a) of this section that is used for interexchange services that use switching facilities for origination and termination that are also used for local exchange telephone service shall be apportioned to the Transport elements.

* * * * *

18. Section 69.306 is amended by revising paragraphs (a), (b), (c), and (e) to read as follows:

§ 69.306 Central office equipment (COE).

(a) The Separations Manual categories shall be used for purposes of apportioning investment in such equipment except that any Central office equipment attributable to local transport shall be assigned to the Transport elements.

(b) COE Category 1 (Operator Systems Equipment) shall be apportioned among the interexchange category and the access elements as follows: Category 1 that is used for intercept services shall be assigned to the Local Switching element. Category 1 that is used for directory assistance shall be assigned to the Information element. Category 1 other than service observation boards that is not assigned to the Information element and is not used for intercept services shall be assigned to the interexchange category. Service observation boards shall be apportioned among the interexchange category, and the Information and Transport access elements based on the remaining combined investment in COE Category 1, Category 2 and Category 3.

(c) COE Category 2 (Tandem Switching Equipment) that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States* v. *Western Electric Co.* shall be assigned to the tandem switching charge subelement and the interconnection charge element. All other COE Category 2 shall be assigned to the interexchange category.

* * * * *

(e) COE Category 4 (Circuit Equipment) shall be apportioned among the interexchange category, and the Common Line, Limited Pay Telephone, Transport, and Special Access elements. COE Category 4 shall be apportioned in the same proportions as the associated Cable and Wire Facilities.

19. Section 69.307 is revised to read as follows:

§ 69.307 General support facilities.

General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Limited Pay Telephone, Local Switching, Information, Transport, and Special Access elements on the basis of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities, excluding Category 1.3, combined.

[FR Doc. 92–27750 Filed 11–19–92; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Lee County Cave Isopod (Lirceus usdagalun)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Lee County isopod (*Lirceus usdagalun*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). Unlike most other members of its genus, the Lee County isopod has adapted to a totally subterranean aquatic existence. It is an eyeless, unpigmented isopod (a kind of crustacean) originally known from two cave systems in Lee County, Virginia. It has been extirpated from one of these systems, by pollution of the underground stream it inhabited. In its remaining cave system, the isopod is threatened by the proposed construction of a prison facility and an airport in the cave vicinity. These construction projects could degrade groundwater quality sufficiently to threaten the isopod's survival, unless construction plans provide for its protection. A proposed rule to list the isopod as endangered was published November 15, 1991.

EFFECTIVE DATE: December 21, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, MD 21401.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Jacobs at the above address, telephone (410) 269–5448, during normal business hours.

SUPPLEMENTARY INFORMATION:

Background

Among the rare creatures discovered by Dr. John Holsinger, during his extensive investigations of the caves in the central Appalachian region, was a freshwater isopod crustacean of the genus *Lirceus*. Unlike any of the other 13 species known to comprise the genus at that time, this species was troglobitic—that is, an obligate cave-dweller. In adapting to the lightless, unchanging cave environment, this species, over evolutionary time, lost its eyes and pigmentation. The species was named "usdagalun", the Cherokee word for "cave" or "hole under rock" (Holsinger and Bowman 1973).

Animals in the genus *Lirceus* occur in parts of the eastern and mid-western United States and the Great Lakes region of southern Ontario, Canada, in a variety of aquatic habitats, including springs, seeps, streams, ponds, sloughs, and drain outlets (Williams 1972). Some other species have been found in cave streams, but all species described prior to *L. usdagalun* have eyes and pigment, and none are considered obligate cave-dwellers (Hubricht and Makin 1949).

Subsequent to the discovery of *L. usdagalun*, an additional troglobitic species has been described (Estes and Holsinger 1976).

Lirceus usdagalun is an eyeless, unpigmented species measuring 4 to 7.5 millimeters (0.2–0.3 inches) in length. The body is about 64% longer than wide, and the head is about ⅓ as long as wide, with deep incisions on its lateral margins. The species was known historically from two cave systems, located approximately 10 kilometers (6 miles) apart, in Lee County, Virginia (Holsinger and Culver 1988).

The caves originally inhabited by *L. usdagalun* are developed in a band of low-dipping, middle-Ordovician limestone on the southern flank of the Cedar Syncline (Holsinger and Bowman 1973). This broad band of limestone, known locally as "the Cedars," is riddled with caves, sinks and ravines, typical for this water-soluble, limestone substrate, also known as karst. Such areas are particularly susceptible to contamination of groundwater from surface contaminants leaching through the porous substrate (Holsinger 1979).

Lirceus usdagalun has been extirpated by groundwater pollution from one of the two cave systems it originally occupied. This pollution resulted when large quantities of sawdust, by-product of a local sawmill operation, were piled on the ground surface over the cave. Rainwater leached tannins and other toxins from the sawdust and transferred these through the porous substrate into the underlying groundwater. Fortunately, the sizeable population of *L. usdagalun* in the other cave system was unaffected and is extant. Prior to its extirpation, a study comparing the populations in the two systems was conducted, and it was found that the two differed in numerous parameters (Estes and Holsinger 1982). The unique characteristics (and genotypes) exhibited by the extirpated population have been lost to the species forever.

The Lee County cave isopod was first recognized by the Federal government in the **Federal Register** Notice of Review published on May 22, 1984 (49 FR 21664). That notice, which covered invertebrate wildlife under consideration for endangered or threatened status, included *Lirceus usdagalun* as a Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. In the **Federal Register** Animal Notice of Review published on January 6, 1989, *L. usdagalun* was retained as a Category 2 species, since available information indicated that its status was essentially unchanged from 1984; it was rare, but there were no known threats to its survival. Since that time, numerous threats to the species' continued existence have appeared, as described below. One of these, the above-mentioned sawdust stockpiling, has already resulted in the extirpation of the species from half its originally known range. Accordingly, on November 15, 1991, the Service published in the **Federal Register** a proposal to list *Lirceus usdagalun* as an endangered species (56 FR 58026). With the publication of this final rule, the Service now determines endangered status for this isopod.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

In the November 15, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period originally closed on January 14, 1992. Comments were requested from appropriate state agencies, county governments, scientific organizations, and other interested parties. Newspaper notices inviting public comment were published on December 3, 1991, in the Kingsport (Tennessee) Times and on December 4, 1991, in the Powell Valley (Virginia) News. On December 20, the Service received a request for a public hearing from Lee Norton Scott Wise Planning District Commission (LENOWISCO). Accordingly, on January 17, 1992, the Service published in the **Federal Register** a notice extending the comment period to February 21, 1992, and announcing a public meeting and hearing to be held in Jonesville, Virginia on February 6, 1992. The meeting allowed for the open exchange of information between the Service and local citizens, in a question and answer format, prior to the formal hearing procedures.

A total of 14 comments were made during the public hearing. Commenters included 5 Lee County officials; the Executive Director of LENOWISCO; consultants for both the prison and the airport; representatives of the Sierra Club and the Virginia Cave Board; and 4 local residents. The point that was made repeatedly by the County and LENOWISCO officials was that Lee is one of the most economically depressed counties in the State of Virginia, and that the Federal prison and the airport are desperately needed to bolster the County's economic well-being. The commenters noted, as the Service had indicated earlier, that economic factors are not included in the Service's determinations of endangered or threatened status; however they wished to point out these economic factors for the record, and their view of the listing of the isopod as "an unnecessary obstacle in the path of the economic future" of Lee County. The consultants for the prison and the airport described the economic and physiographic constraints under which they were working in proposing alternative sites for these facilities. The Service recognizes the validity of these concerns and is working closely with county officials and planning authorities to devise location and design alternatives for the airport and the prison that are compatible with the continued existence of the isopod. However, as noted above, the decision whether to add the isopod to the Federal list is to be based solely on an evaluation of biological factors.

The prison and airport consultants also questioned the completeness of the Service's data indicating only one remaining location for the isopod. The Service responded that data on the distribution of this isopod are based on some 30 years of extensive searching of caves in Virginia, Kentucky, and Tennessee by Dr. John Holsinger and colleagues (Holsinger, pers. comm. 1992). Since the discovery of *L. usdagalun* in 1971, these speleo-biologists have conducted intensive searches of caves in Lee and surrounding counties with the specific goal of finding any additional populations of this species. Although these searches have revealed no additional populations of *L. usdagalun*, other isopod species of the genus *Lirceus* have been located in some other caves in the area. In general, members of the genus *Lirceus* tend to be of very localized distribution, endemic to small areas. When the ecological "niche" that *Lirceus usdagalun* would occupy in a cave ecosystem is filled by another species, there is virtually no chance of expecting to find *L. usdagalun* in that cave. In summary, data now in possession of the Service indicate very strongly that the chances of finding additional populations of this isopod at any considerable distance from the known population are extremely low.

The representative of the Sierra Club took no position on this proposed listing, but registered the general concern that any development should be environmentally sound as well as economically self-sustaining. The representative of the State of Virginia Cave Board indicated that the State's

Cave Protection Act bans the willful destruction of any cave biota. It was his belief that this restriction should apply to counties or companies as well as to individuals.

The residents of Lee County spoke in support of the listing of the isopod, both noting the close relationship between the isopod's well-being and the purity of the groundwater upon which Lee County residents depend for drinking. Two other residents stated their opposition to the listing if this action interfered with the construction of the prison or the airport.

A total of 14 written comments on this proposed listing were received, from: The Commonwealth of Virginia (Department of Game and Inland Fisheries and Department of Conservation and Recreation); four biology professors; one hydrologist; and seven local residents. Both letters from the Commonwealth of Virginia expressed full support for the proposed listing. Similarly, all of the biologists wrote in support of the listing, reiterating the rarity of the isopod and the severity of the threats it faces.

The hydrologist indicated his belief that the proposal "significantly overstated" the damage of the "sawdust disposal incident" to the isopod. However, no information was presented in support of this belief. The letter further indicated his belief that "a very strong case can be made that the isopod exists in most of the area of the Cedars and adjoining areas". Again, no supporting documentation was presented. This latter point was addressed above. In response to the first point, all information from biologists and cavers who have visited the site of the sawdust disposal (including observations by a Service biologist) indicate severe degradation of groundwater quality from tannins and other products of wood decomposition. The stream that had been occupied by the isopod was lined with a black sludge, had an unpleasant odor and an obviously high B.O.D. (biological oxygen demand). In short, the stream within the cave was clearly uninhabitable by any aquatic organism requiring relatively unpolluted conditions. At present, much of the sawdust at the cave mouth has been removed, and the water is clearing, perhaps sufficiently to be re-occupiable by the isopod at some future date.

Of the seven comments received from local residents, six supported the listing of the isopod, expressing the belief that it deserved a chance to live in its natural habitat; that it is beneficial to preserve what little is left of our natural resources; and that every creature and plant has a unique purpose for being. One comment, from an owner of one of the entrances of the cave system still occupied by the isopod, expressed her extreme displeasure at the Federal government becoming involved in this "local" issue, and her opposition to any action that would interfere with the struggling economy of Lee County. As stated above and at the public meeting, the Endangered Species Act requires that listing decisions be based solely on biological evidence. However, the Service does not believe that recognition of the endangered status of this species and its subsequent protection are incompatible with reasoned development in Lee County.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act, set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Lee County cave isopod (*Lirceus usdagalun*) are as follows:

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

Lirceus usdagalun has been extirpated from half of its originally known range by the degradation of its aquatic habitat at one of the two cave systems it was known to occupy. Leachate from sawdust that had been piled on the ground surface above the cave entered the cave's stream system, stripping oxygen from the water and severely contaminating both the water column and the stream bed. In May of 1990, the cave was intensively surveyed, but no *Lirceus* or other aquatic cave organisms were found. The stream system within the cave is presently too polluted to support any of its original aquatic fauna (J.R. Holsinger, Old Dominion University, pers. comm., 1991).

At present, there are two major development projects, an airport and a prison facility, proposed to be constructed in the vicinity of the isopod's remaining cave system that could easily destroy the fragile habitat on which the isopod depends. Some alternatives under consideration would locate these facilities over or adjacent to large sinkholes. Such a location would facilitate sediments or pollutants entering the groundwater during construction or operation phases, thus potentially eliminating the isopod. These developments must be planned based upon an in-depth knowledge of karst topography and groundwater connections, to protect the isopod as well as to ensure the structural integrity of the proposed developments.

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

Lirceus usdagalun is of no perceived value to hobbyist collectors. The only interest in collection of the species would be for purely scientific purposes, and these would be coordinated with State and Federal authorities.

C. Disease or Predation

This isopod is undoubtedly a food item in the diet of certain natural predators, including cave salamanders and possibly crayfish (Holsinger pers. comm., 1991). However, this naturally occurring predation is not currently considered a threat to the isopod's continued existence. There are no known diseases affecting the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Although there are no Federal or State laws specifically protecting the isopod or its habitat, certain laws do address groundwater pollution, in part. The Solid Waste Disposal Act of 1976, as amended, (Pub. L. 98–616), also referred to as the Resource Conservation and Recovery Act, regulates underground storage tanks and solid waste disposal, in conjunction with the states. This law also includes the Safe Drinking Water Act as an amendment in 1986 (Pub. L. 99–339), which deals with wellhead protection of public drinking water sources.

At the State level, several laws have some relevance to protection of the isopod and its habitat. The Commonwealth of Virginia's Cave Protection Act (Virginia Code, Title 10, Chapter 12.2 § 10–150.11–10.150.18) states that it is "unlawful to remove, kill or otherwise disturb any naturally occurring organisms found in any cave." However, this law does not ensure the high quality of groundwater inflow to caves. The Virginia Water Control Law (Title 62.1, Chapter 2) prohibits the discharge of any pollutant into State water (including groundwater) without a permit. This law deals very specifically with point sources but does not address non-point sources as directly. Enforcement of this law is typically remedial where specific permits are not required. Virginia's Solid Waste Management Regulations (VR 672–20–

10) prohibit open dumping (for example, into sinkholes) and require permits for any disposal of solid waste. However, staff for enforcing these regulations is limited. Section 32.1–164 of Virginia's Public Health Laws provides for the specification of minimum distances between sewerage systems or sewage treatment works and groundwaters. Virginia has also formed a groundwater protection steering committee, which consists of 12 State agencies that administer programs with potential impacts to groundwater resources. However, despite the existence of these laws and committees, there is presently no specific program focused on protection of the isopod or prevention of groundwater pollution (from all sources) in the area it inhabits. Furthermore, these laws were insufficient to prevent the pollution of groundwater in the cave from which the isopod is now extirpated.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Although not presently a problem, *L. usdagalun* could be adversely affected by an increase in human foot traffic through the cave in which it occurs. The isopods could be affected directly, or indirectly, by increased siltation of the stream they occupy.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lirceus usdagalun* as endangered. The species has been extirpated from one of the two cave systems it was known to occupy, and it faces threats that could extirpate it from its remaining cave system. In the view of the Service, the isopod is in imminent danger of extinction throughout the remainder of its known range. To list this species as threatened would not accurately reflect the immediacy of the threats it faces. Clearly, endangered status is the most appropriate designation for *Lirceus usdagalun.*

Critical Habitat

Section 4(a)(3) of the Act as amended, requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the determination that a species is endangered or threatened. The Service finds that designation of critical habitat is neither prudent not beneficial for *Lirceus usdagalun.*

As noted under Factor E above, the isopod and its habitat could be adversely affected by an increase in foot traffic through the stream it inhabits. Presently, the location of the cave system is not widely known. Publication of a precise map and locality description could increase the incidence of unauthorized visitation to the cave system, with possible adverse consequences for the isopod and its habitat. Such unauthorized intrusion would be extremely difficult to regulate, due to the remote location of the cave system and to the existence of multiple entrances. For this reason, the Service concludes that it is not prudent to designate critical habitat for *Lirceus usdagalun.*

In addition to the possible adverse consequences of designating critical habitat, the Service believes that in this case, the isopod would receive no additional protection from the designation of critical habitat. Because the isopod is now known from only a single cave system, any adverse modification of this system would be likely to jeopardize the continued existence of the species. All involved parties and principal landowners have been notified of the isopod's location and importance of protecting its habitat. The Service believes that habitat protection for this species will be best accomplished through the Section 7 jeopardy standard and the Section 9 prohibitions against take. In summary, it would be of no benefit, and it is not considered prudent, to determine critical habitat for this species.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or to destroy or adversely modify any designated critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The prison and the airport proposed to be constructed in the vicinity of the isopod's habitat are under the jurisdiction of the Federal Bureau of Prisons and the Federal Aviation Administration, respectively. These agencies are presently working with the Service to incorporate the needs of the isopod, including groundwater protection measures, into their project plans.

The listing of this isopod also brings Sections 5 and 6 of the Endangered Species Act into full effect on its behalf. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to Section 6, the Service may grant funds to affected states for management actions aiding the protection and recovery of the species.

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

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

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the

Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Hubricht, L. and J.G. Makin. 1949. The freshwater isopods of the genus *Lirceus* (Asellota, Asellidae). Amer. Midl. Nat. 42(2): 334–349.

Williams, W.D. 1972. Freshwater isopods (Asellidae) of North America. Biota of Freshwater Ecosystems Ident. Manual No. 7, U.S. Environmental Protection Agency, 45 pp.

Author

The primary author of this rule is Judy Jacobs, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401, telephone (410) 269–5448.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

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

2. Amend § 17.1 by adding the following, in alphabetical order under "CRUSTACEANS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Crustaceans:							
*	*	*	*	*	*		
Lee County cave isopod	*Lirceus usdagalun*	U.S.C. (VA)	N/A	E	483	NA	NA
*	*	*	*	*	*		

Dated: October 1, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–28040 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 57, No. 225
Friday, November 20, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Food Safety and Inspection Service

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

7 CFR Part 100

[SD-92-001]

RIN 0581-AA38

National Laboratory Accreditation Program

AGENCIES: Agricultural Marketing Service, USDA; Food Safety and Inspection Service, USDA; Food and Drug Administration, DHHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Sections 1321–1330 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), as amended, authorized the creation of a National Laboratory Accreditation Program (NLAP) for certain laboratories that request accreditation and conduct pesticide residue analysis of agricultural products or that make claims to the public or buyers of agricultural products. The program is designed to help ensure that such laboratories meet minimum quality and reliability standards. The standards for the NLAP will be developed by the Department of Health and Human Services (DHHS) after consultation with the Secretary of Agriculture (USDA) and the Administrator of the Environmental Protection Agency (EPA). The USDA will administer the NLAP through the Agricultural Marketing Service (AMS) and the Food Safety and Inspection Service (FSIS), USDA.

The program costs will be funded through accreditation fees.

DATES: Comments are requested by January 19, 1993.

ADDRESSES: Comments should be sent to the Chief, Technical Services Branch, Science Division, USDA–AMS, P.O. Box 96456, room 3521 South Building, Washington, DC 20090–6456. Comments will be available for inspection at the Agriculture South Building, 14th and Independence Avenue, SW., room 3521, from 9 a.m. to 5 p.m., Monday through Friday. Commenters who wish receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. Upon receipt of the comments, the postcard will be date stamped and mailed back to the commenter. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Jon E. McNeal, Chief, Technical Services Branch, USDA–AMS–SD, P.O. Box 96456, room 3521 South Building, Washington, DC 20090–6456, (202) 720–2216, for AMS issues related to fresh fruits, fresh vegetables and other agricultural food commodities except meat and poultry products; Richard Ellis, Director, Chemistry Division, USDA–FSIS–S&T, 300 12th Street, SW., Washington, DC 20250, (202) 205–0623, for FSIS issues related to meat and poultry products; or Leon Sawyer, Supervisory Chemist, Food and Drug Administration, Pesticides and Industrial Chemicals Branch, Methods Application Section, HFF–426, 200 C Street SW., Washington, DC 20204, (202) 205–4795, for program standard issues.

SUPPLEMENTARY INFORMATION: The FACT Act requires the Secretary of Agriculture to establish the NLAP for certain laboratories that request accreditation and perform pesticide residue analysis or that make claims concerning pesticide residues on agricultural products, which are defined as any fresh fruit or vegetable or any commodity or product derived from livestock or fowl, that is marketed in the United States for human consumption. The term pesticide means any substance that alone, in chemical combination, or in any formulation with one or more substances, is defined as a pesticide in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)). Standards for laboratories in the program are to be established through regulations by the DHHS after consultation with the EPA and USDA.

Such standards could include but not be limited to: Performance evaluations based on blind and known check sample systems, on-site inspections of both physical facilities and records, analytical methods, experience and educational requirements of personnel, provisions for handling samples, recordkeeping, in-house quality control procedures, and quality assurance programs.

Laboratories may be accredited by the Secretary of USDA after successfully completing certain tests, including analysis of performance evaluation samples, and after compliance with terms and conditions determined to be necessary by the Secretaries of USDA and DHHS.

This FACT Act subtitle does not apply to: (1) A laboratory operated by a government agency; (2) a laboratory operated by a corporation that only performs analysis of residues on agricultural products for such corporation or any wholly owned subsidiary of such corporation and does not make claims to the public or buyers based on such analysis; (3) a laboratory operated by a partnership that only performs analysis of residues on agricultural products for the partners of such partnership and does not make claims to the public or buyers based on such analysis; or (4) a laboratory not operated for commercial purposes that performs pesticide chemical residue analysis on agricultural products for research or quality control for the internal use of a person who is initiating the analysis.

Each laboratory or individual in this program that performs, brokers, or otherwise arranges for pesticide chemical analysis of food is required to promptly report to the Secretary of USDA, the Secretary of DHHS, and to the owner of such food, any findings of residue: (a) For which no pesticide residue tolerance has been established by EPA; (b) which is in excess of pesticide residue tolerances established by EPA; or (c) for which a pesticide residue tolerance has been revoked or is otherwise not permitted by EPA.

The FACT Act also provides for certificates of accreditation to laboratories that are limited to specific fields of testing as would be defined by regulation. These limited accreditations may be categorized along commodity lines for specific families or functional pesticides; for example, meat and poultry products for chlorinated

hydrocarbon, vegetables for carbamate, or fruits for organophosphorus pesticides.

The FACT Act provides for approval by the Secretary of DHHS of State agencies and nonprofit private entities as accrediting bodies to act on behalf of the Secretary of USDA in implementing the certification and quality assurance portions of the NLAP. Thus, either USDA or the accrediting body would provide the performance evaluation samples for analysis initially and at least twice a year thereafter to enable laboratories successfully analyzing such samples the opportunity to continue their accreditation. USDA or accrediting bodies would procure, prepare, pretest, and ship these samples to laboratories participating in the NLAP. Accrediting bodies will not themselves be accredited. Accrediting bodies may also be utilized to conduct on-site laboratory reviews as needed and supply written reports to USDA. The FACT Act requires that the results of all laboratory evaluations conducted by the Secretary of USDA are to be made available to the Secretary of DHHS and, upon request, to the public. All current authorities of the Secretary of DHHS under the Federal Food, Drug, and Cosmetic Act regarding pesticide residues on foods, labeling of foods, and any health based claims about such foods are not substituted or affected by the NLAP. When operational, the NLAP will provide specific uniform standards of performance to participating laboratories. This program will also provide additional documentation to laboratories, over their own quality assurance/control procedures, of their ability to produce quality analytical pesticide residue data.

The NLAP shall require the resources of several agencies. Fees for this program would be set and reviewed and adjusted as necessary on an annual basis to offset all costs to the government, including those of the accrediting bodies which would be reimbursed by the collecting agency. At the present time, the Secretaries of USDA and DHHS have received information indicating potential participation of up to 2,000 laboratories. An accurate base of information is needed to estimate the number of potential participants in order to set a fair fee system.

USDA and DHHS are soliciting comments from any interested individual or party, especially laboratories which might seek accreditation under this program and those organizations that could serve as accrediting bodies. Comments may be submitted regarding any phase of the program such as, but not limited to, the following: Performance standards, operations, applications, inclusion of foreign laboratories, use of accrediting bodies, qualification of accrediting bodies, proficiency testing, on-site audits, good laboratory practices requirements, fees, use of testing results, categories for limited accreditations, analytical methods, validation of data, managerial qualifications, appeal rights, etc.

Authority: 7 U.S.C. 138–138i

Done at Washington, DC: November 9, 1992.

Daniel Haley,

Administrator, Agricultural Marketing Service, U.S. Department of Agriculture.

H. Russell Cross,

Administrator, Food Safety & Inspection Service, U.S. Department of Agriculture.

Michael R. Taylor,

Deputy Commissioner for Policy, Food and Drug Administration, Department of Health and Human Services.

[FR Doc. 92–28204 Filed 11–19–92; 8:45 am]

BILLING CODE 3410–02–M

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 927

[Docket No. A0–99A–6; FV–92–065]

Winter Pears Grown in Oregon, Washington, and California; Hearing on Proposed Amendment of Marketing Agreement and Order No. 927, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 927 (7 CFR part 927) (order). The order regulates handlers of winter pears grown in the States of Oregon, Washington, and California. The purpose of the hearing is to receive evidence on proposals to amend provisions of the order. With the exception of proposals submitted by the Fruit and Vegetable Division, Agricultural Marketing Service (AMS), to make conforming changes and necessary revisions, the proposed amendments were submitted by the Winter Pear Control Committee (WPCC), the agency responsible for local administration of the order. The proposals would authorize the following activities, now applicable only to interstate shipments, to be conducted with respect to intrastate shipments: Collect mandatory assessments; collect statistical information; regulate quantity and quality standards; and require inspection and certification of such pears. In addition, a proposal would allow the WPCC to accept voluntary contributions. These proposals are designed to improve the administration, operation and functioning of the winter pear marketing order program.

DATES: The hearing will begin at 9 a.m. in Portland, Oregon, on December 2, 1992, and if necessary, it will continue the next day.

ADDRESSES: The hearing will take place at the Sheraton Portland Airport Hotel, located at 8235 NE Airport Way in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Mark Hessel, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2522–S, Washington, DC 20250–0200; telephone: (202) 720–3923.

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 and Departmental Regulation 1512–1.

The Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small business. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) hereinafter referred to as the "Act," provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing

on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (17 CFR part 900).

Currently, the order authorizes the WPCC to perform the following tasks on winter pears produced in the production area and shipped in interstate commerce: (1) Collect mandatory assessments; (2) collect statistical information; (3) establish minimum standards of quality and limit the total quantity of shipments of any variety of pears by grade, size, quality or combinations thereof; and (4) require inspection and certification of shipments of pears to market. These proposals would authorize the WPCC to regulate intrastate shipments of winter pears in the same manner as interstate shipments. In addition, a proposal would allow the WPCC to accept voluntary contributions. These proposals are designed to improve the administration, operation and functioning of the winter pear marketing order program.

These proposals were submitted by the WPCC. The WPCC works with the Department in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The WPCC believes that the proposed changes would improve the administration, operation and functioning of the winter pear marketing order.

In addition, proposals by the Fruit and Vegetable Division, AMS, are included to make such changes as are necessary to the order so that all its provisions conform with the proposed amendment and to revise the language of sections in need of updating.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on a *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except designated employees of the Office of General Counsel assigned to represent the WPCC in this rulemaking proceeding; and the Fruit and Vegetable Division, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements

1. The authority citation for 7 CFR part 927 continues to read as follows:

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

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals:

PART 927—WINTER PEARS GROWN IN THE STATES OF OREGON, WASHINGTON, AND CALIFORNIA

Proposals Submitted by the Winter Pear Control Committee

Proposal No. 1

Amend the introductory text of § 927.8 to read as follows:

§ 927.8 Ship or handle.

Ship or *handle* means to sell, deliver, consign or transport pears within the production area or between the production area and any point outside thereof: *Provided,* That the term *handle* shall not include the transportation within the production area from the packing facility located within such area for preparation for market.

Proposal No. 2

Amend § 927.10 to read as follows:

§ 927.10 Production area.

Production area means and includes the States of Oregon, Washington, and California.

Proposal No. 3

Amend § 927.41(a) to read as follows:

§ 927.41 Assessments.

(a) Assessments will be levied only upon handlers who first handle pears. Each handler shall pay, upon billing, assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Control Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Control Committee may be required under this part throughout the period such assessments are payable irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

Proposal No. 4

Add § 927.45 to read as follows:

§ 927.45 Contributions.

The Control Committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 927.47. Furthermore, such contributions shall be free from any encumbrances by the donor and the Control Committee shall retain complete control of their use.

Proposal No. 5

Amend the introductory text of § 927.47 to read as follows:

§ 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to sections 927.41 and 927.45. Expenditures for a particular variety of pears shall approximate the amount of assessments or voluntary contributions collected for that variety of pears.

Proposals Submitted by the Fruit and Vegetable Division, Agricultural Marketing Service

Proposal No. 6

Amend the introductory text of § 927.12 to read as follows:

§ 927.12 Export Market.

Export Market means any destination which is not within the 50 states, or the

District of Columbia, of the United States.

Proposal No. 7

Amend § 927.52(b)(1) to read as follows:

§ 927.52 Prerequisites to Control Committee recommendations.

* * * * *

(b) * * *

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for Forelle and Seckel varieties) of the average quantity of such variety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods to destinations within or outside of the State in which produced; or

* * * * *

Proposal No. 8

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: November 16, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-28290 Filed 11-18-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-203-AD]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes. This proposal would require modification of the flight compartment overhead circuit breaker panel. This proposal is prompted by an operator's report that the number 1 and number 3 display units in the cockpit went blank momentarily on several occasions. The actions specified by the proposed AD are intended to prevent display units from going blank, which could lead to loss of display information that is critical for continued safe flight.

DATES: Comments must be received by January 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-203-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 service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Brett E. Portwood, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-132L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5347; fax (310) 988-5210.

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 92-NM-203-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. 92-NM-203-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

During a recent training flight, one operator of a McDonnell Douglas Model MD-11 series airplane reported that the number 1 and 3 display units (DU) in the cockpit went blank momentarily on several occasions. This condition can occur when all engine-driven generators are off and the air driven generator (ADG) is supplying power to the aircraft. Subsequent investigation by the manufacturer revealed that the DU's on the subject airplanes went momentarily blank because of a high electrical loading condition of the ADG "A" phase power. This causes the ADG power monitor to cycle from ADG to static inverter power. This condition, if not corrected, could result in periodic loss of flight-critical display information and cause damage to system components.

The FAA has reviewed and approved McDonnell Douglas Model MD-11 Alert Service Bulletin A24-51, dated September 11, 1992, that describes procedures for modifying the flight compartment overhead circuit breaker panel. This modification entails replacing an eight lug bus assembly with one three lug bus assembly and one five lug bus assembly; relocating two bus assemblies; and revising associated wiring. This modification will redistribute the right emergency AC power load so as to minimize the possibility of the DU's blanking.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the flight compartment overhead circuit breaker panel. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 61 McDonnell Douglas Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost for required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,815,

or $83 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 the 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 regulatory 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, 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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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:

McDonnell Douglas: Docket 92–NM–203–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Model MD–11 Alert Service Bulletin A24–51, dated September 11, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent display units from going blank, which could lead to momentary loss of flight critical display information, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the flight compartment overhead circuit panel in accordance with McDonnell Douglas Model MD–11 Alert Service Bulletin A24–51, dated September 11, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(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.

Issued in Renton, Washington, on November 13, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–28207 Filed 11–19–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–121–AD]

Airworthiness Directives; SAAB–SCANIA Models SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain SAAB–SCANIA Models SAAB SF340A and SAAB 340B series airplanes, that would have required relocation of the sensor loops of the bleed air leak detection system. That proposal was prompted by reports of bleed air leak detection systems failing to indicate leaks in the bleed air duct. This action revised the proposed rule by adding airplanes to the applicability of the AD and by citing a new service bulletin as the appropriate source of service information. The actions specified by this proposed AD are intended to prevent damage/disbonding of the fuselage skin due to overheat, and subsequent reduced structural capability.

DATES: Comments must be received by December 29, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–121–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 service information referenced in the proposed rule may be obtained from SAAB–SCANIA AB, SAAB Aircraft Product Support, S–581 88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

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 92–NM–121–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. 92–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain SAAB–SCANIA Models SAAB SF340A and SAAB 340B series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 10, 1992 (57 FR 30689). That NPRM would have required relocation of the sensor loops of the bleed air leak detection system. That NPRM was prompted by reports of bleed air leak detection systems failing to indicate leaks in the bleed air duct. That condition, if not corrected, could result in damage/disbonding of the fuselage skin due to overheating, and subsequent reduced structural capability.

Since the issuance of that NPRM, SAAB–SCANIA has issued Service Bulletin SAAB 340–36–006, dated August 6, 1992, that describes procedures for relocation of the sensor loops of the bleed air leak detection system to a better position in order to ensure overheat/leak detection. The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, classified this service bulletin as mandatory and issued Swedish Airworthiness Directive No. 1–054 in order to assure the continued airworthiness of these airplanes in Sweden.

SAAB–SCANIA Service Bulletin SAAB 340–36–006 supersedes Service Bulletin SAAB 340–36–005, dated March 20, 1992, which was referenced in the NPRM. Additionally, the LFV cancelled Swedish Airworthiness Directive No. 1–053, which was referenced in the NPRM.

The FAA has examined the findings of the LFV, reviewed the new service information, and has determined that the proposed rule must be revised to cite Service Bulletin SAAB 340–36–006 as the appropriate source of service information and to add airplanes to the applicability of the AD to coincide with Swedish Airworthiness Directive No. 1–054.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The economic analysis paragraph, below, has been revised to include additional airplanes of U.S. registry that would be affected by this proposed AD. Additionally, the specified work hours necessary to accomplish the actions proposed in this AD have been increased from 3 (as was cited in the NPRM) to 4 to account for one additional work hour that would be needed to accomplish the requirements of this proposal.

The FAA estimates that 180 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $39,600, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 the 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 regulatory 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, 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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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:

SAAB-SCANIA: Docket 92–NM–121–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159, inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 339, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage/disbonding of the fuselage skin due to overheat, and subsequent reduced structural capability, accomplish the following:

(a) Within 3 months after the effective date of this AD, relocate the sensor loops of the bleed air leak detection system, in accordance with SAAB-SCANIA Service Bulletin SAAB 340–36–006, dated August 6, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(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.

Issued in Renton, Washington, on November 12, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–28199 Filed 11–19–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC77

Supplemental Security Income for the Aged, Blind, and Disabled and Redeterminations of Supplemental Security Income Eligibility

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed regulations explain policy on how we establish the beginning of the supplemental security

income (SSI) redetermination period when reviewing a recipient's eligibility to ensure that he or she continues to be eligible and receives the correct SSI benefit amount. This new policy eliminates gaps that occur in the redetermination process under current regulations. The effects of these proposed regulations would be administrative simplification and increased payment accuracy.

DATES: We will consider any comments we receive by January 19, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470.

SUPPLEMENTARY INFORMATION:

Background

Section 1611(c)(1) of the Social Security Act (the Act) provides that eligibility for and the amount of SSI benefits shall be redetermined at such time or times as may be provided by the Secretary of Health and Human Services (the Secretary). Regulations at § 416.204(c) state the period for which a redetermination applies by explaining which months the first and subsequent redetermination periods include.

Current regulations provide that the first redetermination period includes: (1) The month in which we make the redetermination, (2) all the months after the month of first eligibility, and (3) future months until the second redetermination.

Current regulations further provide that subsequent redetermination periods include: (1) The month in which we make the redetermination, (2) all the months after the last time we made a redetermination, and (3) future months until the next redetermination.

These regulations do not provide for the consideration of all factors of eligibility for the entire relevant period because the review period does not begin with the first day of the month of the last determination of eligibility.

The redetermination period, therefore, omits a month or part of a month. Factors which could affect continued eligibility or payment amounts potentially go undetected.

For example: The last redetermination review period was initiated on September 4, 1989. The next redetermination period of review includes all months after the month we last initiated a redetermination; i.e., it begins October 1, 1989. As a result, the period September 5 through September 30, 1989, is never reviewed to see if the individual was eligible for that period or if he or she was receiving the correct SSI benefit amount.

Proposed Regulations

We propose to amend the regulations at § 416.204(c)(1)(ii) to include in the first redetermination period all months beginning with the first day of: The most recent month of eligibility/re-eligibility; or application; or deferred/updated development (applicable when nonmedical issues in a disability case are not fully developed until a disability allowance is made).

In addition, we propose to amend § 416.204(c)(2)(ii) to include in subsequent redetermination periods all months beginning with the first day of the month the last redetermination was initiated.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. The program savings and the administrative costs will be insignificant and are estimated at less than $1 million a year. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

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

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: July 25, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: August 4, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 416—[AMENDED]

1. The authority citation for part 416, subpart B continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat, 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

2. In § 416.204, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

§ 416.204 Redeterminations of SSI eligibility.

* * * * *

(c) * * *

(1) * * *

(ii) All months beginning with the first day of the latest of the following:

(A) The month of first eligibility or re-eligibility; or

(B) The month of application; or

(C) The month of deferred or updated development; and

* * * * *

(2) * * *

(ii) All months beginning with the first day of the month the last redetermination was initiated; and

* * * * *

[FR Doc. 92–28195 Filed 11–19–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–4–89]

RIN 1545–AN06

Disposition of an Interest in a Nuclear Power Plant; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to the Federal income tax treatment of the disposition of an interest in a nuclear power plant where the taxpayer disposing of that interest has maintained a nuclear decommissioning fund with respect to that plant.

DATES: The public hearing will be held on Monday, February 1, 1993, beginning at 9:30 a.m. Requests to speak and outlines of oral comments must be received by Monday, January 11, 1993.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–4–89], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that contain proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 468A of the Internal Revenue Code of 1986. These proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, January 11, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

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

[FR Doc. 92–27640 Filed 11–19–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[PS–4–89]

RIN 1545–AN06

Disposition of an Interest in a Nuclear Power Plant

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the Federal income tax treatment of the disposition of an interest in a nuclear power plant where the taxpayer disposing of that interest has maintained a nuclear decommissioning fund with respect to that plant. Final regulations published March 3, 1988, relating to nuclear decommissioning funds, did not include rules relating to these dispositions. The proposed regulations would affect taxpayers that transfer or acquire interests in nuclear power plants by providing guidance on the tax consequences of these transfers. In addition, the proposed regulations would extend the benefits of section 468A to electing taxpayers with an interest in a nuclear power plant under the jurisdiction of the Rural Electrification Administration. The proposed regulations would make a number of other changes and clarifications to the existing regulations to aid in the administration of section 468A.

DATES: Written comments, requests to appear at a public hearing scheduled for February 1, 1993, and outlines of oral comments must be received by January 11, 1993. See notice of hearing published elsewhere in this **Federal Register.**

ADDRESSES: Send comments (preferably a signed original and eight copies), requests to appear at a public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS–4–89), room 5228, Washington, DC 20044. The hearing will be held in the IRS Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations contact Peter C. Friedman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) at (202) 622–3110 (not a toll-free call). Concerning the hearing contact Michael Slaughter, Regulations Unit, at (202) 622–7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 468A of the Internal Revenue Code of 1986. Section 468A, relating to nuclear decommissioning costs, was added to the Internal Revenue Code by section 91(c) of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 609).

Section 468A provides special rules pursuant to which a taxpayer is allowed a deduction for the taxable year in which the taxpayer makes a contribution to a Nuclear Decommissioning Fund (Fund), even though economic performance with respect to the nuclear decommissioning costs will occur in a later taxable year. Section 468A(c)(1)(B) authorizes the Secretary to issue regulations that prescribe the extent to which a taxpayer must include amounts from a Fund in gross income upon the disposition of an interest in a nuclear power plant to which the Fund relates. Section 1.468A–6T of the temporary regulations (T.D. 8094, 51 FR 25033) published in the **Federal Register** on July 10, 1986, treated such a disposition as a taxable distribution of assets in the Fund to the taxpayer transferring the interest. Thus, the transferor was required to include the fair market value of the assets deemed distributed in its income and the Fund recognized gain or loss on the deemed distribution. In response to comments on this rule, final regulations (T.D. 8184, 53 FR 6800) published in the **Federal Register** on March 3, 1988, stated that guidance on the tax treatment of these dispositions would be provided at a later date. These proposed regulations are issued to provide this guidance.

These proposed regulations also include additional provisions to address concerns that have arisen in the administration of section 468A.

Explanation of Provisions

The proposed regulations prescribe the federal income tax consequences of the disposition of all or a portion of a qualifying interest in a nuclear power plant to which a Fund relates. The proposed regulations generally treat the transferee of the interest as stepping in the shoes of the transferor with respect to the assets in the transferor's Fund that relate to the interest, and with respect to the transferor's ruling amount for the portion of the taxable year that follows the disposition.

A transferor of a qualifying interest in a nuclear power plant that retains a qualifying interest in the same plant, and a transferee of the qualifying interest, may immediately request revised schedules of ruling amounts for the year of disposition and subsequent taxable years. If the transferor or the transferee does not file a timely request for a schedule of ruling amounts, however, the proposed regulations provide a formula for determining these amounts. If the ruling amount for any taxable year is determined with reference to these formulas, the taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the first taxable year that begins after the transfer.

The proposed regulations also contain a general provision allowing the Internal Revenue Service to treat a disposition occurring on or after [THE DATE THESE PROPOSED REGULATIONS ARE PUBLISHED AS FINAL REGULATIONS] as satisfying the requirements of the regulations if the Service determines that this treatment is necessary or appropriate to carry out the purposes of section 468A and the regulations thereunder. Another provision allows the Service, upon the request of an electing taxpayer, to apply these proposed regulations to a disposition of an interest in a nuclear power plant occurring after July 17, 1984, and before [THE DATE THESE PROPOSED REGULATIONS ARE PUBLISHED AS FINAL REGULATIONS].

Other Changes

The proposed regulations also:

(a) Permit rural electric cooperatives to qualify as electing taxpayers;

(b) Modify the information requirements that are part of a request for a schedule of ruling amounts;

(c) Create a new mandatory review period for schedules of ruling amounts determined with respect to a disposition of an interest in a nuclear power plant;

(d) Require that the trust agreement for each Fund contain a provision that assets of the Fund may be used only in a manner that is authorized by section 468A and the regulations thereunder; and

(e) Shorten from 60 days to 30 days the period within which a taxpayer must substantially comply with the provisions requiring information to be submitted as part of a request for a schedule of ruling amounts.

The Service requests comments on the extent to which it may be appropriate to provide transitional relief to rural electric cooperatives that want to qualify as electing taxpayers.

Special Analyses

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

Drafting Information

The principal author of these regulations is Peter C. Friedman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service.

List of Subjects in 26 CFR 1.461–1 Through 1.469–11T

Accounting, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For reasons set out in the preamble, 26 CFR part 1 is proposed to be amended in part as follows:

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

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.468A–0 is amended by:

1. Adding an entry for § 1.468A–1, paragraph (d).

2. Revising the heading for § 1.468A–6 and adding entries for paragraphs (a) through (f).

3. The additions and revisions read as follows:

§ 1.468A–0 Nuclear decommissioning costs; table of contents.

* * * * *

Section 1.468A–1 Nuclear Decommissioning Costs; General Rules

* * * * *

(d) Special rules for electing taxpayers whose rates are under the jurisdiction of the Rural Electrification Administration.

* * * * *

Section 1.468A–6 Disposition of an Interest in a Nuclear Power Plant

(a) In general.
(b) Requirements.
(c) Tax consequences.
  (1) The transferor and its Fund
  (2) The transferee and its Fund
  (3) Basis
(d) Calculation of schedule of ruling amounts for dispositions described in this section.
  (1) Transferor.
  (2) Transferee.
  (3) Example.
(e) Other
(f) Effective date.

* * * * *

Par. 3. Section 1.468A–1 is amended as follows:

1. The introductory text of paragraph (b) is revised.

2. Paragraph (b)(4) is revised.

3. Paragraph (d) is added.

4. The added and revised provisions read as follows:

§ 1.468A–1 Nuclear decommissioning costs; general rules.

* * * * *

(b) *Definitions.* The following terms are defined for purposes of section 468A and the regulations thereunder:

* * * * *

(4) The term *nuclear power plant* means any nuclear power reactor that is used predominantly in the trade or business of the furnishing or sale of electric energy, if the rates for the furnishing or sale, as the case may be, either have been established or approved by a public utility commission or are under the jurisdiction of the Rural Electrification Administration. Each unit (i.e., nuclear reactor) located on a multi-unit site is a separate nuclear power plant. The term "nuclear power plant" also includes the portion of the common facilities of a multi-unit site allocable to a unit on the site.

* * * * *

(d) *Special rules for electing taxpayers whose rates are under the jurisdiction of the Rural Electrification Administration.* Notwithstanding any other provision of the regulations under section 468A, a schedule of ruling amounts may be provided to a taxpayer with respect to a nuclear power plant the rates of which are under the jurisdiction of the Rural Electrification Administration. This schedule will be determined on the basis of all facts and circumstances in a manner consistent with section 468A of the Internal Revenue Code. No taxpayer will be provided a schedule of ruling amounts under this section for any taxable year unless the portion of the rates attributable to the decommissioning costs of that taxpayer with respect to such taxable year are treated by the taxpayer as though they were subject to section 88 of the Internal Revenue Code.

Par. 4. Section 1.468A–3 is amended as follows:

1. Paragraph (h)(1)(v) is removed.
2. Paragraph (h)(1)(vi) through (viii) are redesignated as paragraphs (h)(1)(v) through (vii), respectively.
3. Newly designated paragraph (h)(1)(vii) is revised.
4. Paragraphs (h)(2)(xi) and (xii) are redesignated as paragraphs (h)(2)(xiii) and (xiv), respectively.
5. New paragraphs (h)(2)(xi) and (xii) are added.
6. The revisions and additions read as follows:

§ 1.468A–3 Ruling amount.

* * * * *

(h) * * *

(1) * * *

(vii)(A) If a request does not comply substantially with the requirements of this paragraph (h), the Internal Revenue Service will notify the taxpayer of that fact. If the information or materials necessary to comply substantially with the requirements of this paragraph (h) are provided to the Internal Revenue Service within 30 days after this notification, the request will be considered filed on the date of the original submission. If the information or materials necessary to comply substantially with the requirements of this paragraph (h) are not provided within 30 days after this notification, the request will be considered filed on the date that all information or materials necessary to comply with the requirements of this paragraph (h) are provided.

(B) The Internal Revenue Service may waive the requirements of paragraph (h)(1)(vii)(A) of this section if the Internal Revenue Service determines that the waiver is consistent with the purposes of section 468A.

* * * * *

(2) * * *

(xi) A chart or table, based upon the assumed after-tax rate of return to be earned by the assets of the nuclear decommissioning fund, setting forth the years the fund will be in existence, the annual contribution to the fund, the estimated annual earnings of the fund and the cumulative total balance in the fund.

(xii) If the request is for a revised schedule of ruling amounts, a copy of the most recently issued schedule of ruling amounts for the nuclear power plant to which the request relates that has been issued to the taxpayer (or a predecessor in interest) making the request.

* * * * *

Par. 5. Section 1.468A–3(i)(1)(ii) as proposed to be amended on August 19, 1991 (56 FR 41103–41104) is further amended as follows:

1. Paragraph (i) (1) (ii) (A) is revised.
2. Paragraph (i) (1) (ii) (C) is added.
3. The revisions and additions read as follows:

§ 1.468A–3 Ruling amount.

* * * * *

(i) * * *

(1) * * *

(ii) (A) Any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year under paragraph (a) (4) of this section (which applies when a public utility commission estimates decommissioning costs in current dollars) must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for its fifth taxable year that begins after its taxable year in which the most recent formula or method was received.

* * * * *

(C) Any taxpayer that has determined its ruling amount for any taxable year under a formula prescribed by § 1.468A–6 (which prescribes ruling amounts for the taxable year in which there is a disposition of a qualifying interest in a nuclear power plant) must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for its first taxable year that begins after the disposition.

* * * * *

Par. 6. Section 1.468A–5 is amended as follows:

1. Paragraph (a) (4) is added.
2. Paragraph (b) (2) (vi) is revised.
3. The added and revised provisions read as follows:

§ 1.468A–5 Nuclear decommissioning fund qualification requirements; prohibitions against self-dealing; disqualification of nuclear decommissioning fund; termination of fund upon substantial completion of decommissioning.

(a) * * *

(4) *Trust provisions.* By [730 DAYS AFTER THESE PROPOSED REGULATIONS ARE PUBLISHED AS FINAL REGULATIONS], each qualified nuclear decommissioning fund trust agreement must provide that assets in the fund must be used in a manner that is authorized by section 468A and the regulations thereunder and that the agreement must not be amended in a manner that would violate section 468A or the regulations thereunder.

(b) * * *

(2) * * *

(vi) Any act described in § 53.4951–1(c) of this chapter only if undertaken to facilitate the temporary investment of assets or the payment of reasonable administrative expenses of the nuclear decommissioning fund.

* * * * *

Par. 7. Section 1.468A–6 is amended by adding text to read as follows:

§ 1.468A–6 Disposition of an interest in a nuclear power plant.

(a) *In general.* This section describes the federal income tax consequences of a sale, exchange, or other disposition by a taxpayer (transferor) of all or a portion of its qualifying interest in a nuclear power plant to another taxpayer (transferee). This section also explains how a schedule of ruling amounts will be determined for the transferor and transferee.

(b) *Requirements.* This section applies if—

(1) Immediately before the disposition, the transferor maintained a nuclear decommissioning fund within the meaning of § 1.468A–1(b)(3) (Fund) with respect to the interest disposed of; and

(2) Immediately after the disposition—

(i) The transferee maintains a Fund with respect to the interest acquired;

(ii) The interest acquired is a qualifying interest of the transferee in a nuclear power plant to which the Fund relates; and

(iii) The assets of the transferor's Fund relating to the interest transferred (related assets) are transferred to the transferee's Fund.

(c) *Tax consequences.* A disposition that satisfies the requirements of this section will have the following tax consequences at the time it occurs:

(1) *The transferor and its Fund.* Neither the transferor nor the transferor's Fund will recognize income,

gain or loss on the transfer of the related assets to the transferee's Fund. This transfer will not result in a deemed distribution of these assets to the transferor.

(2) *The transferee and its Fund.* Neither the transferee nor the transferee's Fund will recognize income, gain or loss on the transfer of the related assets to the transferee's Fund. For purposes of the regulations under section 468A, this transfer will not constitute a payment or a contribution of these assets by the transferee to its Fund.

(3) *Basis.* The transferee's Fund will have a basis in the related assets received from the transferor's Fund that is the same as the basis of these assets in the transferor's Fund immediately before the disposition.

(d) *Calculation of schedule of ruling amounts for dispositions described in this section*—(1) *Transferor.* If a transferor disposes of all or a portion of its qualifying interest in a nuclear power plant in accordance with this section, the transferor's schedule of ruling amounts with respect to the interests disposed of and retained (if any) will be determined in accordance with paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(i) *Taxable year of disposition.* If a transferor does not file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the taxable year of the transferor in which the disposition of its interest in the nuclear power plant occurs (*i.e.*, the date that is two and one-half months after the close of that year), the transferor's ruling amount with respect to that plant for that year will equal the sum of—

(A) The ruling amount contained in the transferor's current schedule of ruling amounts with respect to that plant for that taxable year multiplied by the portion of the qualifying interest that is retained (if any); and

(B) The ruling amount contained in the transferor's current schedule of ruling amounts with respect to that plant for that taxable year multiplied by the product of—

(*1*) The portion of the transferor's qualifying interest that is disposed of; and

(*2*) A fraction, the numerator of which is the number of days in that taxable year that precede the date of disposition and the denominator of which is the number of days in that taxable year.

(ii) *Taxable years subsequent to the year of disposition.* A transferor that retains a qualifying interest in a nuclear power plant must file a request for a revised schedule of ruling amounts with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferor beginning after the disposition. See § 1.468A–3 (i)(1)(ii)(B). If the transferor does not timely file such a request, the transferor's ruling amount with respect to that interest for the affected year or years will be zero, unless the Internal Revenue Service waives the application of this paragraph (d)(1)(ii) upon a showing of good cause for the delay.

(2) *Transferee.* If a transferee acquires all or a portion of a transferor's qualifying interest in a nuclear power plant in accordance with this section, the transferee's schedule of ruling amounts with respect to the interest acquired will be determined in accordance with paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) *Taxable year of disposition.* If a transferee does not file a request for a schedule of ruling amounts on or before the deemed payment deadline for the taxable year of the transferee in which the disposition occurs (*i.e.*, the date that is two and one-half months after the close of that year), the transferee's ruling amount with respect to the interest acquired in the nuclear power plant for that year will equal the amount described in the following sentence. This amount is the amount contained in the transferor's current schedule of ruling amounts with respect to that plant for the taxable year of the transferor in which the disposition occurred, multiplied by the product of—

(A) The portion of the transferor's qualifying interest that is transferred; and

(B) A fraction, the numerator of which is the number of days in the taxable year of the transferor including and following the date of disposition, and the denominator of which is the number of days in that taxable year.

(ii) *Taxable years subsequent to the year of disposition.* A transferee of a qualifying interest in a nuclear power plant must file a request for a revised schedule of ruling amounts with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferee beginning after the disposition. See § 1.468A–3(i)(1)(ii)(B). If the transferee does not timely file such a request, the transferee's ruling amount with respect to that interest for the affected year or years will be zero, unless the Internal Revenue Service waives the application of this paragraph (d)(2)(ii) upon a showing of good cause for the delay.

(3) *Example.* The following example illustrates the provisions of this section.

Example. (a) *X* Corporation is a calendar year taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned entirely by *X*. On May 27, 1991, *X* transfers a 60 percent qualifying interest in the plant to *Y* Corporation, a calendar year taxpayer. Prior to the transfer *X* had received a schedule of ruling amounts containing an annual ruling amount of $10 million for the taxable years 1989 through 2009. For 1991, neither *X* nor *Y* file a request for a revised schedule of ruling amounts.

(b) Under paragraph (d)(1)(i) of this section, *X*'s ruling amount for 1991 is calculated as follows: ($10,000,000×40%)+($10,000,000×60%×146/365)=$6,400,000. Under paragraph (d)(2)(i) of this section, *Y*'s ruling amount for 1991 is calculated as follows: $10,000,000×60%×219/365=$3,600,000. Under paragraphs (d)(1)(ii) and (d)(2)(ii) of this section, *X* and *Y* must file requests for revised schedules of ruling amounts by March 15, 1993.

(e) *Other*—(1) *Anti-abuse provision.* The Internal Revenue Service may treat a disposition occurring on or after [THE DATE THESE PROPOSED REGULATIONS ARE PUBLISHED AS FINAL REGULATIONS] as satisfying the requirements of this section if the Service determines that this treatment is necessary or appropriate to carry out the purposes of section 468A and the regulations thereunder.

(2) *Relief provision.* Upon request of the electing taxpayer, the Internal Revenue Service may treat a disposition occurring after July 17, 1984, and before [THE DATE THESE PROPOSED REGULATIONS ARE PUBLISHED AS FINAL REGULATIONS] as satisfying the requirements of this section if the Service determines that this treatment is necessary or appropriate to carry out the purposes of section 468A and the regulations thereunder.

(f) *Effective date.* Section 1.468A–6 is effective for a disposition of an interest in a nuclear power plant on or after [THE DATE THESE PROPOSED REGULATIONS ARE PUBLISHED AS FINAL REGULATIONS].

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–27641 Filed 11–19–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 77

[AG Order No. 1632–92]

Communications With Represented Persons

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The proposed rule governs the circumstances under which Department of Justice attorneys may communicate with persons known to be represented by counsel in the course of law enforcement investigations and proceedings. The proposed rule generally permits such communications if they are made during the course of a Federal law enforcement investigation, and generally prohibits such communications (subject to exceptions) if they are made after formal criminal or civil proceedings have been instituted. The rule is essentially derived from existing attorney ethical rules promulgated by the states, from Federal case law interpreting such state rules, and from Federal case law interpreting the scope of the Sixth Amendment right to counsel. The purpose of the proposed rule is to impose a comprehensive, clear, and uniform set of regulations on the conduct of government attorneys before and during criminal and civil enforcement proceedings, in order to ensure appropriate conduct and to eliminate uncertainty and confusion arising from the variety of interpretations of state and local Federal court rules.

DATES: Comments must be received on or before December 21, 1992.

ADDRESSES: Written comments should be submitted to: Philip C. Baridon, Office of Policy & Management Analysis, Criminal Division, United States Department of Justice, room 2216, 10th St. and Pennsylvania Ave. NW., Washington, DC 20530, (202) 514–2659.

FOR FURTHER INFORMATION CONTACT: Philip C. Baridon, Office of Policy & Management Analysis, Criminal Division, United States Department of Justice, (202) 514–2659. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: These rules are intended to provide a comprehensive, clear, and uniform set of guidelines governing the circumstances under which Department of Justice attorneys may communicate with persons known to be represented by counsel in the course of law enforcement investigations and proceedings.

Background

It has long been recognized that legitimate law enforcement activities, such as undercover operations, occasionally require that government attorneys and agents communicate directly with a person who is known to be represented by counsel. No Federal statute or rule of procedure prohibits such communications, and courts have almost uniformly upheld their validity as long as the requirements of the Constitution are met. *See, e.g., United States* v. *Ryans*, 903 F.2d 731 (10th Cir.), *cert. denied*, 111 S. Ct. 152 (1990); *United States* v. *Dobbs*, 711 F.2d 84 (8th Cir. 1983); *United States* v. *Fitterer*, 710 F.2d 1328, 1333 (8th Cir.), *cert. denied*, 464 U.S. 852 (1983); *United States* v. *Kenny*, 645 F.2d 1323, 1339 (9th Cir.), *cert. denied*, 452 U.S. 920 (1981); *United States* v. *Lemonakis*, 485 F.2d 941 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 989 (1974).

In recent years, however, many defendants have asserted that otherwise valid law enforcement communications were prohibited by DR 7–104(A)(1) of the American Bar Association Code of Professional Responsibility (and its successor, Rule 4.2 of the ABA Model Rules of Professional Conduct), and analogous state and local rules. *See* Johnson, "The Impact of Disciplinary Rule 7–104 of Law Enforcement Contact with Represented Persons," 40 U. Kan. L. Rev. 63, 85 (1992) ("Investigative procedures involving law enforcement officers and prosecutors, long thought routine and legal under constitutional and statutory law, suddenly became 'unethical' with the application of the defense bar's reading of Rule 7–104"); Cramton & Udell, "State Ethics Rules and Federal Prosecutors: The Controversies over the Anti-Contact and Subpoena Rules," 53 U. Pitt. L. Rev. 291, 293 (1992) ("The [criminal defense] bar threatens prosecutors with the use of professional discipline against those who engage in certain longstanding investigative practices, such as contacting a person who is represented but unindicted"). The efforts to expand the scope of DR 7–104, although largely unsuccessful, have created substantial problems for Federal law enforcement.

DR 7–104(A)(1) prohibits an attorney from communicating with a "party" known to be represented by counsel unless the attorney has counsel's consent or the communication is "authorized by law." The basic principle embodied in the rule has been part of the ABA rules of professional ethics, in varying formulations, since 1908. The principal purpose underlying the rule is to prohibit attorneys from using their skills and knowledge to the disadvantage of non-attorneys. *Massiah* v. *United States*, 377 U.S. 201, 211 (1964) (White, J., dissenting); see *United States* v. *Jamil*, 707 F.2d 638, 646 (2d Cir. 1983) (purpose of rule is "to protect a defendant from the danger of being 'tricked' into giving his case away by opposing counsel's artfully crafted questions").

Almost all Federal courts to have considered the issue have declined to hold that otherwise legitimate law enforcement communications with represented persons violate DR 7–104. See, *e.g., Ryans*, 903 F.2d at 735–36 (collecting cases). While the rationales for the decisions are varied, most courts have agreed that such communications are either "authorized by law" within the meaning of DR 7–104 or are outside the scope of the rule altogether. For pre-indictment communications, some courts have held that the rule does not apply because the use of the term "party" presupposes the existence of formal legal proceedings. *See, e.g., id.* at 739.

Several state and local jurisdictions have gone further, and ruled that DR 7–104 simply does not apply in the law enforcement context. Thus, the District of Columbia has specifically exempted Federal and local law enforcement from the application of the rule, and the supreme courts of Arizona and Washington have similarly held that the rule does not reach otherwise valid law enforcement functions. District of Columbia Rule of Professional Conduct 4.2, Comment 8 ("This Rule is not intended to regulate the law enforcement activities of the United States or the District of Columbia"). *See also State* v. *Nicholson*, 77 Wash.2d 415, 419, 463 P.2d 633, 636 (1969) ("the purpose of [the rule] was to assure to civil litigants some of the protection from [the 'evils of oppression, intimidation and unfair advantage'] which the federal and state constitutions guarantee to criminal defendants"); *State* v. *Richmond*, 114 Ariz. 186, 191, 560 P.2d 41, 46 (1976) (similar), *cert. denied*, 433 U.S. 915 (1977); California Rule of Professional Conduct 2–100, Commentary (among the "applicable law" that may "override the rule" is "the authority of government prosecutors and investigators to conduct criminal investigations, as limited by the relevant decisional law"). Perhaps the most powerful criticism against the sweeping application of DR 7–104 to prosecutors was articulated by the Maryland Court of Special Appeals:

> The weightiest of all arguments against the appellant's position [that DR 7–104 prohibits law enforcement communications with employees of a represented corporation] * * * is the one based on simple common sense. If the law were as the appellant urges it upon us, there could be little effective investigation of any sophisticated and organized criminal enterprise.
>
> * * * * * *
>
> The ultimate authority against the appellant's thesis is the realization that it is self-evidently absurd.

In re Criminal Investigation No. 13, 82 Md. App. 609, 616–17, 573 A.2d 51, 55 (1990).

The conclusion that DR 7–104 should be read narrowly has also received substantial support among commentators. *See, e.g.*, Johnson, *supra*, 40 U. Kan. L. Rev. at 69–70 ("Liberal application of Rule 7–104 to the prosecutor and the law enforcement officer threatens to make large portions of the case law interpreting the rights [to] counsel under the Fifth and Sixth Amendments irrelevant"); Cramton & Udell, *supra*, 53 U. Pitt. L. Rev. at 359 (DR 7–104 should not prohibit law enforcement investigatory communications, or defendant-initiated communications); Note, "Prosecutorial Investigations and DR 7–104(A)(1)," 89 Colum. L. Rev. 940, 946 (1989) ("DR 7–104(A)(1) should not apply at all to the Criminal context."); Green, "A Prosecutor's Communications with Defendants: What Are the Limits?," 24 Crim. L. Bull. 283, 319–20 (1988) (DR 7–104 generally should not be applied in the criminal context); Uviller, "Evidence from the Mind of the Criminal Suspect: A Reconsideration of the Current Rules of Access and Restraint," 87 Colum. L. Rev. 1137, 1179 (1987) (DR 7–104 should not apply in criminal cases).

Although the government's position has generally prevailed, as a practical matter the efforts to expand the scope of DR 7–104, and the resulting controversy, have succeeded in creating a climate of great uncertainty and confusion regarding the scope of permissible communications. The uncertainty is perhaps best illustrated by the two opinions of the Second Circuit in *United States* v. *Hammad*, 846 F.2d 854, *amended*, 858 F.2d 834 (2d Cir. 1988).

In 1982, the Second Circuit held in a per curiam opinion that the pre-indictment use of a government informant to communicate with a represented person was not prohibited by DR 7–104, and that the application of the rule in criminal cases was "doubtful." *United States* v. *Vasquez*, 675 F.2d 16, 17 (2d Cir. 1982). Six years later, however, the court reached an opposite result in *Hammad*. In its first *Hammad* opinion, the court held that DR 7–104 applies to Federal criminal investigations both before and after indictment, and that a prosecutor may violate the rule by using an informant to gather information prior to indictment from a suspect known to be represented by counsel. 846 F.2d at 858–60. That decision, if it had remained in effect, would have virtually eliminated significant informant and undercover investigations in the Second Circuit, and accordingly the decision generated enormous controversy in the law enforcement community.

Several months later, however, the court issued an amended *Hammad* opinion that substantially modified its earlier holding. In the amended opinion, the court ruled that while the use of informants by prosecutors to obtain information from a represented suspect in a pre-indictment, non-custodial situation would "generally" fall within the "authorized by law" exception to DR 7–104, the prosecutor's use of a sham grand jury subpoena to help the informant elicit admissions from the suspect constituted "misconduct." 858 F.2d at 840. Although the holding is somewhat unclear, the court appears to have ruled that the use of the informant to obtain information from a represented person, coupled with the "misconduct," violated DR 7–104.

The court specifically declined to issue any brightline rules as to what conduct might violate DR 7–104, stating that the parameters of the rule would have to be developed on a case-by-case basis. Thus, Department of Justice attorneys in the Second Circuit must now attempt to forecast, without any real guidance, whether their contacts with represented persons will be judged in hindsight to be improper and potentially subject to disciplinary action. *See United States* v. *Galanis*, 685 F. Supp. 901, 904 (S.D.N.Y. 1988) (noting that *Hammad* "presents a serious problem" for future cases, and that it "sets forth little by way of an objective standard to guide the lower courts in the exercise of discretion"); Note, *supra*, 89 Colum. L. Rev. at 952 (prosecutors after *Hammad* "are bound by a reading of DR 7–104(A)(1) that has never been applied, that depends on arcane and unprovable concepts and for which no discernible standards exist") (footnote omitted).

In the wake of *Hammad*, and in response to various efforts to subject Department of Justice attorneys to broader interpretations of DR 7–104 through the regulatory authority of state bar disciplinary boards, the Department issued the so-called "Thornburgh Memorandum" on June 8, 1989. That memorandum reaffirmed the Department's commitment to traditional interpretations of DR 7–104 and noted that state efforts to regulate Department of Justice attorneys would run afoul of the Supremacy Clause of the United States Constitution. The memorandum did not create new policy, but rather restated existing Department of Justice policy that had been explicit since at least the tenure of Attorney General Benjamin Civiletti. *See* "Ethical Restraints of the ABA Code of Professional Responsibility on Federal Criminal Investigations," 4 Op. Off. Legal Counsel 576, 601–02 (1980). The "Thornburgh Memorandum," however, has itself generated heated debate, because it has been erroneously interpreted to state that Department of Justice attorneys are to be held to a "lower" standard of ethics than private attorneys. See, *e.g.*, J. Norton, "Ethics and the Attorney General," 74 Judicature 203 (1991); see also *United States* v. *Adonis*, 744 F. Supp. 336, 347 (D.D.C. 1990). The controversy may have reached its apex with the District Court's opinion in *United States* v. *Lopez*, 765 F. Supp. 1433, 1461 (N.D. Cal. 1991), *appeal pending*, No. 91–10274 (9th Cir. May 28, 1991), 91–10393 (July 25, 1991), where a federal judge dismissed an indictment for violation of the California version of DR 7–104, and stated that the Thornburgh Memorandum "is nothing less than a frontal assault on the legitimate powers of the court."

The uncertainty as to what constitutes appropriate conduct by Department of Justice attorneys in this area has become a substantial burden on Federal law enforcement. The threat of disciplinary proceedings (and the possible resulting loss of license and livelihood) against a government attorney engaged in legitimate law enforcement activities may have a profound chilling effect on the responsible exercise of that attorney's duties, even where the threat is entirely baseless. In an uncertain environment, government attorneys may hesitate to engage in proper and necessary investigative activities, to the great detriment of law enforcement efforts. In fact, in recent months the Federal Bureau of Investigation has expressed serious concerns to the Attorney General that Federal prosecutors were refusing to permit law enforcement investigative activities that were entirely appropriate and legal, out of fear of disciplinary action by state authorities.

In addition, the current system, which depends largely on state ethical rules to govern the substantive conduct of federal officials, has proved unsatisfactory in a number of respects.

First, the lack of uniformity among the various state jurisdictions has led to substantial difficulties in the application of those rules in actual practice. See Cramton & Udell, *supra*, 53 U. Pitt. L. Rev. at 296 ("The uniform enforcement of federal criminal law is threatened by a decisional law [regarding DR 7–104] that is confused and inconsistent"). The

problem is best illustrated by the issue of communications with corporate employees, where state courts and bar associations have issued a bewildering variety of inconsistent and contradictory opinions as to which communications are permissible. See *generally* Comment, "*Ex Parte* Communications with Corporate Parties: The Scope of the Limitations on Attorney Communications with One of Adverse Interest," 82 Nw. U.L. Rev. 1274, 1285 (1988) ("no single interpretation of DR 7–104(A)(1) has achieved universal acceptance"). Thus, government attorneys working alongside one another in the same office, or even on the same case, may be subject to substantially different rules if they are members of different state bars. That problem is exacerbated by the uneven application of state disciplinary rules in the Federal courts. See *Rand* v. *Monsanto Co.*, 926 F.2d 596, 600 (7th Cir. 1991); Cramton & Udell, *supra*, 53 U. Pitt. L. Rev. at 316 & n.80.

Furthermore, even well-meaning attorneys who attempt to conform their conduct to the requirements of the law may be subjected to state disciplinary proceedings for "unethical" conduct because the law is uncertain, or because state authorities disagree with traditional interpretations of the ABA ethical rules. See *Lopez*, 765 F. Supp. at 1462 n.49 (Assistant U.S. Attorney in California who was member of the Arizona bar was referred to Arizona state disciplinary authorities by defendant's former counsel for alleged violation of California version of DR 7–104, even though Arizona Supreme Court has ruled (*Richmond*, 560 P.2d at 46) that DR 7–104 does not apply to law enforcement). The institution of unwarranted disciplinary action against a government attorney subjects the attorney to needless embarrassment, trouble, and expense, even where the attorney is ultimately vindicated. The prospect of such disciplinary proceedings in cases involving communications with represented persons has been a source of much bitterness and frustration among government attorneys in recent years, and has seriously eroded relationships between Federal law enforcement and state bar authorities.

Problems involving the application of DR 7–104 to government attorneys have not been limited to criminal prosecutions. Department of Justice attorneys who conduct civil law enforcement investigations and proceedings perform functions that largely parallel those of prosecutors, and generally bear little resemblance to the representation of a client by a private civil attorney. Civil law enforcement proceedings, like criminal indictments, are brought to protect the public, to remedy past violations, and to deter future misconduct; as with criminal cases, the public interest, and often public safety and health considerations, require that government attorneys and agents conduct thorough investigations of potential civil violations of Federal law, including investigative interviews with potential witnesses.

Not surprisingly, government attorneys engaged in civil law enforcement have encountered many of the same types of problems regarding DR 7–104 as their criminal law enforcement counterparts, particularly in the area of communications with corporate employees. See, *e.g.*, *United States* v. *Western Electric Co.*, 1990–2 Trade Cas. (CCH) ¶ 69,148 (D.D.C. 1990) (court denied motion by corporation in civil proceeding for order prohibiting communications by Department of Justice attorneys with current employees). In some respects, civil law enforcement attorneys have suffered even greater uncertainty, in that the strong resemblance of civil law enforcement to criminal enforcement and the concomitant need to make investigatory communications have not always been fully acknowledged or understood.

The need for a uniform standard for all Department of Justice attorneys conducting law enforcement investigations is likewise compelling. The Department of Justice cannot be divided neatly into "criminal" and "civil" components, and many investigations are likewise neither purely criminal nor purely civil. Many government attorneys (and several entire offices, such as the Office of Consumer Litigation of the Civil Division) do both criminal and civil enforcement work. Joint criminal and civil enforcement investigations are increasingly common, and are strongly encouraged by Department of Justice policy in areas such as government fraud, waste, and abuse. Indeed, attorneys often will not know in the early stages of an investigation whether the matter will ultimately proceed criminally or civilly or both. Similarly, agency investigators often act pursuant to the direction of both criminal prosecutors and civil enforcement attorneys.

The Department of Justice, accordingly, has concluded that a uniform, bright-line set of rules governing communications with represented persons will best promote effective Federal law enforcement. Such rules will provide clear guidance to Department of Justice attorneys, who frequently must make difficult and immediate decisions as to what types of communications with represented parties are appropriate, and will ensure that all Department of Justice attorneys are held to the same requirements.

The Department of Justice also recognizes, however, that there are substantial competing considerations which must be weighed in the balance. The Department fully recognizes that the traditional rule safeguards important interests, including the protection of the attorney-client relationship from unnecessary intrusion. While some communications with represented persons are plainly essential for effective law enforcement, such communications should not exceed what is reasonably necessary. The Department also, of course, recognizes that its law enforcement efforts must not impinge upon the Sixth Amendment right to counsel, or any other right secured by the United States Constitution.

The proposed rules, therefore, are intended to strike an appropriate balance between the need to protect the attorney-client relationship from unnecessary intrusion and the need to preserve the ability of government attorneys to conduct legitimate law enforcement activities. In striking that balance, the Department has elected to follow, in substance, traditional interpretations of DR 7–104, by generally permitting investigatory communications and prohibiting communications after formal proceedings have been instituted, subject to certain specific exceptions. For post-indictment communications in criminal cases, the rules essentially track existing case law under the Sixth Amendment.

The proposed rules specifically state that communications made pursuant to their authority are intended to constitute communications that are "authorized by law" within the meaning of DR 7–104(A)(1) and Model Rule 4.2 and analogous state or local ethical rules. Accordingly, in almost every state jurisdiction, communications made pursuant to these rules will be lawful under both Federal and state law. In those jurisdictions (such as the State of Florida) that have eliminated the "authorized by law" exception, Department of Justice attorneys will be required to observe the Federal rule rather than the state rule in the event those rules conflict.

As noted, one of the principal criticisms levelled at the "Thornburgh Memorandum" was that the Department of Justice was attempting "unilaterally to exempt its lawyers from the professional conduct rules that apply to all lawyers," with the corollary implication that Department attorneys would be free to act "unethically" in the absence of such restraints. Resolution of ABA House of Delegates, Report No. 301 (February 1990). The application of state ethics rules and local district court ethics rules to Department of Justice attorneys for acts undertaken in the course of their duties is, at best, an extremely complicated question, touching a variety of different issues regarding federalism, local rulemaking authority, separation of powers, and the interplay of ethics rules and substantive law. See generally Moore, "Intra-Professional Warfare between Prosecutors and Defense Attorneys: A Plea for an End to the Current Hostilities," 53 U. Pitt. L. Rev. 515 (1992); Cramton & Udell, *supra*, 53 U. Pitt. L. Rev. at 291; Johnson, *supra*, 40 U. Kan. L. Rev. at 63. The question is made more complex yet by the growing multiplicity of differing (and inconsistent) ethics rules adopted by the fifty states and the ninety-four Federal district courts. *See* Cramton & Udell, *supra*, 53 U. Pitt. L. Rev. at 315–16, 323–24. These rules do not attempt to address, much less resolve, that broader issue, but rather address only the problems arising out of DR 7–104 and Model Rule 4.2.

Statutory Authority

These rules are issued under the authority of the Attorney General to prescribe regulations for the government of the Department of Justice, the conduct of its employees, and the performance of its business, pursuant to 5 U.S.C. 301; to direct officers of the Department of Justice to secure evidence and conduct litigation, pursuant to 28 U.S.C. 516; to direct officers of the Department to conduct grand jury proceedings and other civil and criminal legal proceedings, pursuant to 28 U.S.C. 515(a); to supervise litigation and to direct Department officers in the discharge of their duties, pursuant to 28 U.S.C. 519; and otherwise to direct Department officers to detect and prosecute crimes, to prosecute offenses against the United States, to prosecute civil actions, suits, and proceedings in which the United States is concerned, and to perform such other functions as may be provided by law, pursuant to 28 U.S.C. 509, 510, 533, and 547.

Related Documents

The rules if adopted will be accompanied by companion provisions in the United States Attorneys' Manual setting forth internal Department of Justice policies and procedures relating to the application of the rules, and by an interpretive commentary intended to assist Department of Justice attorneys in understanding and interpreting the rule. Copies of the proposed United States Attorneys' Manual provisions and the proposed commentary may be obtained by contacting the Office of Policy and Management Analysis, Criminal Division, room 2216, Department of Justice, 10th St. and Pennsylvania Ave. NW., Washington, DC 20530.

Certifications

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not be a major rule within the meaning of section 1(b) of Executive Order 12291. In light of the Attorney General's longstanding policy of regulating the conduct of his employees, this rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order 12612.

List of Subjects in 28 CFR Part 77

Government employees, Investigations, Law enforcement, Lawyers.

For the reasons set out in the preamble, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by adding a new part 77 to read as follows:

PART 77—COMMUNICATIONS WITH REPRESENTED PERSONS

Sec.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515(a), 516, 519, 533, 547.

§ 77.1 Purpose and authority.

The purpose of this part is to provide a comprehensive, clear, and uniform set of rules governing the circumstances under which Department of Justice attorneys may communicate with persons known to be represented by counsel in the course of law enforcement investigations and proceedings. These rules are issued under the authority of the Attorney General to prescribe regulations for the government of the Department of Justice, the conduct of its employees, and the performance of its business, pursuant to 5 U.S.C. 301; to direct officers of the Department of Justice to secure evidence and conduct litigation, pursuant to 28 U.S.C. 516; to direct officers of the Department to conduct grand jury proceedings and other civil and criminal legal proceedings, pursuant to 28 U.S.C. 515(a); to supervise litigation and to direct Department officers in the discharge of their duties, pursuant to 28 U.S.C. 519; and otherwise to direct Department officers to detect and prosecute crimes, to prosecute offenses against the United States, to prosecute civil actions, suits, and proceedings in which the United States is concerned, and to perform such other functions as may be provided by law, pursuant to 28 U.S.C. 509, 510, 533, and 547.

§ 77.2 Definitions.

As used herein, the following terms shall have the following meanings, unless the context indicates otherwise:

(a) *Attorney for the government* means the Attorney General; the Deputy Attorney General; the Associate Attorney General; the Solicitor General; the Assistant Attorneys General for, and any attorney employed in, the Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Environment and Natural Resources Division, or Tax Division; any United States Attorney; any Assistant United States Attorney; any Special Assistant to the Attorney General or Special Attorney duly appointed pursuant to 28 U.S.C. 515; any Special Assistant United States Attorney duly appointed pursuant to 28 U.S.C. 543 who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United

States; or any other attorney employed by the Department of Justice who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United States.

(b) *Person* means any individual or organization.

(c) *Organization* means any corporation, partnership, association, joint-stock company, union, trust, pension fund, unincorporated organization, state or local government or political subdivision thereof, or non-profit organization.

(d) *Employee* means any employee, officer, director, partner, member, or trustee.

(e) *Cooperating witness* means any person, other than a law enforcement agent, who is acting as an agent for the government in an undercover or confidential capacity.

(f) *Civil law enforcement proceeding* means a civil action or proceeding brought by the United States under its police or regulatory powers to enforce its laws, including, but not limited to, civil actions or proceedings brought to enforce the laws relating to:

(1) Antitrust;
(2) Banking and financial institution regulation;
(3) Bribery, kickbacks, and corruption;
(4) Civil rights;
(5) Consumer protection;
(6) Environment and natural resource protection;
(7) False claims against the United States;
(8) Food, drugs, and cosmetics regulation;
(9) Forfeiture of property;
(10) Fraud;
(11) Internal revenue;
(12) Occupational safety and health; or
(13) Securities regulation.

The term "civil law enforcement proceeding" shall not include proceedings related to the enforcement of an administrative subpoena or summons or a civil investigative demand. An action or proceeding shall be considered "brought by the United States" if it involves a claim asserted by the Department of Justice on behalf of the United States, whether the claim is asserted by complaint, counterclaim, cross-claim, or otherwise.

(g) *Civil law enforcement investigation* means an investigation of possible civil violations of or claims under Federal law that may form the basis for a civil law enforcement proceeding.

§ 77.3 Represented person.

A person shall be considered a "represented person" within the meaning of these rules only if all three of the following circumstances exist:

(a) The person has retained counsel, or accepted counsel by appointment;

(b) The representation concerns the subject matter in question; and

(c) The attorney for the government knows that the person is represented by counsel concerning the subject matter.

Nothing in this part is intended to or shall be construed to permit any purported legal representation undertaken for the purpose of facilitating the commission or concealment of a crime or fraud.

§ 77.4 Constitutional and Other Limitations.

Notwithstanding any other provision of these rules, any communication that is prohibited by the Sixth Amendment right to counsel or by any other provision of the United States Constitution or by any Federal statute or Federal Rule of Criminal or Civil Procedure shall be likewise prohibited by these rules.

§ 77.5 Criminal Enforcement—General Rule—Investigative Stage.

An attorney for the government may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation if:

(a) The communication—

(1) Is made in the course of an investigation, whether undercover or overt, of possible criminal activity; and

(2) Occurs prior to the attachment of the Sixth Amendment right to counsel with respect to charges against the represented person arising out of the criminal activity that is the subject of the investigation; or

(b) The communication is otherwise permitted by law.

§ 77.6 Criminal Enforcement—General Rule—Prosecutive Stage.

An attorney for the government may not communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the attachment of the Sixth Amendment right to counsel of the represented person, except as provided herein or as otherwise permitted by law.

§ 77.7 Criminal Enforcement—Exceptions—Prosecutive Stage.

An attorney for the government may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the attachment of the Sixth Amendment right to counsel of the represented person if one or more of the following circumstances exist:

(a) *Consent.* Counsel for the represented person has been given prior notice of the communication and consents to the communication.

(b) *Determination if Representation Exists.* The purpose of the communication is to determine if the person is in fact represented by counsel; provided, however, that further communication is permitted only if the person indicates that he or she is not represented or the communication is otherwise permitted under these rules.

(c) *Discovery or Judicial or Administrative Process.* The communication is made pursuant to discovery procedures or judicial or administrative process, including but not limited to the service of a grand jury or trial subpoena.

(d) *Investigation of New or Additional Crimes.* The communication is made in the course of an investigation, whether undercover or overt, of new or additional criminal activity as to which the Sixth Amendment right to counsel has not attached; provided, however, that the restrictions set forth in § 77.8 are observed. Such new or additional criminal activity may include, but is not limited to:

(1) New or additional criminal activity that is separate from the criminal activity that is the subject of pending criminal charges;

(2) New or additional criminal activity that is intended to impede or evade the administration of justice as to pending criminal charges, such as obstruction of justice, subornation of perjury, jury tampering, murder, assault, or intimidation of witnesses, bail jumping, or unlawful flight to avoid prosecution; and

(3) New or additional criminal activity that represents a continuation after indictment of criminal activity that is the subject of pending criminal charges, such as the continuation of a conspiracy or a scheme to defraud after indictment.

(e) *Initiation of Communication by Represented Person—Overt Communications.* The represented person initiates the communication directly with the attorney for the government, or indirectly through a person known to the represented person to be a law enforcement agent; provided, however, that prior to engaging in substantive discussions concerning the subject matter of charges as to which the Sixth Amendment right to counsel has attached, either of the following circumstances must have occurred:

(1) The represented person has knowingly, intelligently, and voluntarily waived the presence of counsel; or

(2) The represented person has obtained substitute counsel, and substitute counsel has consented to the communication or the communication is otherwise permitted under these rules.

(f) *Initiation of Communication by Represented Person—Undercover Communications.* The represented person initiates the communication with an undercover law enforcement agent or a cooperating witness; provided, however, that the restrictions set forth in § 77.8 are observed.

(g) *Imminent Threat to Safety or Life.* The attorney for the government reasonably believes that there is an imminent threat to the safety or life of any person; the purpose of the communication is to obtain information to protect against the risk of serious injury or death; and the communication is reasonably necessary to protect against such risk.

§ 77.8 Criminal Enforcement—Restrictions—Prosecutive Stage.

When an attorney for the government communicates, or causes a law enforcement agent or cooperating witness to communicate, with a represented person after the attachment of the Sixth Amendment right to counsel pursuant to one or both of the exceptions set forth in §§ 77.7(d) or (f), the following restrictions must be observed:

(a) *Deliberate Elicitation.* An attorney for the government, law enforcement agent, or cooperating witness may not deliberately elicit incriminating information from the represented person concerning the pending criminal charges.

(b) *Attorney-Client Meetings.* An undercover law enforcement agent or cooperating witness may not attend or participate in attorney-client meetings or communications concerning the lawful defense of the pending criminal charges, except when requested to do so by the defendant, defense counsel, or another person affiliated or associated with the defense, and when reasonably necessary to protect the safety of the agent or witness or the confidentiality of an undercover operation. If the agent or witness attends or participates in such meetings, any information regarding lawful defense strategy or trial preparation imparted to the agent or witness shall not be communicated to attorneys for the government or to law enforcement agents who are participating in the prosecution of the pending criminal charges, or used in any other way to the substantial detriment of the defendant.

§ 77.9 Civil Enforcement—General Rule—Investigative Stage.

An attorney for the government may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation if:

(a) The communication

(1) is made in the course of a civil law enforcement investigation, whether undercover or overt, and

(2) occurs prior to the time the United States commences a civil law enforcement proceeding against the represented person arising out of the violations that are the subject of the investigation; or

(b) the communication is otherwise permitted by law.

§ 77.10 Civil Enforcement—General Rule—Litigative Stage.

An attorney for the government may not communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the commencement of a civil law enforcement proceeding by the United States against the represented person, except as provided herein or as otherwise permitted by law.

§ 77.11 Civil Enforcement—Exceptions—Litigative Stage.

An attorney for the government may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the commencement of a civil law enforcement proceeding by the United States against the represented person if one or more of the following circumstances exist:

(a) *Consent.* Counsel for the represented person has been given prior notice of the communication and consents to the communication.

(b) *Determination if Representation Exists.* The purpose of the communication is to determine if the person is in fact represented by counsel; provided, however, that further communication is permitted only if the person indicates that he or she is not represented or the communication is otherwise permitted under these rules.

(c) *Discovery or Judicial or Administrative Process.* The communication is made pursuant to discovery procedures or judicial or administrative process, including but not limited to the service of a summons and complaint, a notice of deposition, a deposition or trial subpoena, or an administrative summons or subpoena.

(d) *Investigation of New or Additional Civil Violations.* The communication is made in the course of a civil law enforcement investigation of new or additional violations of Federal law as to which the United States has not commenced a civil law enforcement proceedings; provided, however, that the attorney for the government may not deliberately elicit, or cause to be elicited, admissions from the represented person concerning the pending civil law enforcement proceeding during the communication.

(e) *Initiation of Communication by Represented Person—Overt Communications.* The represented person initiates the communication directly with the attorney for the government, or indirectly through a person known to the represented person to be a law enforcement agent; provided, however, that prior to engaging in substantive discussions concerning the subject matter of a pending civil law enforcement proceeding, either of the following circumstances must have occurred:

(1) The represented person has knowingly, intelligently, and voluntarily waived the presence of counsel; or

(2) The represented person has obtained substitute counsel, and substitute counsel has consented to the communication or the communication is otherwise permitted under these rules.

(f) *Initiation of Communication by Represented Person—Undercover Communications.* The represented person initiates the communication with a cooperating witness; provided, however, that the cooperating witness may not deliberately elicit admissions from the represented person concerning the pending civil law enforcement proceeding.

(g) *Imminent Threat to Safety or Life.* The attorney for the government reasonably believes that there is an imminent threat to the safety or life of any person; the purpose of the communication is to obtain information to protect against the risk of serious injury or death; and the communication is reasonably necessary to protect against such risk.

§ 77.12 Other Civil Matters.

Nothing in these rules is intended or shall be construed to limit the right or ability of attorneys for the government, when conducting civil investigations or proceedings not involving civil law enforcement, to communicate with represented persons when otherwise permitted by law.

§ 77.13 Organizations and Employees.

This section applies when the communication involves a former or current employee of an organization, and the subject matter of the

communication relates to the business or affairs of the organization.

(a) *Communications with Former Employees—Organizational Representation.* A communication with a former employee of an organization which is represented by counsel shall not be considered to be a communication with the organization for purposes of these rules.

(b) *Communications with Current Employees—Organizational Representation.* A communication with a current employee of an organization which is represented by counsel shall be considered to be a communication with the organization for purposes of these rules only if:

(1) The employee is a controlling individual, as defined in § 77.13(c); and

(2) such controlling individual is not represented by separate counsel with respect to the subject matter of the communication.

Nothing in this section is intended or shall be construed to prohibit communications with a current employee of an organization that are otherwise permitted under these rules.

(c) *Definition—Controlling Individual.* For purposes of these rules, a "controlling individual" is a current employee who has authority to direct and make binding decisions regarding the representation of the organization by counsel.

(d) *Communications with Former or Current Employees—Individual Representation.* A communication with a former or current employee of an organization who is individually represented by counsel may occur only to the extent otherwise permitted by these rules.

(e) *Initiation of Communication by Unrepresented Controlling Individual.* Notwithstanding any other provision of these rules, an attorney for the government may communicate with a controlling individual who is not individually represented as to the subject matter of the communication when the controlling individual initiates the communication.

(f) *Multiple Representation.* Nothing in this section is intended or shall be construed to affect the requirements of Rule 44(c) of the Federal Rules of Criminal Procedure, or to permit the multiple representation of an organization and any of its employees, or the multiple representation of more than one such employee, if such representation is prohibited by any applicable law or rule of attorney ethics.

§ 77.14 Parallel Investigations and Proceedings.

(a) *Criminal Enforcement Communications During Pending Civil Law Enforcement Proceedings.* An attorney for the government who is participating in a criminal investigation or proceeding may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the commencement of a civil law enforcement proceeding by the United States against the represented person if the communication is permitted under §§ 77.5 or 77.7.

(b) *Civil Law Enforcement Communications During Pending Criminal Enforcement Proceedings.* An attorney for the government who is participating in a civil law enforcement investigation or proceeding may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the attachment of the Sixth Amendment right to counsel of the represented person if the communication is permitted under §§ 77.9 or 77.11 and:

(1) The communication does not involve the subject matter of the pending criminal charges; or

(2) the communication involves the subject matter of the pending criminal charges, and one or more of the following circumstances exist:

(i) Counsel for the represented person in the pending criminal proceeding has been given prior notice of the communication and consents to the communication;

(ii) the communication is made pursuant to discovery procedures or judicial or administrative process; or

(iii) an attorney for the government who is participating in the prosecution of the pending criminal proceeding takes part in, directs, supervises, or approves the communication, and the communication is permitted in the criminal proceeding under § 77.7.

§ 77.15 Enforcement of rules.

Allegations of violations of these rules shall be investigated by the Office of Professional Responsibility of the Department of Justice, and shall be addressed where appropriate as matters of attorney discipline by the Department. These rules are not intended to and do not create substantive rights on behalf of criminal or civil defendants, targets or subjects of investigations, witnesses, counsel for represented persons, or any other person other than an attorney for the government, and shall not be a basis for dismissing criminal or civil charges or proceedings against represented persons or for excluding relevant evidence in any proceeding in any court of the United States.

§ 77.16 Relationship to State and local regulation.

Communications with represented persons pursuant to these rules are intended to constitute communications that are "authorized by law" within the meaning of Rule 4.2 of the American Bar Association Model Rules of Professional Conduct, DR 7–104(A)(1) of the ABA Code of Professional Responsibility, and analogous state and local Federal court rules. These rules are further intended to govern the conduct of attorneys for the government in the discharge of their duties to the extent that state and local laws or rules are inconsistent with these rules.

Dated: November 13, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–28002 Filed 11–19–92; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PP Docket No. 92–234]

Encryption Technology for Satellite Cable Programming

AGENCY: Federal Communications Commission.

ACTION: Correction.

SUMMARY: In document 92–27131, regarding an enquiry into encryption technology for satellite cable programming, on page 53307 in the issue of Monday, November 9, 1992, make the following corrections. The docket number should be PP Docket No. 92–234 (not 92–468). The comment deadline should be December 24, 1992 (not December 23, 1992) and the reply comment deadline should be January 8, 1993 (not January 7, 1993).

FOR FURTHER INFORMATION CONTACT: John D. Levy, (202) 653–5940.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–28030 Filed 11–19–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 192, 193, and 195

[Docket No. PS-126; Notice 1]

RIN AB-71

Passage of Instrumented Internal Inspection Devices

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes regulations requiring that new and replacement gas transmission lines and new and replacement hazardous liquid pipelines and certain carbon dioxide pipelines be designed and constructed to accommodate the passage of instrumented internal inspection devices (commonly referred to as "smart pigs"). However, the proposed rules do not apply to specific installations for which such design and construction would be impracticable. This rulemaking is mandated by statute.

DATES: RSPA invites interested persons to submit comments by January 19, 1993. We will consider late filed comments as far as practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, room 8419, Office of Pipeline Safety Regulatory Programs, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8419 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Kevin Saunders, 202-366-0524.

SUPPLEMENTARY INFORMATION:

Statutory mandates

Section 108(b) of the Pipeline Safety Reauthorization Act of 1988 (hereinafter "Reauthorization Act") (Pub. L. 100-561, Oct. 31, 1988) amended section 3 of the Natural Gas Pipeline Safety Act of 1968 to add subsection (g), "Instrumented Internal Inspection Devices" (49 App. U.S.C. 1672(g)). This new subsection requires the Secretary of Transportation to establish regulations requiring that—

> (1) the design and construction of new [gas] transmission facilities, and (2) when replacement of existing transmission facilities or equipment is required, the replacement of such existing facilities—be carried out, to the extent practicable, in a manner so as to accommodate the passage through such transmission facilities of instrumented internal inspection devices (commonly referred to as "smart pigs").

Section 207(b) of the Reauthorization Act also amended section 203 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 App. U.S.C. 2002) to require that DOT establish similar regulations with respect to pipeline facilities subject to the HLPSA. The House Committee on Energy and Commerce said the new subsections "will facilitate but not require the increased use of instrumented internal inspection devices * * * [and] increase the ease and reduce the expense of future use of smart pigs." (H.R. Rep. No. 445, 100th Cong., 1st Sess. 15 (1987)).

Smart Pigs

In pipeline industry vernacular, a "pig" is a device used either to clean corrosion products, liquids, or debris from the inside of a pipeline or to collect data about the pipeline's physical condition. After insertion at a pig-trap, a pig is propelled through the operating pipeline by force of the commodity being transported. The name "pig" comes from a characteristic pig-like squealing noise made by a rubberized scraper as it rubs along the inside of the pipeline. Personnel use this noise to track the location of the pig in the pipeline.

If a pig is designed to collect data about the physical condition of a pipeline, it is known as a "smart pig," or an instrumented internal inspection device. These pigs employ different technologies (e.g., magnetic flux leakage) to detect various irregularities, or "anomalies," in the pipe wall, including wall thinning which is usually caused by corrosion. Smart pigs carry apparatus to record the location and relative severity of anomalies that are detected.

Benefit of Using Smart Pigs

Smart pigs have potential benefits in prevention not available through other tools. Texas Eastern Transmission Corporation's conduct of aboveground tests had shown that its 30-inch gas transmission line through Kentucky was adequately protected against corrosion. The operator did not realize, however, that the pipe lay over a strata of rock that shielded it from electrical current intended to stop corrosion. A smart pig, however, detected the presence of generalized corrosion.

Unfortunately, the line was not repaired and on February 31, 1986, it failed due to corrosion, and three injuries and extensive property damage resulted. Nonetheless, the accident shows that aboveground corrosion surveys may not reveal all corrosion problems. In such occasions, usually where rock, a metallic casing, or disbonded coating shields protective current, a smart pig can detect the presence of corrosion.

National Transportation Safety Board

After investigating the Kentucky accident, the National Transportation Safety Board (NTSB) recommended that RSPA require operators of gas transmission lines and liquid petroleum pipelines, when repairing or modifying their systems, to install facilities to incorporate the use of in-line inspection equipment (Recommendation P-87-006). NTSB further recommended that RSPA require that all new gas and liquid transmission pipelines be constructed to facilitate the use of in-line instrumented inspection equipment (Recommendation P-87-007). The proposed rules address both recommendations.

Restrictions to the Passage of Smart Pigs

Section 304 of the Reauthorization Act directed DOT to study the feasibility of requiring operators to inspect their transmission facilities with smart pigs at periodic intervals. Results from this study revealed that about 10 percent of hazardous liquid pipelines and 40 percent of natural gas transmission lines are not constructed to allow pigs to pass through them. Passage is restricted by pipeline physical characteristics, including the following:

(1) Pipe fittings, such as elbows or tees, that are not designed to permit pigs to proceed.

(2) Pipe bends with too short a radius to accommodate the length of a smart pig.

(3) Pipeline valves that do not open fully or are not full line size.

(4) Telescoped pipe (linkage of successively smaller diameter pipe for short distances).

Pig Traps

The study conducted under section 304 of the Reauthorization Act shows that large percentages of gas transmission lines and hazardous liquid pipelines are constructed so that pigs can pass through them. Although the study also shows these lines may lack pig traps (equipment used to launch and receive pigs), once pig traps are installed, even temporarily, operators can run pigs through the lines.

RSPA does not believe that the presence of pig traps is necessary for pipelines to "accommodate the passage of * * * instrumented internal inspection devices" within the meaning

of sections 108(b) and 207(b) of the Reauthorization Act. The clear intent of this language is to ensure that pipelines provide sufficient space for unrestricted movement of pigs. While pig traps are necessary for the use of smart pigs, they are not necessary to ensure that a pipeline has sufficient space to allow a pig to pass through it. Therefore, the proposed rules would not require operators to include pig traps in the design or construction of pipelines. The installation of pig traps would be left to the discretion of the pipeline operator that could be done when an internal inspection survey is to be conducted.

As a matter of practice, most hazardous liquid pipelines, especially crude oil pipelines, currently being constructed include scraper pig traps because these lines require frequent cleaning. Scraper traps can be lengthened to accommodate internal inspection devices; i.e., smart pigs. Gas transmission pipelines are much less likely to require cleaning, and, therefore, are unlikely to be constructed to include pig traps. A decision whether pig traps should be permanent or temporary depends on the condition of the commodity being transported, the configuration of the pipeline system, and operating considerations.

Proposed Rules

Sections 108(b) and 207(b) of the Reauthorization Act require DOT to require operators to design and construct certain new pipeline facilities and replacement pipeline facilities (i.e., pipeline facilities that replace existing facilities), to the extent practicable, to accommodate the passage of smart pigs. To meet this statutory requirement, the rules proposed by this notice would, with limited exceptions, prohibit any physical restriction on the passage of a smart pig in the design or construction of new or replacement pipelines. The affected pipelines are gas transmission lines subject to part 192 (excluding gathering lines), and hazardous liquid and carbon dioxide pipelines subject to part 195. The exceptions would include manifolds, station piping, cross-overs, fittings that provide branch line junctures (such as tees and other lateral pipe connections), and any other piping that the RSPA Administrator finds in a particular case would be impracticable to design and construct to accommodate the passage of an instrumental internal inspection device. However, in the case of fittings providing branch line junctures other than in manifolds and station piping, restraining elements would have to be added to the fitting so that pigs can pass in the direction of straight flow.

To simplify the process of petitioning the Administrator to find that designing and constructing particular piping to accommodate the passage of pigs would be impracticable, RSPA is proposing to establish a procedure in 49 CFR part 190. This procedure is similar to the existing procedure in 49 CFR part 193 for seeking an administrative ruling. It would apply to all findings and approvals under parts 192, 193, and 195. The part 193 procedure, found in § 193.2015, would be removed upon adoption of the proposed part 190 procedure.

The RSPA safety standards for hazardous liquid and carbon dioxide pipelines (49 CFR part 195) currently require operators to provide for the passage of pigs in the design of pipelines. Section 195.120, "Changes in direction: Provision for internal passage," reads as follows:

> Each component of a main line system, other than manifolds, that change direction within the pipeline system must have a radius of turn that readily allows the passage of pipeline scrapers, spheres, and internal inspection equipment.

In accordance with § 195.100, this rule applies to new pipelines and existing pipelines that are replaced, relocated, or otherwise changed.

However, § 195.120 does not fully meet the requirements of section 207(b) of the Reauthorization Act, because the rule is limited in scope, applying only to main line systems. Also, it does not prohibit the use of components that do not change the pipeline's direction yet restrict the passage of pigs, such as less than full opening, full-line size valves.

As set forth below, RSPA proposes to revise § 195.120 to implement section 207(b) of the Reauthorization Act. A similar rule, § 192.150, would be added to part 192 to implement section 108(b) of the Reauthorization Act.

Rulemaking Analyses

E.O. 12291 and DOT Regulatory Policies and Procedures

RSPA has concluded that the proposed rules are not major under Executive Order 12291, and are not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

RSPA believes that the proposed rules would add minimally to the average expense of pipeline design and construction. The information RSPA has collected for the study under section 304 of the Reauthorization Act shows that about 90 percent of hazardous liquid pipelines and 60 percent of gas transmission lines have been constructed to accommodate the passage of pigs. This information confirms RSPA's field experience that most operators are now constructing new and replacement gas transmission lines and hazardous liquid pipelines to accommodate smart pigs. Although RSPA lacks similar information about carbon dioxide pipelines subject to part 195, there are only about 10 such pipeline systems. RSPA does not expect the carbon dioxide pipeline systems to grow in mileage or to require a significant amount of replacement in the near term. Thus, those pipelines should not be greatly affected by the proposed revision of § 195.120. In addition, operators may in most cases comply with the proposed rules simply by selecting certain components (as noted above) that are of a proper shape and size to allow the passage of pigs. Such components are readily available, and considering the potential benefit of using smart pigs (as noted above), there is little, if any, financial reason not to select them.

RSPA believes a more detailed evaluation of the impact of the proposed rules is not warranted. Nevertheless, RSPA is particularly interested in receiving comments on costs and benefits. Comments on our assessment of pipeline components which restrict the passage of pigs are also welcome.

Regulatory Flexibility Act

Based on the facts available concerning the impact of this proposal, I certify under section 605 of the Regulatory Flexibility Act that it would not, if adopted as final, have a significant economic impact on a substantial number of small entities.

E.O. 12612

RSPA has analyzed this final rule under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987) and finds it does not warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 193

Fire prevention, pipeline safety, reporting and recordkeeping requirements, security measures.

49 CFR Part 195

Anhydrous Ammonia, carbon dioxide, petroleum, pipeline safety, reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR parts 190, 192, 193, and 195 as follows:

PART 190—[AMENDED]

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. § 190.9 would be added to subpart A to read as follows:

§ 190.9 Petitions for finding or approval.

Where a rule in part 192, 193, or 195 of this chapter authorizes the Administrator to make a finding or approval, any operator may petition the Administrator to make such finding or approval. Petitions must be sent to the Administrator, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590, and be received at least 90 days before the operator requests that the finding or approval be made. Each petition must refer to the rule authorizing the action sought and contain information or arguments that justify the action. Unless otherwise specified, no public proceeding is held on a petition before it is granted or denied. After a petition is received, the Administrator notifies the petitioner of the disposition of the petition or, if the request requires more extensive consideration or additional information or comments are requested and delay is expected, of the date by which action will be taken.

PART 192—[AMENDED]

3. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

4. In § 192.3, the definition of *Secretary* would be removed, and a definition of *Administrator* would be added to read as follows:

§ 192.3 Definitions.

Administrator means Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated.

* * * * *

5. Section 192.9 would be revised to read as follows:

§ 192.9 Gathering lines.

Each gathering line must comply with the requirements of this part applicable to transmission lines, except § 192.150.

6. Section 192.150 would be added to read as follows:

§ 192.150 Provision for internal passage of inspection devices.

(a) Except as provided in paragraph (b) of this section, each new transmission line and each replacement transmission line must be designed and constructed to accommodate the passage of instrumented internal inspection devices.

(b) Paragraph (a) of this section does not apply to manifolds, station piping (such as compressor stations, metering stations, or regulator stations), cross-overs, and fittings that provide branch line junctures (such as tees and other lateral connections), and any other piping that the Administrator finds in a particular case would be impracticable to design and construct to accommodate the passage of an instrumented internal inspection device. In the case of fittings providing branch line junctures, however, restraining elements must be added to the fitting so that pigs can pass in the direction of straight flow.

PART 193—[AMENDED]

7. The authority citation for part 193 continues to read as follows:

Authority: 49 App. U.S.C. 1671 *et seq.*; and 49 CFR 1.53.

8. Section 193.2015 would be removed.

PART 195—[AMENDED]

9. The authority citation for part 195 would be revised to read as follows:

Authority: 49 App. U.S.C. 2002 and 2015; 49 CFR 1.53.

10. In § 195.2, the definition of *Secretary* would be removed, and a definition of *Administrator* would be added to read as follows:

§ 195.2 Definitions.

Administrator means Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated.

* * * * *

11. In §§ 195.8, 195.56(a), 195.58, 195.106(e), and 195.260(e), the term "Secretary" would be removed and the term "Administrator" would be added in its place.

12. Section 195.120 would be revised to read as follows:

§ 195.120 Provision for internal passage of inspection devices.

(a) Except as provided in paragraph (b) of this section, each new pipeline and each replacement pipeline must be designed and constructed to accommodate the passage of instrumented internal inspection devices.

(b) Paragraph (a) of this section does not apply to manifolds, station piping (such as pump stations and metering stations), cross-overs, and fittings that provide branch line junctures (such as tees and other lateral connections), and any other piping that the Administrator finds in a particular case would be impracticable to design and construct to accommodate the passage of an instrumented internal inspection device. In the case of fittings providing branch line junctures, however, restraining elements must be added to the fitting so that pigs can pass in the direction of straight flow.

Issued in Washington, DC, on November 13, 1992.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 92-28049 Filed 11-19-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant "Salix arizonica" (Arizona willow), with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the plant *Salix arizonica* (Arizona willow) as an endangered species with critical habitat under the authority of the Endangered Species Act of 1973, as amended (Act). This riparian plant occurs in low numbers and is endemic to the slopes of Mt. Baldy, the highest peak in the White Mountains of Arizona. It is threatened by livestock and wildlife grazing, habitat degradation and loss, and fungal disease. This proposal, if made final, would implement Federal protection provided by the Act for Arizona willow. The Service seeks data and comments from the public on the proposed rule.

DATES: Comments from all interested parties must be received by January 19, 1993. Public hearing requests must be received by January 4, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 W. Thomas, suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, at the above address (Telephone: 602/379–4720 or FTS 261–4720).

SUPPLEMENTARY INFORMATION:

Background

Dorn (1975) described the species *Salix arizonica* from specimens collected by Granfelt, who recognized them as distinct in 1969 (Galeano-Popp 1988). Arizona willow is a shrub, up to 0.5 meter (1.5 feet) high, with ovate leaves and red stems. Leaves are 1–4.5 centimeters (0.4–1.8 inches) long, 5–22 centimeters (0.2–0.9 inches) wide, with fine-toothed margins. Leaves are rounded or nearly heart-shaped at the base. Although this species is described as shrubby, it exhibits several forms that include scraggly shrub, rounded shrub, prostrate mat, and large hedge or thicket (Galeano-Popp 1988). The factors responsible for these variations are not understood.

Arizona willow is known only from the White Mountains of Arizona on land managed by the Apache-Sitgreaves National Forest (Forest) and the White Mountain Fort Apache Indian Reservation (Reservation). Although intensive surveys have been conducted on both the Forest and Reservation, the species has been located in only 15 drainages. All Arizona willow plants occur in drainages that trend to the north, east, or south. Sometimes, individuals are widely spaced (more than one mile apart), but occasionally plants are clustered.

The species is found at elevations above 2,600 meters (8,500 feet) in wet meadows, stream sides, and cienegas most commonly in or adjacent to perennial water. Plants are less commonly found in meadows adjacent to forest edges or meadows with sparse stands of spruce. Plants are also found in drier sites within the riparian zone (Galeano-Popp 1988). Species associated with Arizona willow include *Salix monticola* (Serviceberry willow), *Salix geyeriana* (Geyer willow), *Salix bebbiana* (Bebb willow), *Picea pungens* (blue spruce), *Picea engelmannii* (Engelmann spruce), *Potentilla fruticosa* (shrubby cinquefoil), *Potentilla diversifolia* (cinquefoil), *Mimulus rimuloides* (mat monkeyflower), *Deschampsia caespitosa* (tufted hairgrass) and *Carex* species (sedges) (Galeano-Popp 1988).

Although there are no records of the historic distribution of Arizona willow, unoccupied habitat within the known range does exist. The historical range may have extended approximately two miles further to the east and two miles further to the south (Galeano-Popp 1988). Galeano-Popp (U.S. Forest Service, pers. comm., 1991) and Granfelt (Pinetop, AZ, pers. comm., 1991) believe that all potential habitat has been surveyed and all populations located. The relatively small number of individuals, their rarity within the habitat, and the degraded condition of the habitat indicate the species may have been more common in the past.

Federal government actions on this species began with Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House document No. 94–51, was presented to Congress on January 9, 1975. Arizona willow was included as "threatened" in the 1975 Smithsonian report.

Arizona willow's status as a very localized endemic discovered in 1969 and described in 1975 prompted the inclusion of the species in Category 1 in the December 15, 1980 **Federal Register** (42 FR 82480) notice of plants under review for threatened or endangered classification. The designation was based on a small population and the threat of degradation of riparian habitat by livestock usage (Fletcher 1978). Category 1 includes those taxa for which the Service has sufficient information on biological vulnerability and threat(s) to support the appropriateness of proposing to list them as endangered or threatened. The November 23, 1983, supplement to the 1980 notice (48 FR 53640) included Arizona willow as a Category 3C species based on an assessment by Phillips, et al. (1982) that the willow was endemic but locally common with all known populations apparently healthy and reproducing. Category 3C includes those taxa that have proven to be more abundant or widespread than previously supposed and/or those that are not subject to any identifiable threat. If further research or changes in habitat indicate significant decline in any of these taxa, they may be reevaluated for possible inclusion in Category 1 or 2. Arizona willow was placed in Category 2 in the September 27, 1985, **Federal Register** notice (50 FR 39526) of plants under review for threatened or endangered classification due to further questions concerning vulnerability and threats to the small populations. Category 2 includes those taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time. A March 1989 report addressing the Arizona willow found on the White Mountain Apache Indian Reservation and a species' status report for the Apache-Sitgreaves National Forest, dated April 1988, prompted the placement of Arizona willow in Category 1 in the February 21, 1990, **Federal Register** notice (55 FR 6184) of plants under review for threatened or endangered classification. The studies by Galeano-Popp (1988) and Granfelt (1989) presented additional information on vulnerability and threats faced by this species which supported moving the species from Category 2 to Category 1.

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the plants in the December 15, 1980, **Federal Register** notice, including Arizona willow, were treated as under petition, they were considered to be newly petitioned on October 13, 1982. In 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petitioned listing of Arizona willow was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. This proposal constitutes the final 1-year finding as required by the 1982 amendments to the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section

4(a)(1). These factors and their application to *Salix arizonica* Dorn (Arizona willow) are as follows:

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

Historic and current livestock grazing in the high elevation riparian meadows on the Forest has contributed to habitat degradation. Livestock have had less of a recent effect on Reservation riparian areas because no livestock grazing has occurred there for a number of years. Livestock overuse of riparian meadows affects the habitat through hydrologic changes, soil compaction, erosion, bank instability, and siltation. Repeated habitat overuse by cattle results in reduced plant vigor and reproductive success, shifts in relative abundance of plant species, and localized loss of plant species. The adverse effects of livestock on the habitat are believed to be the most important factor affecting the populations on the Forest (Galeano-Popp 1988).

Erosion and siltation may adversely affect Arizona willow through their influence on plant vigor and reproductive success (Medina 1990; Tom Subirge, Apache-Sitgreaves National Forest, pers. comm., 1991). The primary source of siltation in Arizona willow habitat on the Forest is probably habitat disturbance from livestock. Another cause of erosion and siltation in Arizona willow habitat is timber harvesting and related activities such as road building in the upper watersheds on the Reservation.

The construction of reservoirs and stock ponds has resulted in the loss of Arizona willow habitat and probably plants, and may have contributed to increased wildlife use within Arizona willow habitat areas. Many of the dams were constructed prior to the description of this species or the knowledge of its limited distribution.

Recreation has adversely affected Arizona willow habitat and populations. Although part of one recreation site, which was subject to heavy use, has been closed to camping since 1980, compacted soils, relatively poor understory composition, and widespread accelerated streambank losses characterize the area. Arizona willow populations within this disturbed area are the least dense on the Forest (Galeano-Popp 1988). Construction of the Sunrise Ski resort on the Reservation also caused the loss of plants and habitat. Degradation of Arizona willow habitat by off-road vehicle users is a potential recreational threat. Riparian habitats are vulnerable to vehicle damage, which can cause disrupted streamflow, accelerated sedimentation rates, bank instability, and soil compaction.

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

None known.

C. Disease or Predation

Arizona willow on both the Forest and the Reservation is infected by a rust identified as *Melampsora* spp. (Gilbertson, University of Arizona, *in litt.*, 1989). The alternate hosts for the rust are apparently *Abies* spp. (fir) and *Ribes* spp. (gooseberry). Evidence of direct or indirect damage from rust can be seen in dead material of previously large plants. While infection levels vary with locality, one entire half-mile stretch of Arizona willow on the Reservation was defoliated by a rust infection (Galeano-Popp 1988).

Resistance to the rust varies as indicated by the proximity of healthy plants to heavily infected plants. *Melampsora* spp. occur on other willow species in Arizona but do not appear to be virulent pathogens associated with high mortality. However, the impacts of grazing could reduce the vigor of otherwise healthy Arizona willow plants making them more prone to infection. The plants, then weakened by both grazing and disease, are more vulnerable to dying from other environmental factors (e.g. frost) (Galeano-Popp 1988).

Arizona willow is eaten by livestock, elk (*Cervus canadensis*), and perhaps small mammals. While it is difficult to determine the proportional use by livestock, elk, and other wildlife, approximately 85 percent of the carrying capacity of the Forest is allocated to livestock (Galeano-Popp 1988). Initial observations of sites that differ in livestock use indicate that livestock grazing is detrimental to Arizona willow (Galeano-Popp 1988). Lower plant densities and decreased plant height are correlated with areas of high livestock use.

D. The inadequacy of existing regulatory mechanisms

Forest Service policy requires a permit to collect Arizona willow on the Forest (USDA, Forest Service 1986). The Arizona Native Plant Law only requires a permit for collecting highly safeguarded plants (Arizona Revised Statutes chapter 7, title 3, article 1). However, overuse from collecting is not presently considered a threat to Arizona willow and these permit requirements do not protect populations from habitat degradation and loss.

E. Other natural or manmade factors affecting its continued existence

Beaver (*Caster canadensis*) dam construction results in flooding of riparian areas. This flooding can inundate and kill local willow populations and remove suitable habitat (Granfelt, *in litt.*, 1991). This is a localized threat because most Arizona willow habitat appears unsuitable for beaver occupation (Galeano-Popp 1988).

Elk damage other willow species in the area by trampling and by rubbing their antlers and bodies against the plants. No data are available to assess the degree of physical damage by elk to Arizona willow.

Populations may also be limited by other natural factors. Some populations have so few plants remaining (as low as one) they may no longer be viable. In addition, competition with other willow species, or conversely, loss of cover provided by other riparian plants may contribute to the decline of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Salix arizonica* as endangered. A combination of factors contribute to the decision to propose this species as endangered. Arizona willow plants tend to be sparsely distributed within a small range. Within this small area, threats are numerous, complex, and not easily identified or resolved. Some threats, such as the rust, may not be resolvable. The small range, sparse distribution, degraded habitat, threats due to natural causes and the difficulty of conflict resolution have contributed to the decision to propose this species as endangered rather than threatened. Threatened status would not accurately reflect the precarious status of this species. Critical habitat is being proposed for the reasons stated below.

Critical Habitat

Critical habitat, as defined by section 3(5)(A) of the Act means:

(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and;

(ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are

essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being proposed for *Salix arizonica* to include high altitude riparian areas along streams or cienegas on the northern, eastern, and southern slopes of the White Mountains hill mass, Apache County, east-central Arizona. The following areas are proposed as critical habitat:

(1) Approximately 5.6 km (3.5 miles) of Becker Creek and associated tributaries.

(2) Approximately 1.6 km (1 mile) of an unnamed tributary entering Snake Creek from the east in the SE¼ Section 14, T7N R26E.

(3) Approximately 1.8 km (1.1 miles) of Snake Creek.

(4) Approximately 2.9 km (1.8 miles) of Ord Creek, including the reach flowing through Smith Cienega.

(5) Hall Creek upstream approximately 5.3 km (3.3 miles) from the high water mark of the White Mountain Reservoir.

(6) Approximately 7.3 km (4.5 miles) of the West Fork of the Little Colorado River and associated tributaries.

(7) Approximately 13.9 km (8.6 miles) of the East Fork of Little Colorado River and tributaries, including the South Fork of the East Fork of the Little Colorado River.

(8) Purcell Cienega, 65 hectares (160 acres).

(9) Approximately 4.2 km (2.6 miles) of Thompson Creek, including Hall Cienega.

(10) Approximately 4.5 km (2.8 miles) of the West Fork of the Black River, between Stinky Creek and Thompson Creek.

(11) Approximately 5.0 km (3.1 miles) of Stinky Creek, between the West Fork of the Black River and the Apache-Sitgreaves National Forest boundary.

(12) Reservation Creek upstream approximately 0.6 km (0.4 mile) from Reservation Lake.

(13) Reservation Creek downstream approximately 3.5 km (2.2 miles) from Reservation Lake, including Deep Cienega.

(14) Approximately 4.2 km (2.6 miles) of Pacheta Creek, including Upper Pacheta Cienega.

(15) Hurricane Creek approximately 2.3 km (1.4 miles) upstream from the normal high water mark of Hurricane Lake.

(16) Approximately 1.0 km (0.6 mile) of an unnamed tributary of Reservation Creek.

Sites numbered 1 through 4, 8, and 12 through 16 are on the White Mountain Fort Apache Indian Reservation. Sites numbered 6, 7, and 11 are on the Apache-Sitgreaves National Forest. Sites numbered 5 and 10 are on the Apache-Sitgreaves National Forest and private land. Site number 9 is on the White Mountain Fort Apache Indian Reservation, Apache-Sitgreaves National Forest and private land. The legal descriptions of specific locations of critical habitat areas are given below under the Proposed Regulations Promulgation section of this proposed rule.

A total of approximately 68 km (40 miles) of stream and 65 hectares (160 acres) of critical habitat is proposed. The areas described were chosen for critical habitat designation because they contain Arizona willow plants. All reaches also contain some unoccupied habitat needed to maintain ecosystem integrity or to support larger Arizona willow populations as the species expands during recovery. A number of separate, protected, healthy populations of Arizona willow are needed to protect the species from extinction if floods cause the loss of one or several populations. Protection of this proposed critical habitat will ensure that sufficient quantity and quality of habitat exists to prevent this species from becoming extinct throughout all or a significant portion of its range.

Constituent elements for all areas of critical habitat except Purcell Cienega include areas that contain the amount and timing of perennial, clear, clean, unpolluted surface and subsurface water flow sufficient to promote vigorous growth and reproduction of Arizona willow. The constituent elements include the riparian ecosystem within 200 years of the center of the stream drainage bottom (measured perpendicularly to the channel) except where (a) tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*). Constituent elements for Purcell Cienega include all areas within the boundaries of the quarter-sections described above that contain the amount and timing of perennial, clear, clean, unpolluted surface and subsurface water flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Such activities may include road maintenance or construction, timber harvesting, water diversion or impoundment, groundwater pumping, any other activity that may alter the quality or quantity of surface or subsurface water flow, development of recreational facilities near occupied or recovery habitat, and overstocking or other mismanagement of livestock or elk.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained before making a decision on whether to issue a final rule.

Available Conservation Measures

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

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

habitat, the responsible Federal agency must enter into formal consultation with the Service.

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

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22201 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Sam F. Spiller, Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office (refer to **ADDRESSES** section).

National Environmental Policy Act

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

References Cited

Dorn, R.D. 1975. A systematic study of *Salix* section *Cordatae* in North America. Canadian Journal of Botany. 53:1491–1522.

Galeano-Popp, R.G. 1988. *Salix arizonica* Dorn. on the Apache-Sitgreaves National Forest: inventory and habitat study Apache-Sitgreaves National Forest, Springerville, Arizona. 47 pp.

Granfelt, C. 1989. Arizona willow (*Salix arizonica* Dorn) populations on the Fort Apache Indian Reservation, Arizona. White Mountain Apache Game and Fish Department, Whiteriver, Arizona. 37 pp.

Medina, A.L. 1990. Study plan: Autecology of Arizona willow in the Mount Baldy region of east central Arizona. U.S. Forest Service, Rocky Mountain Forest and Range Experiment Station, Tempe, Arizona. 28 pp.

Phillips, B.G., N. Brian, J. Mazzoni, and L.T. Green III. 1982. Status report for *Salix arizonica*. Fish and Wildlife Service, Albuquerque, New Mexico. 12 pp.

USDA, Forest Service. 1986. Forest Service Manual, title 2600—wildlife, fish, and sensitive plant habitat management.

Authors

The primary authors of this proposed rule are William Austin and Sue Rutman (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.12(h) for plants by adding the following species and by adding a new family "Salicaceae—Willow family," in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	
Salicaceae—Willow family:						
Salix Arizonica	arizona willow	U.S.C. (AZ)	E		17.96(a)	NA
•	•	•	•	•	•	

3. It is further proposed to amend § 17.96(a) by adding critical habitat of *Salix arizonica* (Arizona willow) in the same alphabetical order as the species occurs in § 17.12(h).

§ 17.96 Critical habitat—plants.

(a) * * *

* * * * *

Family—Salicaceae.

Salix arizonica (Arizona willow).

Arizona: Maps 2–7 are subset maps located in the general area indicated on map 1.

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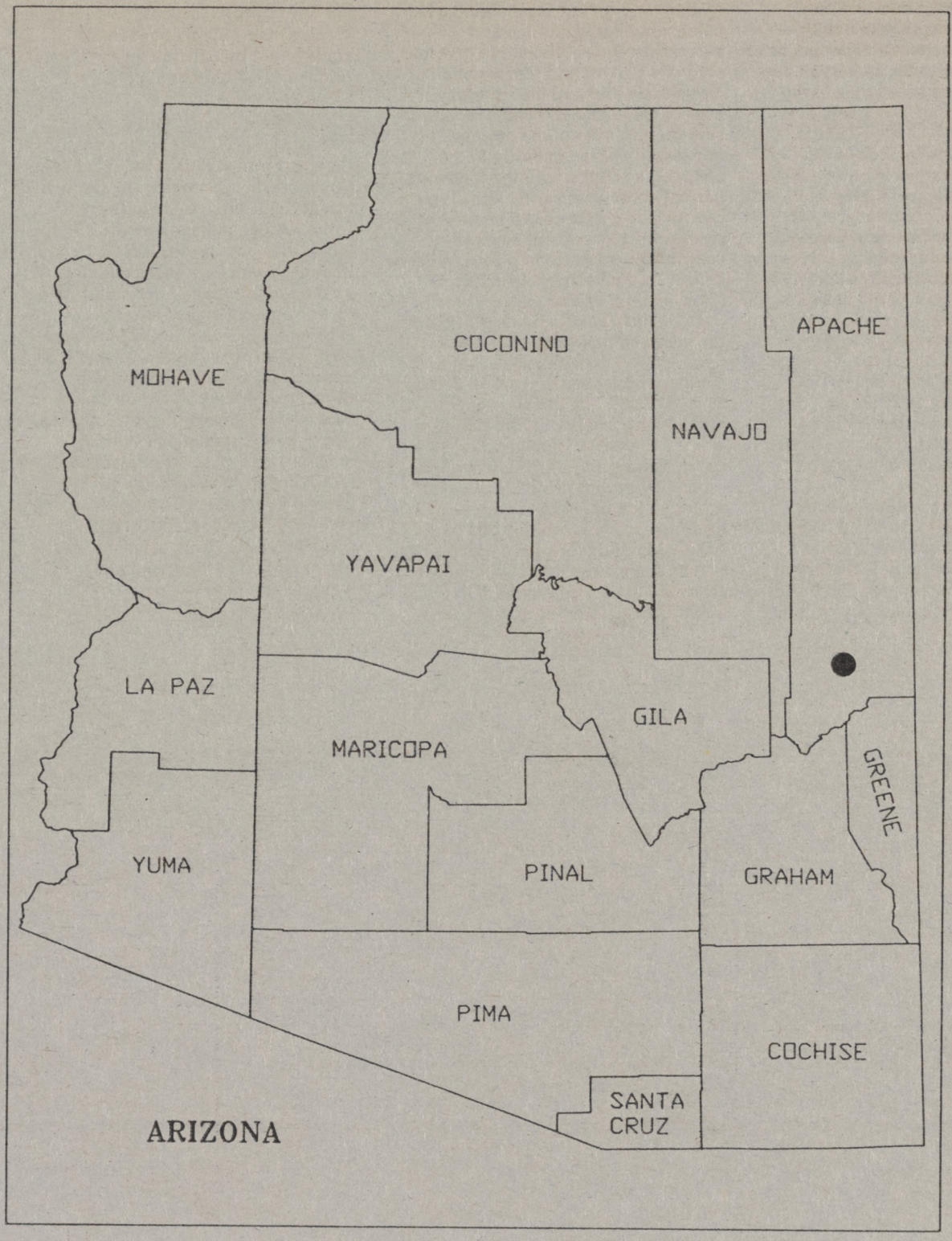

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1. *Apache County:* Becker Creek upstream from its confluence with Snake Creek to the western boundary of the E½NE¼ Section 26, T7N R26E, including unnamed tributaries in the following sections of T7N R26E: the NE¼NE¼ Section 22, the E½NE¼ Section 26, and the W½NW¼ Section 25. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

2. *Apache County:* An unnamed tributary entering Snake Creek from the east of SE¼ Section 14 in T7N R26E, upstream to the southern boundary of the NW¼SW¼ Section 13, T7N R26E. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

3. *Apache County:* Snake Creek from the northern boundary of the S½ Section 24, T7N R26E, upstream to the southern boundary of the N½ Section 25, T7N R26E. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

4. *Apache County:* Ord Creek including the section of the stream flowing through Section 3, T6N R26E (including the reach flowing through Smith Cienega), and including Ord Creek and unnamed tributaries in the NE¼NE¼ Section 10, T6N R26E. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

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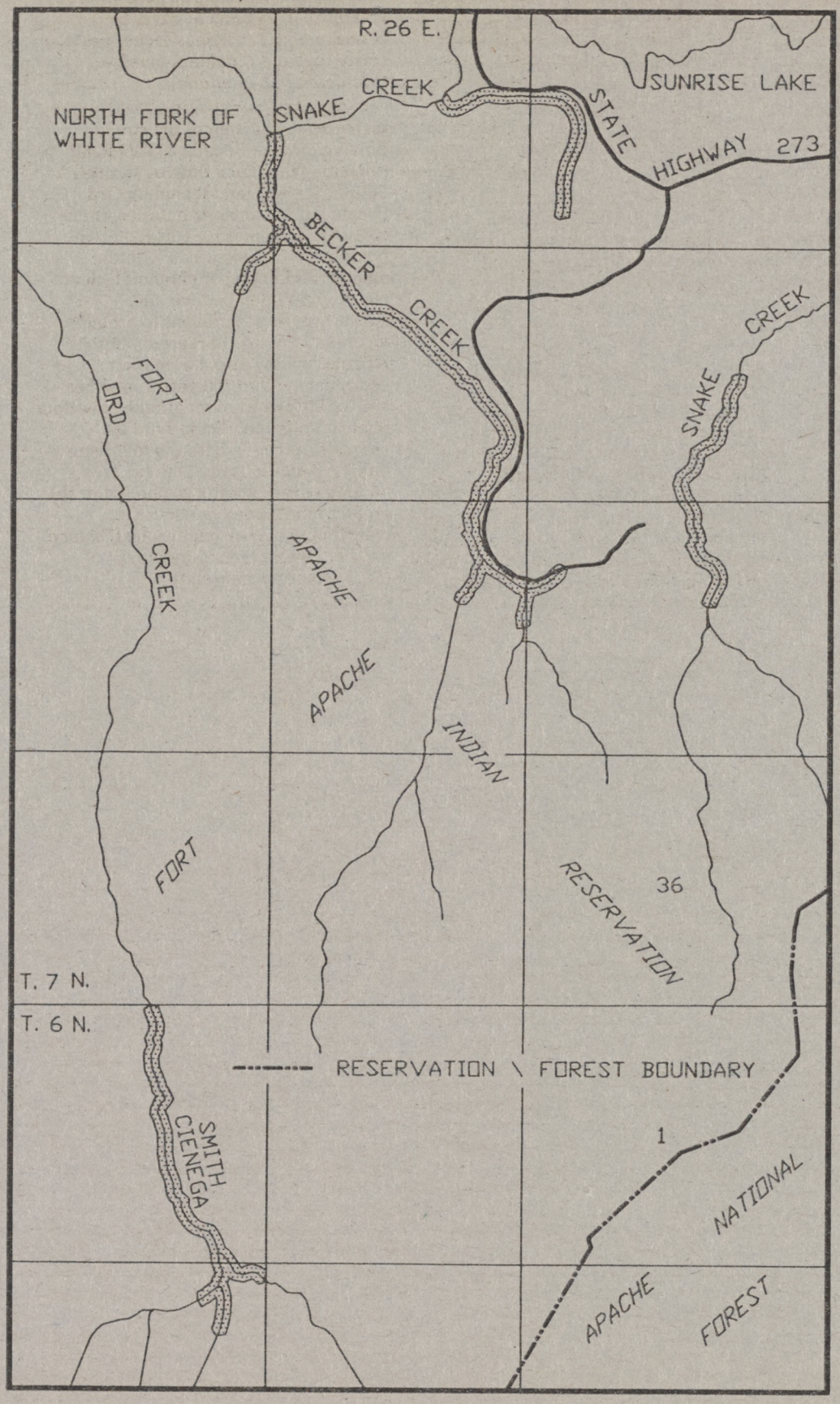

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5. *Apache County:* Hall Creek upstream from the high water mark of the White Mountain Reservoir, to the southern boundary of the N½ Section 31, T7N R27E. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

6. *Apache County:* West Fork of Little Colorado River and tributaries in T7N R27E, Sections 32 and 33; T6N R27E, Sections 5, 6, and 7; and T6N R26E, Section 12. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

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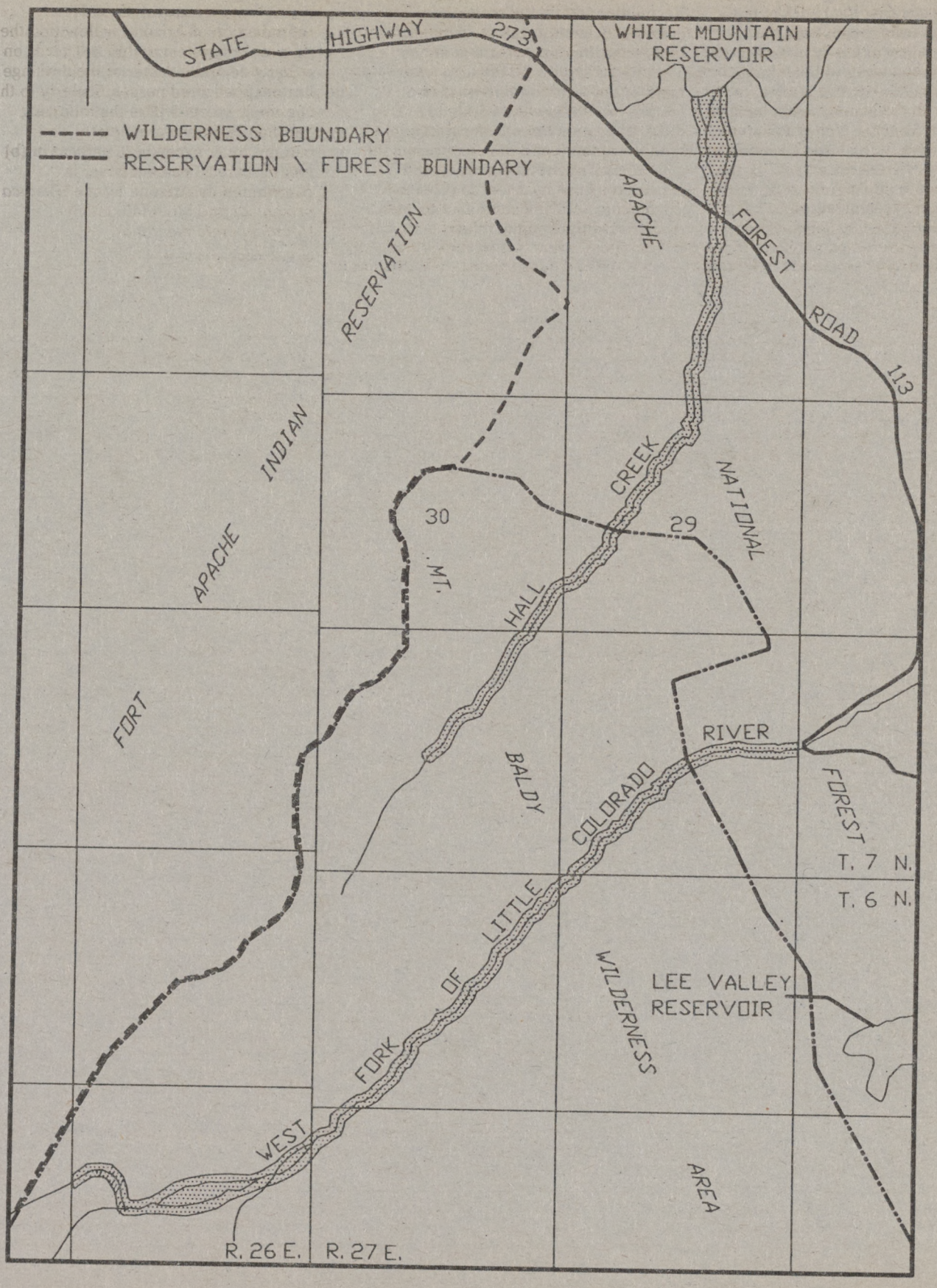

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7. *Apache County:* East Fork of Little Colorado River upstream from the eastern boundary of the W½ Section 36, T7N R27E, to the western boundary of T6N R27E, Section 17. Tributaries included in this stream complex include downstream from Lee Valley Reservoir to the East Fork of the Little Colorado River (T6N R27E, Sections 3 and 4), the South Fork of the East Fork of the Little Colorado River (T6N R27E, Sections 9 and 16), the tributary between Coulter Reservoir and Lee Valley Reservoir (T6N R27E, Section 12), the tributary that forms the northwest arm of Lee Valley Reservoir from the high water mark of the reservoir upstream to include two forks within Section 3, T6N R27E. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

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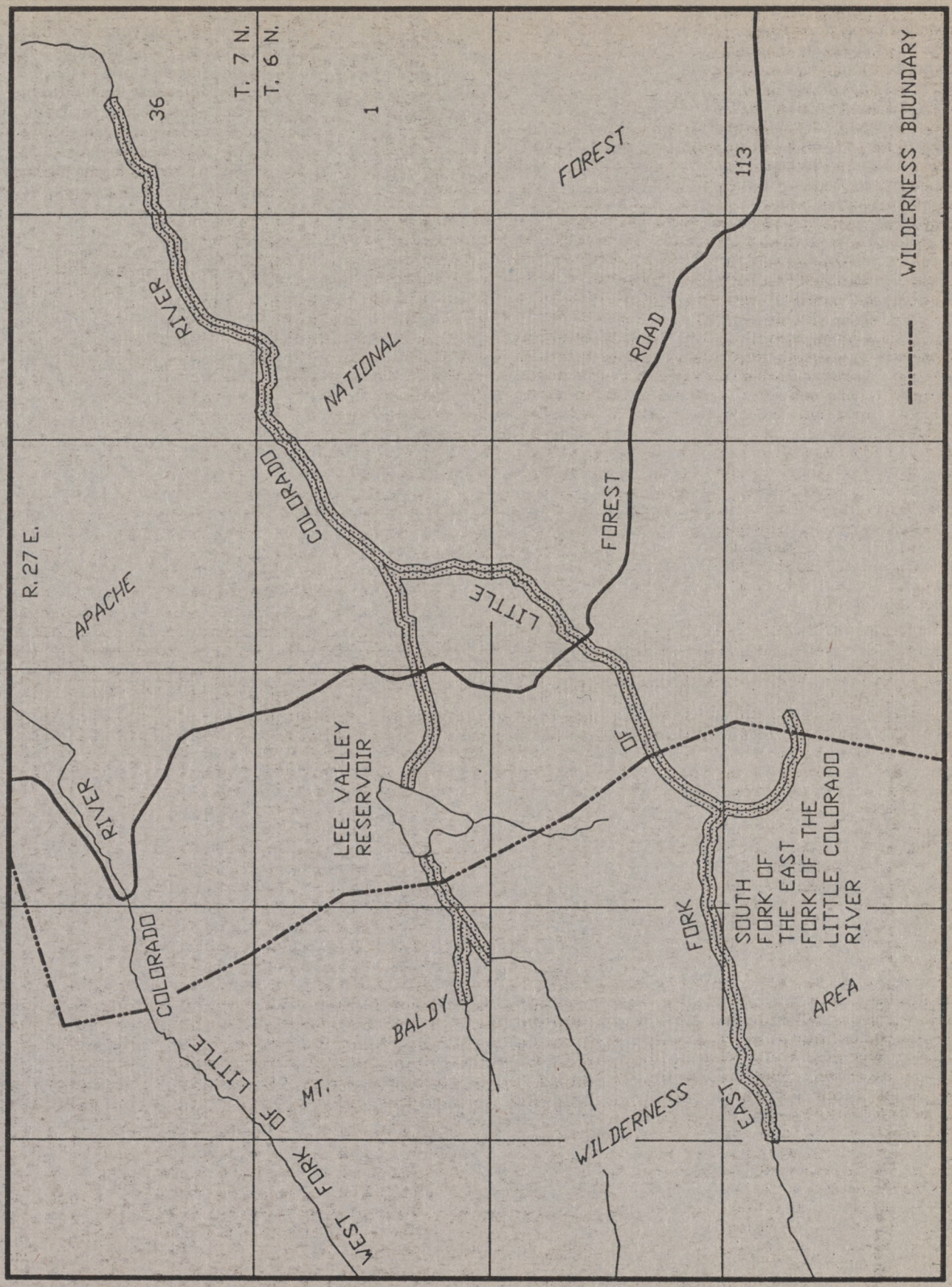

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8. *Apache County:* Purcell Cienega, which occurs along a reach of the West Fork of the Black River in T6N R27E in the following Sections: NE¼NE¼ Section 19, SE¼SE¼ Section 18, SW¼SW¼ Section 17, and NW¼NW¼ Section 20. The boundaries include those areas of the quarter-sections described above that contain the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

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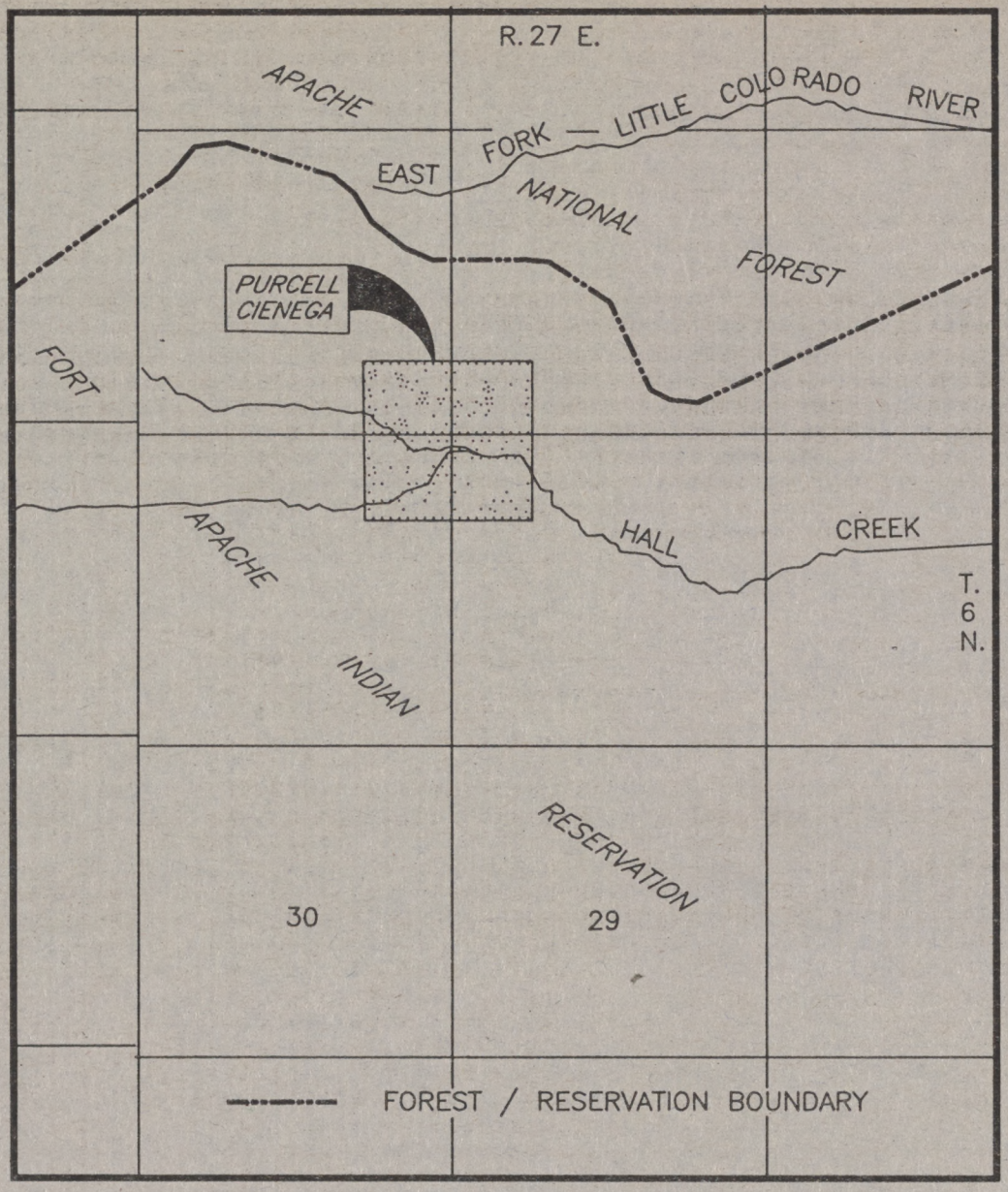

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9. *Apache County:* Thompson Creek from the confluence of Thompson Creek and the West Fork of the Black River (T6N R27E, Section 27) upstream to the western boundary of the E¼ T6N R27E, Section 29. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

10. *Apache County:* West Fork of the Black River, upstream from its confluence with Stinky Creek (T5N R27E, Section 1) to the confluence of Thompson Creek and the West Fork (T6N R27E, Section 27). The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

11. *Apache County:* Stinky Creek from its confluence with the West Fork of the Black River (T5N R27E, Section 1) upstream to the boundary of the Apache-Sitgreaves National Forest (T6N R27E, Section 33). The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

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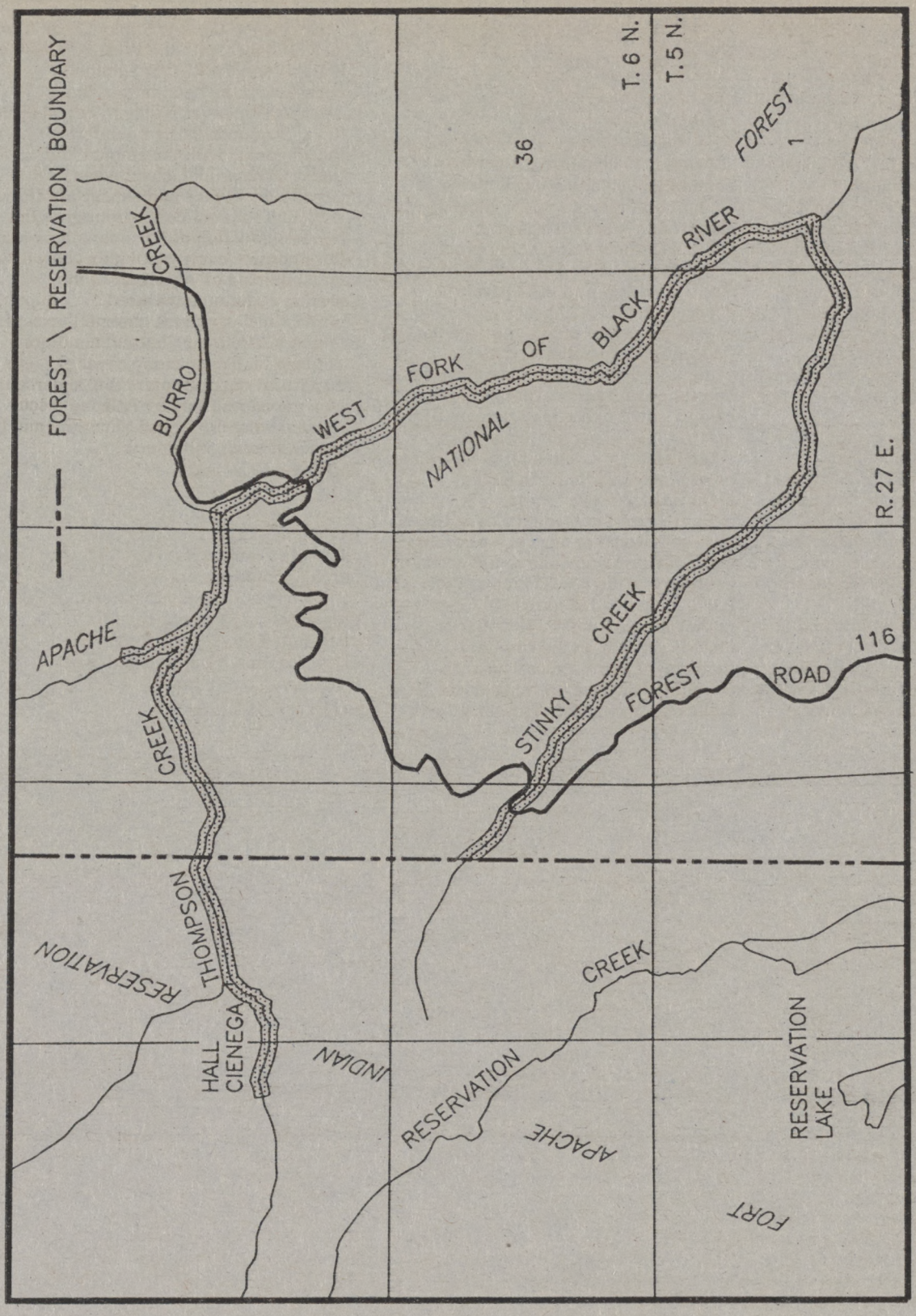

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12. *Apache County:* Reservation Creek from the normal high water mark of Reservation Lake upstream to the northern boundary of the NE¼ Section 4, T5N R27E. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

13. *Apache County:* Reservation Creek downstream from the outlet from Reservation Lake (T5N R27E, Section 7) to the southern boundary of T5N R27E, Section 20. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

14. *Apache County:* Pacheta Creek in T5N R27E, Sections 7 and 8. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

15. *Apache County:* Hurricane Creek upstream from the normal high water mark of Hurricane Lake to the northern boundary of the S¼ Section 1, T5N R26E, including the unnamed tributary in that subsection. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

16. *Apache County:* A reach of an unnamed tributary of Reservation Creek, including the NE¼NW¼ Section 13, T5N R26E, upstream through the SE¼SW¼ Section 12, T5N R26E. The boundaries include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards on either side of the center of the drainage bottom (measured perpendicularly to the channel), except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenergia montana*).

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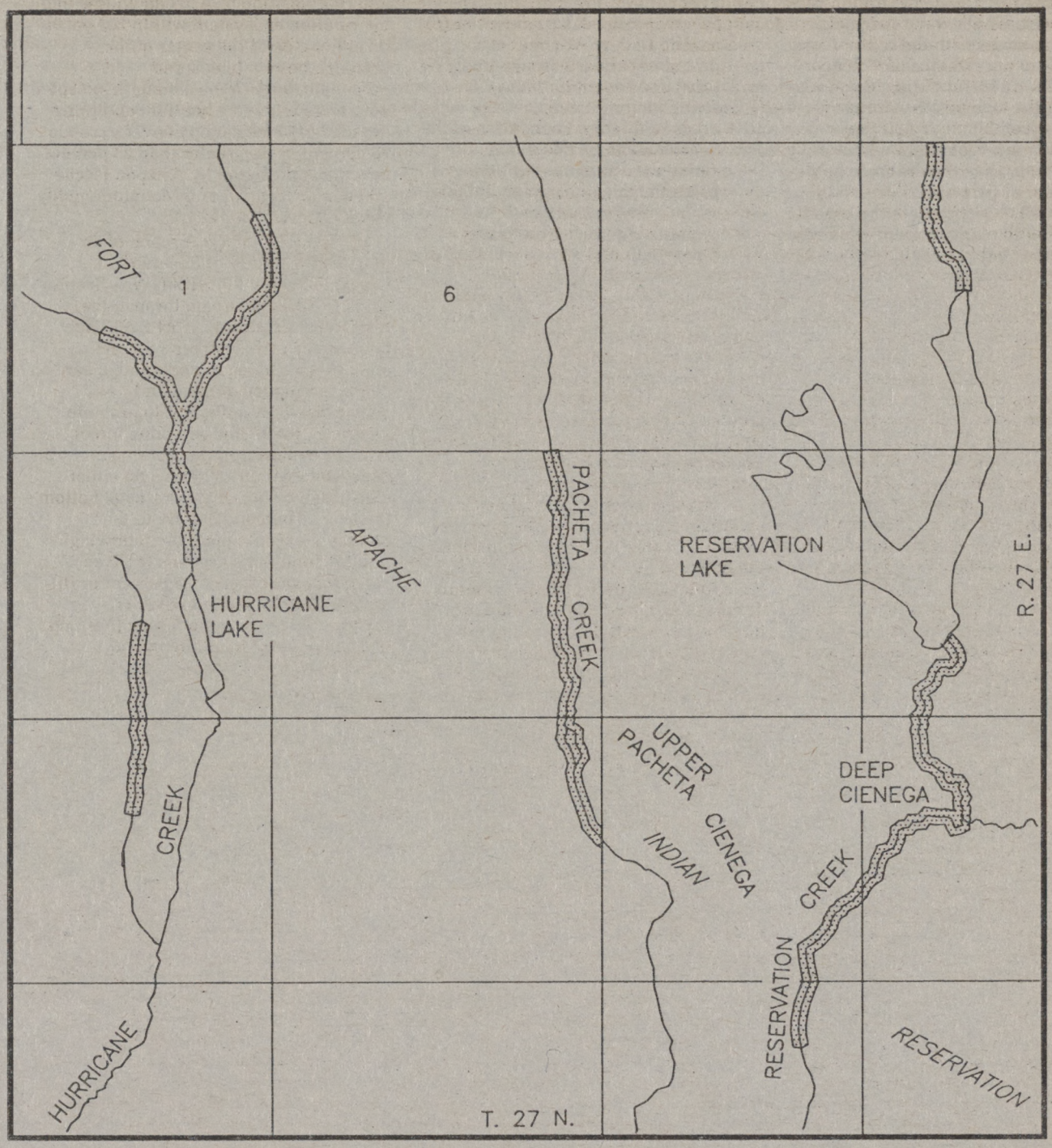

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Constituent elements for all areas of critical habitat except Purcell Cienega include areas with the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem within 200 yards of the center of the drainage bottom (measured perpendicularly to the channel) to incorporate the broader areas with plants, except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*). Constituent elements for Purcell Cienega include all areas within the boundaries of the quarter-sections described above that contain the amount and timing of perennial, clear, clean, unpolluted surface and subsurface flow sufficient to promote vigorous growth and reproduction of Arizona willow and the riparian ecosystem except where the following habitat conditions are met: (a) Tree canopy cover exceeds 25 percent or (b) greater than 25 percent cover is contributed by Arizona fescue (*Festuca arizonica*) and Mountain muhly (*Muhlenbergia montana*).

Dated: October 14, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-28066 Filed 11-19-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 225
Friday, November 20, 1992

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States.

Committee on Rulemaking

Date: Thursday, December 10, 1992.

Time: 9–11 a.m.

Location: Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

Agenda: The Committee will meet to further discuss a report by Jerry Mashaw on ossification of the rulemaking process.

Contact: Kevin L. Jessar, 202–254–7020.

Attendance at the committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request. The contact person's mailing address is: Administrative Conference of the United States. 2120 L Street NW., suite 500, Washington, DC 20037. Telephone: 202–254–7020.

Dated: November 12, 1992.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 92–28183 Filed 11–19–92; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Subsistence Management for Federal Public Lands in Alaska, Closure of Portion of Game Management Unit 23 for Sheep Hunting

AGENCIES: Forest Service, USDA. Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the regulatory authority found at 50 CFR 100.19(b), the Federal Subsistence Board (Board) has closed the Federal subsistence sheep hunting season in a portion of Game Management Unit (GMU) 23 for the remainder of the 1992–93 regulatory year and has closed sheep harvest on all Federal public lands in GMU 23 for the period of August 10–August 31. Convinced by data, projections, and public comment indicating that sheep harvest in the affected portions of GMU 23 would seriously compromise the health of the sheep population in that area, the Board implemented the temporary closures to assure the continued viability of sheep in that area.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503; telephone (907) 271–2306. National Park Service, P.O. Box 1029, Kotzebue, Alaska, 99752; telephone (907) 442–3890.

SUPPLEMENTARY INFORMATION: As empowered by the regulatory authority provided at 50 CFR 100.10(a) and 100.19(b), the Board has closed Federal public lands in GMU 23 south and east of the Noatak River (excluding Gates of the Arctic National Park), and in the Igichuk Hills (that area west of the Noatak Village) to any hunting of sheep for the 1992–93 regulatory year. In addition, the Board has closed Federal public lands in the remainder of GMU 23 to any hunting of sheep from August 10–August 31.

Prior to this closure, the National Park Service staff in Kotzebue worked closely with the local State of Alaska biologist to monitor the applicable sheep population, collect data pertinent to the continued viability of the sheep population, and assess biological and environmental factors which would indicate whether closure of any or all sheep harvest was warranted. The State of Alaska had previously directed an emergency closure preventing sheep harvest on corresponding portions of GMU 23 for the 1992–93 regulatory year.

The Board also received information at two public hearings: the first held in Juneau, Alaska on July 29, 1992; and the second, with discussion confined to the propriety of the temporary closures in GMU 23, held in Kotzebue, Alaska on August 5, 1992.

Making its determination based upon the information provided, the Board has closed the sheep harvest season, for the remainder of the 1992–93 regulatory year, in that portion of GMU 23 south and east of the Noatak River and the Igichuk Hills. The Board has also closed the sheep harvest on all Federal public lands in GMU 23 for the period of August 10–August 31. The Board has directed these closures in order to assure the continued viability of affected sheep populations

Curtis McVee,

Chair, Federal Subsistence Board.

Michael A. Barton,

Regional Forester, USDA—Forest Service.

[FR Doc. 92–25988 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 921197–2297]

Motor Freight Transportation and Warehousing Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 131, 182, 224, and 225, I have determined that 1992 operating revenue and expenses are needed for the for-hire trucking and public warehousing industries to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Current Services Branch, on (301) 763–5528.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuity and timely national statistical data on motor freight transportation and warehousing services. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses. The Census Bureau will select a probability sample of trucking and warehousing firms in the United States (with revenue size determining the probability of selection) to report in the 1992 Motor Freight Transportation and Warehousing Survey. The sample will provide, with measurable reliability, national level statistics on operating revenue and expenses for these industries. We will mail report forms to the firms covered by this survey and require their submission within 30 days after receipt.

This survey has been submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was approved under OMB Control No. 0607–0510. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 13, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92–28264 Filed 11–19–92; 8:45 am]

BILLING CODE 3510–07–M

[Docket No. 921196–2296]

Service Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determiantion.

SUMMARY: In accordance with title 13, United States Code, sections 131, 182, 224, and 225, I have determined that 1992 service sector data on receipts and revenue are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. Selected service industries include personal, business, automotive, repair, amusement, health and other professional, and social service industries. This survey will yield 1992 estimates of the dollar volume of receipts for taxable firms and revenue of firms and organizations exempt from Federal income taxes. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Current Services Branch, on (301) 763–5528.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on selected service industries. The data collected in the Service Annual Survey will be within the general scope and nature of those inquiries covered in the Economic Censuses. The Census Bureau will select a probability sample of service firms and organizations in the United States (with receipts or revenue size determining the probability of selection) to report in the 1992 Service Annual Survey. The sample will provide, with measurable reliability, national level statistics on receipts and revenue for these industries. We will mail report forms to the firms covered by this survey and require their submission within 30 days after receipt.

This survey is cleared under Office of Management and Budget Control No. 0607–0422 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing determination, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 12, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92–28266 Filed 11–19–92; 8:45 am]

BILLING CODE 3510–07–M

[Docket No. 921079–2279]

Annual Wholesale Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides on a comparable classification basis annual sales and purchases for 1992 and inventories for 1991 and 1992. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Nancy A. Piesto or Edward Murphy on (301) 763–3916.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on wholesale trade for the period between Economic Censuses. The next Economic Censuses will be conducted for 1992. The data collected in this survey will be within the general scope and nature of those inquiries covered in the Economic Censuses.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1992 Annual Wholesale Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

This survey has been submitted to the Office of Management and Budget, in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was cleared under OMB Control No. 0607–0195. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 2, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92–28265 Filed 11–19–92; 8:45 am]

BILLING CODE 3510–07–M

Minority Business Development Agency

Business Development Center Applications: Bronx, N.Y. (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated as $266,500 in Federal funds, and a minimum of $47,029 in non-Federal (cost sharing) contribution, from May 1, 1993 to April 30, 1994. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Boston, Massachusetts SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&%TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with QMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF–LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for application is December 29, 1992. Applications must be postmarked on or before December 29, 1992.

The mailing address for submission is:

ADDRESSES; New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278, Area Code/Telephone Number: (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Inter-governmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: November 12, 1992.

John F. Iglehart,

Regional Director, New York Regional Office.

[FR Doc. 92-28215 Filed 11-19-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, Commerce.

The North Pacific Fishery Management Council (Council), its Scientific and Statistical Committee (SSC) and Advisory Panel (AP) will meet during the week of December 7, 1992, at the Hilton Hotel, Anchorage, AK.

The Council is scheduled to convene its regular public meeting on December 8, at 8 a.m., and continue that meeting through December 12 and possibly through Sunday, December 13. A Council executive session, that is not open to the public and that pertains to reports on litigation, international affairs and employment matters, is scheduled to begin at noon on December 9. Other committee and workgroup meetings may occur during the week.

The Council's SSC and AP will begin their public meetings on December 7 at noon at the same location. Their agenda items will be similar to that of the Council (see below). Other workgroup and committee meetings also may be scheduled on short notice throughout the meeting week.

The Council will consider the following agenda items:

(1) Reports by the National Marine Fisheries Service (NMFS), the Alaska Department of Fish and Game, and the U.S. Coast Guard;

(2) Status report on the North Pacific Fisheries Research Plan and review and approval of observer requirements for 1993;

(3) A legislative update and Magnuson Act issues;

(4) A status report on the Community Development Quota (CDQ) program for 1992 and 1993 and management of CDQ fisheries for 1993;

(5) Final groundfish specifications for 1993 for the Bering Sea/Aleutian Islands and Gulf of Alaska, including assumed mortality rates for halibut, by catch specifications and Vessel Incentive Program rates;

(6) Final review and approval of groundfish plan amendments, including a proposed Pribilof Island trawl closure and exclusive registration areas for the Gulf of Alaska;

(7) Initial review of a groundfish plan amendment for salmon by catch rates;

(8) Final review of groundfish regulatory amendments, including bycatch rates for the Inshore-Offshore and Community Development Program fisheries, definition of legal gears in the groundfish plans, and a proposed delay for the start of the pollock "B" season;

(9) Review and comment on proposed rules for enforcement standards for a performance-based pelagic trawl definition, fair-start provisions for the hook and line longline sablefish fishery in the Gulf of Alaska, gangion-cutting/careful release provisions, and the delay of the 2nd quarter Gulf of Alaska pollock season;

(10) Committee reports on progress toward a comprehensive Gulf of Alaska rockfish management plan and bycatch management planning;

(11) A request for an experimental fishing permit to allow retention of prohibited species catch for distribution to charitable organizations; and

(12) A review of current staff tasking.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (907) 271-2809.

Dated: November 16, 1992.

David S. Crestin,

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

[FR Doc. 92-28270 Filed 11-19-92 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Plan Development Team will hold a public meeting on December 1, 1992, beginning at 10 a.m. The meeting will be held in the small conference room at the California Department of Fish and Game, 330 Golden Shore, suite 50, Long Beach, CA.

The purpose of this meeting is to discuss the status of the coastal pelagic species fishery management plan.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590-5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546-7117.

Dated: November 16, 1992.

David S. Crestin,

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

[FR Doc. 92-28269 Filed 11-19-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Import Permit

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

ACTION: Issuance of import permit (P6N).

On October 6, 1992, Notice was published in the **Federal Register** (57 FR 46017) that an application had been filed by the National Zoological Park, Smithsonian Institution, Washington, DC 20008-2598, for a permit to import from Canada and Scotland, blood and skin samples collected from grey seals (*Halichoerus grypus*). Samples will be used to determine if kin selection could contribute to fostering in nonsocial colonially breeding grey seals by comparing different breeding populations.

Notice is hereby given that on November 16, 1992, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above imports subject to certain conditions set forth therein.

The Permit is available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301) 713-2289); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508) 281-6150).

Dated: November 16, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-28243 Filed 11-19-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

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

ACTION: Receipt of applications for scientific research permits.

Notice is hereby given that each of the following applicants have applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

Application No. P171C. Deborah A. Glockner-Ferrari and Mark J. Ferrari, Center for Whale Studies, 39 Woodvine Court, Covington, Louisiana 70433–4724, request authorization to approach, up to three times each, up to 2000 humpback whales *(Megaptera novaeangliae)* annually over a five-year period during the course of photo-identification, observational, and acoustic recording studies and collection of sloughed skin samples for export to England for genetic analyses. Activities will be carried out in the waters of Hawaii.

Application No. P524. The University of Hawaii at Manoa, Kewalo Basin Marine Mammal Laboratory, 1129 Ala Moana Boulevard, Honolulu, Hawaii 96814, requests authorization to approach, up to four times each, up to 2000 humpback whales *(Megaptera novaeangliae)* annually over a five-year period during the course of photo-identification, observational, and acoustic recording studies and aerial surveys. Activities will be carried out in Hawaiian waters.

Application No. P254C. The Pacific Whale Foundation, Kealia Beach Plaza, 101 N. Kihei Road, Suite 21, Kihei, Maui, Hawaii 96753–8833, requests authorization to approach, up to five times each, up to 1000 humpback whales *(Megaptera novaeangliae)* annually over a five-year period during the course of photo-identification, observational, and acoustic recording studies and aerial surveys. Activities will be carried out in Hawaiian waters.

Application No. P523. Adam Frankel, University of Hawaii at Manoa, Department of Oceanography, 1000 Pope Road, Honolulu, HI 96822, requests authorization to approach up to 1000 humpback whales *(Megaptera novaeangliae)* annually over a five-year period during the course of acoustic playback experiments and photo-identification, observational studies. Approximately 5 percent of the requested animals may be approached twice in carrying out the above studies. Activities will be carried out in Hawaiian waters.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of these applications to the Marine Mammal Commission and its Committee on Scientific Advisors.

Written data or views, or requests for a public hearing on these applications should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on a particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in these applications are summaries of those of the Applicants and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above applications are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016);

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221); and

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, HI 96822–2396 (808/955–8831).

Dated: November 17, 1992

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–28244 Filed 11–19–92; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

[Docket No. 921103–2303]

Request for Information Regarding Process Patent Amendments Made by the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Patent and Trademark Office is requesting information from domestic industries regarding possible adverse effects of the process patent amendments made by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) This information will be useful in preparing a report to Congress as required by the Act.

DATES: Comments must be received on or before January 31, 1993.

FOR FURTHER INFORMATION CONTACT: Documents and questions should be submitted to Michael K. Kirk, Assistant Commissioner for External Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231. Telephone at (703) 305–9300.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) was enacted on August 23, 1988. Among other things, the Act amended title 35, United States Code, to extend the protection of a process patented in the United States also to products made by that process. As a consequence, whoever without authority imports into the United States, or sells or uses in this country, a product made by a patented process shall be liable as an infringer, if the importation, sale or use occurs during the term of the process patent. (Sections 9002 and 9003 of Pub. L. 100–418). The effective date of that amendment was February 23, 1989.

Section 9007 of the Act requires the Secretary of Commerce to report to the Congress, at the end of each one-year period from the effective date of the above amendments, on the effect of these amendments on those domestic industries that submitted complaints during such period, alleging that their legitimate sources of supply have been adversely affected. Such reports must be submitted for five successive years.

The fourth report from the Secretary of Commerce to the Congress will be submitted on February 23, 1993, covering the preceding one-year period. Accordingly, it is requested that domestic industries wishing their complaints reflected in the Secretary's report ensure that any submission on

this subject is received by the Department of Commerce not later than January 31, 1993.

Dated: November 13, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-28191 Filed 11-19-92; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

November 17, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6712. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated August 26, 1992 between the Governments of the United States and Malaysia establishes import restraint limits for the period beginning on January 1, 1993 and extending through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Information regarding the 1993 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 17, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Memorandum of Understanding (MOU) dated August 26, 1992 between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Fabric Group	
218, 219, 220, 225-227, 313-315, 317, 326 and 613/614/615/617, as a group.	78,324,890 square meters.
Sublevels within the group	
218	5,035,172 square meters.
219	24,392,609 square meters.
220	24,392,609 square meters.
225	24,392,609 square meters.
226	24,392,609 square meters.
227	24,392,609 square meters.
313	29,092,103 square meters.
314	35,000,000 square meters.
315	24,392,609 square meters.
317	24,392,609 square meters.
326	3,356,780 square meters.
613/614/615/617	28,000,000 square meters.
Other Specific Limits	
200	212,331 kilograms.
237	285,690 dozen.
300/301	2,252,004 kilograms.
331/631	1,546,192 dozen pairs.
333/334/335/835	177,316 dozen of which not more than 106,390 dozen shall be in Category 333, not more than 106,390 dozen shall be in Category 334, not more than 106,390 dozen shall be in Category 335 and not more than 106,390 dozen shall be in Category 835.
336/636	344,261 dozen.
338/339	812,863 dozen.
340/640	994,169 dozen.
341/641	1,288,480 dozen of which not more than 459,666 dozen shall be in Category 341
342/642/842	308,619 dozen.
345	118,344 dozen.
347/348	332,875 dozen.
350/650	111,300 dozen.
351/651	191,500 dozen.
363	3,000,000 numbers.
435	14,554 dozen.
438-W [1]	11,911 dozen.
442	17,738 dozen.
445/446	28,155 dozen.
604	987,454 kilograms.
634/635	601,371 dozen of which not more than 360,823 dozen shall be in Category 635.
638/639	354,254 dozen.
645/646	270,955 dozen.
647/648	1,275,079 dozen of which not more than 892,555 dozen shall be in Category 647-K [2] and not more than 892,555 dozen shall be in Category 648-K [3].
Group II	
201, 222-224, 229, 239, 330, 332, 349, 352-354, 359-362, 369, 400-434, 436, 438-O [4], 439, 440, 443, 444, 447, 448, 459, 464-469, 600-603, 606, 607, 611, 618-622, 624-630, 632, 633, 643, 644, 649, 652-654, 659, 665-670, 831-834, 836, 838, 839, 840 and 843-859, as a group.	34,296,752 square meters equivalent.

[1] Category 438-W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2020, 6106.90.3020, 6109.90.1540, 6109.90.2035, 6110.10.2080, 6110.30.1560, 6110.90.0074 and 6114.10.0040.

[2] Category 647-K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.0044.

[3] Category 648-K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0052 and 6117.90.0046.

[4] Category 438-O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.3020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.0072, 6114.10.0020 and 6117.90.0023.

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the

provisions of the current bilateral agreement between the Governments of the United States and Malaysia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-28209 Filed 11-20-92; 8:45 am]

BILLING CODE 3510-DR-F

Denial of Entry of Certain Cotton Textile Products Exported From Pakistan

November 17, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying entry of certain textile products.

EFFECTIVE DATE: November 18, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based upon letters from the Government of Pakistan concerning investigations of alleged circumvention of the current textile and apparel agreement between the Governments of the United States and Pakistan, the Government of the United States, at the request of the Government of Pakistan, shall deny entry of certain shipments of cotton sheets in Category 361 which were visaed by the Government of Pakistan during 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 48 FR 25257, published on June 6, 1983; and 52 FR 21611, published on June 8, 1987.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes export visa and exempt certification requirements for certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Pakistan.

Based upon a letter received from the Government of Pakistan, effective on November 18, 1992 and until further notice, visas listed in the referenced letter which are issued by the Government of Pakistan during 1992 for shipments of certain cotton sheets in Category 361 shall be denied entry.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-28330 11-18-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 21, 1992.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 12 and October 2, 1992, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (57 FR 25023 and 45609) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity or services.

3. The action will result in authorizing small entities to furnish the commodity or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity or services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Curtain, Vehicular, 2540-00-402-2157.

Services

Commissary Shelf Stocking and Custodial, Fort Irwin, California.

Janitorial/Custodial, Naval Weapons Center Commissary, China Lake, California.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-28242 Filed 11-19-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 21, 1992.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Bakery Mix, 8920–00–NSH–0001.
(Requirements for the Department of Agriculture, Kansas City, Missouri).
Nonprofit Agency: Association for Retarded Citizens of Putnam County, Inc., Algood, Tennessee at its facility in Lebanon, Tennessee.

Services

Janitorial/Custodial, Libby Ranger Station, Kootenai National Forest, Libby, Montana.
Nonprofit Agency: Lincoln County Sheltered Workshop, Libby, Montana.
Mailroom Operation, Internal Revenue Service, Computing Center, Route 9 and Needy Road, Martinsburg, West Virginia.
Nonprofit Agency: Hagerstown Goodwill Industries, Inc., Hagerstown, Maryland.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–28235 Filed 11–19–92; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Request for Approval for Qualification Training and Approval of Contractor Flight Crewmember; DD Forms 2627 and 2628.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: .478 minutes.

Responses Per Respondent: 2.5.

Number of Respondents: 42.

Annual Burden Hours: 50.

Annual Responses: 105.

Needs and Uses: The Defense Logistics Agency will use the DD Form 2627 to request approval for qualification training. The DD Form 2628 will be used to receive flight evaluation of a contractor crewmember and to request approval as a flight crewmember. This flight evaluation must be conducted for each contractor crewmember and will be kept in the crewmember's folder at the appropriate Defense Contract Management District Office. The requirement for the contractor to provide the Government with this information results in approval for the contractor crewmember to initiate qualification training or to fly the Government test aircraft.

Affected Public: Businesses or other for-profit; small businesses or organizations; Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: November 16, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–28224 Filed 11–19–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws; Meeting

AGENCY: Defense Systems Management College.

ACTION: Notice of meeting.

SUMMARY: Open to the public on December 3 and 4, 1992, starting at 8:30 a.m. at the Defense Systems Management College in Building 186 on Fort Belvoir, VA. The Panel will hear presentations and recommendations by the various panel working groups on the statutes they have reviewed to date.

For further information contact Linda Snellings at (703) 355–2665.

Dated: November 16, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–28225 Filed 11–19–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Office of the Secretary; Record of Decision (ROD) for the Development of the Armed Forces Recreation Center (AFRC) at Fort DeRussy, Waikiki, HI

AGENCY: U.S. Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Army proponent for the proposed action is the U.S. Army Community and Family Support Center, Alexandria, VA, which directs the operation of the Hale Koa Hotel at Fort DeRussy. Full authority and responsibility for overall development of Fort DeRussy as an installation lies with U.S. Army Support Command, Hawaii.

In March 1988, at the direction of Congress, the Secretary of the Army prepared a Master Plan for the AFRC at Fort DeRussy. The plan recommended the relocation of some U.S. Army Reserve units to Fort Shafter and the construction of new hotel and recreation facilities at Fort DeRussy. Studies showed a large demand for hotel accommodations in addition to the existing Hale Koa Hotel. To enhance the morale and recreation needs of the active and retired military community and to maximize recreational open space for shared use by the military and civilian communities, the plan recommended a proposed action.

The Army published a Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) in the Federal Register on January 23, 1989. Scoping meetings were held for governmental agencies on February 16, 1989, and for the public February 22, 1989. The NOA of the DEIS was published by the U.S. Environmental Protection Agency in the Federal Register on January 19, 1990. A public hearing was held on February 5, 1990. Comments at the public hearing and in letters commenting on the DEIS have been considered in preparing the Final Environmental Impact Statement (FEIS).

The NOA of the FEIS was published in the Federal Register on March 6, 1992, and in The Bulletin of the (Hawaii) Office of Environmental Quality Control on March 8, 1992. The public comment period ended on April 5, 1992; no adverse comments were received.

The Department of the Army announces the ROD for development of the AFRC, Fort DeRussy, Waikiki, HI, is available.

Under the recommended action, the U.S. Army would construct a hotel tower with up to 400 rooms to augment the existing Hale Koa Hotel; construct a single level, bermedover minimum 350-stall parking structure and a three level, landscaped minimum 1,300-stall parking structure; relocate utilities; and provide extensive landscaping and recreational facilities. Kalia Road, which crosses the Army post, would be realigned; its present intersection with Saratoga Road would be retained, and it would remain a two-lane road.

To provide space for construction of the new hotel tower and other facilities, some buildings now used by U.S. Army Reserve units will be demolished. The impact of these buildings being demolished and the U.S. Army Reserve units leaving Fort DeRussy are addressed in the FEIS. Construction of new U.S. Army Reserve facilities at Fort Shafter has been addressed in a separate Environmental Assessment.

Under the "turn-key" design-construction contracting process, supplemental National Environmental Policy Act documents may be prepared after contract award to address any significant changes from the recommended action or significant changes in environmental impacts.

A NOA of the ROD will also be published in the Bulletin of the (Hawaii) Office of Environmental Quality Control.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 92-28283 Filed 11-19-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Notice of Availability of Draft Environmental Impact Statement and Public Hearings for the Proposed Healy (Alaska) Clean Coal Project (HCCP)

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Availability of Draft Environmental Impact Statement (DEIS) to assess the environmental effects of the construction and operation of the proposed Healy Clean Coal Project (HCCP), a new 50 Megawatt-electric (MWe) coal-fired power generating facility at Healy, Alaska, and conduct public hearings on the DEIS.

SUMMARY: The Department of Energy (DOE) announces the availability of the HCCP DEIS (DOE/EIS-0186). As one of the proposals selected under Round III of the Clean Coal Technology (CCT) Program, the HCCP would demonstrate the combined removal of sulfur dioxide, oxides of nitrogen, and particulate matter from a 50-MWe power plant using innovative integration of advanced combustion and flue gas cleanup technologies. The proposed action is the cost-shared Federal funding of the project by DOE of about $104 million (about 48% of the total cost of approximately $215 million), to demonstrate the economic viability and environmental acceptability of the technologies. The two technologies to be demonstrated are the TRW Applied Technologies Division (TRW) entrained combustion system, and the Joy Technologies, Inc./Niro Atomizer (Joy), spray dryer absorber.

INVITATION TO COMMENT AND DATES: DOE invites comments on the DEIS from all interested parties. Written comments or suggestions regarding the adequacy, accuracy, and completeness of the DEIS will be considered in preparing the final EIS and should be postmarked by January 5, 1993. Written comments postmarked after that date will be considered to the degree practicable.

DOE will also hold three public hearings at which agencies, organizations, and the general public are invited to present oral comments or suggestions. Locations, dates, and times for the public hearings are provided in the section of this notice entitled "PUBLIC HEARINGS." Written and oral comments will be given equal weight and will be considered in preparing the final EIS. Requests for copies of the draft and/or final EIS, or questions concerning the project, should be sent to Dr. Earl W. Evans at the address noted below.

ADDRESSES: Written comments on the DEIS should be postmarked by January 5, 1993, for incorporation into the public hearing record. Oral comments will be accepted at the public hearings. Written comments, requests to speak at the hearings, or questions concerning the HCCP, should be directed to: Dr. Earl W. Evans, Environmental Coordinator, HCCP, Mail Stop 920L, Pittsburgh Energy Technology Center, U.S. Department of Energy, P.O. Box 10940, Pittsburgh PA 15236, Telephone: (412) 892-5709. If you request to speak, please indicate at which hearing(s). Envelopes should be labeled "HCCP Draft EIS."

Individuals desiring to speak at a hearing should notify the DOE Environmental Coordinator for the HCCP at the above address not later than November 30, 1992, so that DOE may arrange a schedule for presentations.

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process and other matters related to the National Environmental Policy Act (NEPA), please contact Ms. Carol M.

Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585, Tel. (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Action

DOE proposes to provide cost-shared funding support for the construction and operation of a new 50–MWe (nominal electrical output) coal-fired power plant at Healy, Alaska, to demonstrate two clean coal technologies. The HCCP was proposed by the Alaska Industrial Development and Export Authority (AIDEA), a State agency, and selected by DOE for negotiation of a Cooperative Agreement for financial assistance by the CCT Program. The HCCP would demonstrate the combined removal of sulfur dioxide (SO_2), oxides of nitrogen (NO_x), and particulate matter (PM) using innovative combustion and flue gas cleanup technologies. After a 1-year demonstration period, anticipated to conclude in 1997, the facility would enter commercial operation. The HCCP would be located in Healy, Alaska, approximately 100 miles southwest of Fairbanks and 250 miles north of Anchorage. The facility would be built adjacent to the existing 25–MWe Healy Unit No. 1 conventional pulverized coal unit owned and operated by Golden Valley Electric Association (GVEA), Inc., in a rural setting along the Nenana River. The proposed site is located about four miles north of the nearest border of Denali National Park and Preserve (DNPP).

On September 27, 1988, Public Law No. 100–446, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1989, and for Other Purposes," was signed into law. Among other things, the Act provided funding to DOE to cost-share the design, construction, and operation of CCT projects that demonstrate the feasibility of technologies capable of achieving significant reductions in the emissions of sulfur dioxide and/or the oxides of nitrogen from existing facilities to minimize environmental impacts such as transboundary and interstate pollution, and/or providing for future energy needs in an environmentally acceptable manner.

On May 1, 1989, DOE issued Program Opportunity Notice Number DE–PS01–89FE61825 for Round III of the CCT program, soliciting proposals to conduct cost-shared CCT projects to demonstrate innovative, energy-efficient clean coal technologies that are capable of being commercialized in the 1990s. The Healy Clean Coal Project was one of the 13 projects selected from among the 48 proposals received.

EIS Preparation

The draft EIS has been prepared in accordance with Section 102(2)(C) of NEPA, as implemented in regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR Parts 1500–1508) and by DOE's regulations for compliance with NEPA (57 FR 15122, April 24, 1992). In accordance with NEPA, DOE determined that providing cost-shared funding for the HCCP constitutes a major Federal action that may significantly affect the quality of the human environment. Therefore, DOE has prepared a DEIS to assess the potential impacts on the human and natural environment of the proposed action and reasonable alternatives.

A Notice of Intent (NOI) to prepare the EIS and hold public scoping meetings in Healy, Fairbanks, and Anchorage, Alaska, was published by DOE in the **Federal Register** on October 5, 1990 (55 FR 40912). The NOI invited oral and written comments and suggestions on the proposed scope of the EIS, including environmental issues and alternatives, and invited public participation in the NEPA process. As a result of the scoping process, 111 comments were received that assisted in identifying major issues that have been analyzed in depth in the DEIS as well as those issues that are minor or have been evaluated and dismissed from further consideration in the DEIS. Further, an EIS Implementation Plan was developed to define the scope and provide further guidance for preparing the EIS.

The DEIS considers the proposed action, the no-action alternative (including scenarios that reasonably could be expected to result as a consequence of the no-action alternative), and an alternative site located about four miles north-northwest of the proposed site. Other alternatives have been considered and dismissed from further evaluation. Impacts to atmospheric resources (including air quality and visibility), surface water, groundwater, and ecological and socioeconomic resources from construction and operation of the HCCP are analyzed. Special consideration is given to the potential impacts to DNPP. Impacts resulting from three reasonably foreseeable outcomes of the demonstration are also analyzed.

The DEIS provides as much information as possible at this stage of the project development regarding the potential environmental impacts of the proposed construction and operation of the HCCP at the proposed site and at an alternative site.

Floodplain/Wetlands Notification

Pursuant to Executive Order 11988, Floodplain Management, Order 11990, Protection of Wetlands, and DOE's Procedures for Compliance with Floodplains/Wetlands Environmental Review Requirements (10 CFR part 1022), DOE hereby provides notice that the construction and operation of the proposed HCCP may impact surface waters at the proposed and alternative sites. Identified areas at each of the two sites are as follows:

Healy Unit No. 1 Proposed Site

No permanent intrusion on the floodplain or loss of wetlands would occur. There would be increased thermal discharge to the Nenana River.

Alternative Site four miles north

A total of 22 acres of wetland could be disturbed by construction, of which 2 acres currently supports wetland botanical and zoological life. There would be increased thermal discharge to the Nenana River.

The potential environmental impacts of site selection on these surface waters and adjacent floodplain and wetland areas are discussed in Chapter 4 of the DEIS. Any comments regarding the proposed action on floodplains and wetlands may be submitted to DOE in accordance with procedures describe below.

Comment Procedures:

Availability of Draft EIS

Copies of the DEIS are being distributed to organizations, environmental groups, and individuals known to be interested in or affected by the proposed project. Additional copies of the document may be obtained by contacting DOE as provided in the section of this notice entitled **ADDRESSES.**

Copies of the DEIS and major documents referenced in the DEIS are available for inspection at the locations given below:

(1) U.S. Department of Energy, Freedom of Information Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585

(2) Rocky Flats Area Office, c/o Front Range Community College, 3645 West 112th Avenue, Westminster, CO 80030

(3) Alaska Power Administration, suite 2B, 2770 Sherwood Lane, Juneau, AK 99801

(4) Tri-Valley Community School Library, P.O. Box 400, Healy, AK 99743

(5) Z.J. Loussac Library, 3600 Denali Street, Anchorage, AK 99503

(6) Fairbanks North Star Borough Library, 1215 Cowles Street, Fairbanks, AK 99701

Written Comments.

Interested parties are invited to provide comments on the content of the DEIS to DOE as provided in the section of this notice entitled **ADDRESSES**. Envelopes should be labeled "HCCP Draft EIS." Comments should be postmarked no later than January 5, 1993, to ensure consideration in preparing the final EIS. Comments postmarked after January 5, 1993, will be considered to the extent practicable.

Public Hearings:

Procedures

The public is invited to provide comments in person on the DEIS to DOE at the scheduled public hearings. The purpose of the hearings is to receive substantive comments related to the DEIS, rather than to receive either general endorsements or denouncements of the proposed project. The hearings will not be of a judicial or evidentiary nature. Advance registration for presentation of oral comments at the hearings will be accepted up to one week prior to the hearing date by telephone or by mail at the office listed in the **ADDRESSES** section above. Envelopes should be labeled "HCCP Hearings." Requests to speak at a specific time will be honored, if possible. Registrants are allowed only to register themselves to speak and must confirm the time they are scheduled to speak at the registration desk the day of the hearing. Persons who have not registered in advance may register to speak when they arrive at the hearings to the extent that time is available. To ensure that as many persons as possible have the opportunity to present comments, 5 minutes will be allotted to each speaker. Persons presenting comments at the hearings are requested to provide DOE with written copies of their comments at the hearing, if possible.

Hearing Schedules and Locations

Public hearings will be held at the following locations, times, and dates, weather permitting, or will be rescheduled as appropriate. A "hotline" telephone number, 907–451–4179, will be available to announce changes, if any:

1. *Date:* Monday, December 7, 1992.
   Time: 7 p.m.
   Place: Tri-Valley Community Center, Mile 249 Parks Highway, P.O. Box 146, Healy, Alaska 99743.
2. *Date:* Wednesday, December 9, 1992.
   Time: 7 p.m.
   Place: Joy Elementary School Gymnasium, 24 Margaret Street, Fairbanks, Alaska 99701.
3. *Date:* Thursday, December 10, 1992.
   Time: 7 p.m.
   Place: Z.J. Loussac Library Theater Facility room, 3600 Denali Street, Anchorage, Alaska 99503.

Conduct of Hearings

DOE has established basic rules and procedures for conducting the hearings. Rules needed for the orderly conduct of the hearings will be announced by the presiding officer at the start of the hearings. Clarifying questions regarding statements made at the hearings may be asked only by DOE personnel conducting the hearings. There will be no cross-examination of persons presenting statements. A transcript of the hearings will be prepared, and the entire record of each hearing, including the transcript, will be placed on file by DOE for inspection at the public locations given above in the **COMMENT PROCEDURES** section.

Signed in Washington, DC, this 17th day of November 1992, for the United States Department of Energy.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health

[FR Doc. 92–28274 Filed 11–19–92; 8:45 am]

BILLING CODE 6450–01–M

Notice of Grant Award to Howard University

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Howard University for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program at DOE. The BCTR program seeks to improve operations and decrease energy use in the chemical and petrochemical industries.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: Howard University has been conducting research for a number of years to develop genetic engineering techniques to enhance the capability of fungi/bacteria to degrade lignocellulose to simpler materials. Successful completion of this research would advance the goal of converting biomass to useful chemicals and other products. A detailed understanding of the processes that control the reactivity and specificity of enzymatic reactions within the fungi/bacteria will provide the knowledge needed to exploit these reactions for technological applications.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for this grant is estimated at $51,000 and the anticipated period of performance is twelve (12) months.

Issued in Chicago, Illinois on October 30, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92–28280 Filed 11–19–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–93–000, et al.]

Baltimore Gas & Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Baltimore Gas and Electric Co.

[Docket No. ER93–93–000]

November 10, 1992.

Take notice that on October 30, 1992, Baltimore Gas & Electric Company (BG&E) tendered for filing as an initial rate schedule an agreement (the Agreement) between Long Island Lighting Company (LILCO) and BG&E. The Agreement provides for the sale by BG&E of energy from its system (system energy) to LILCO on a daily, weekly or monthly basis (a transaction). BG&E states that the timing of the transactions cannot be accurately estimated but that the energy will be provided by BG&E to LILCO at a negotiated agreed upon rate which the parties will enter into prior to each transaction when it is economical for each to do so. LILCO will pay an Energy Reservation Charge to BG&E for each transaction in an amount equal to the megawatthours of system energy reserved for LILCO by BG&E during a transaction multiplied by an Energy

Reservation Charge Rate negotiated prior to each transaction. The Energy Reservation Charge will, however, be subject to a cost justified ceiling designated the Maximum Energy Reservation Charge. LILCO will pay an Energy Charge for each transaction in an amount equal to the megawatthours delivered by BG&E during such transaction multiplied by an Energy Charge rate. The Energy Charge rate is the weighted average forecasted Energy Charge rate for the generating unit(s) which BG&E determines to be available to provide such energy at the time of a transaction.

BG&E requests that the Commission waive its customary notice period and allow the Agreement to become effective on November 2, 1992. LILCO has concurred in this rate schedule by its execution of the Agreement.

Comment date: November 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Central Power and Light Co.

[Docket No. ER93–95–000]

November 10, 1992.

Take notice that on October 30, 1992, Central Power and Light Company (CPL) tendered for filing a Service Agreement under which CPL provides full-requirements wholesale electric service to Rio Grande Electric Cooperative (RGEC) under CPL's FERC Electric Tariff.

CPL requests that the Commission's notice requirements to be waived in order to permit the Service Agreement to become effective retroactively.

Copies of this filing have been served on RGEC and the Public Utility Commission of Texas. CPL's other wholesale customers, Magic Valley Electric Cooperative, Inc., South Texas Electric Cooperative, Inc. Medina Electric Cooperative, Inc., and Kimble Electric Cooperative, Inc., the Public Utilities Board of the City of Brownsville, Texas and the City of Robstown, Texas have been notified of CPL's request for waiver of the Commission's notice requirements.

Comment date: November 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Co.

[Docket No. ER93–94–000]

November 10, 1992.

Take notice that on October 30, 1992, Northeast Utilities Service Company (NUSCO) on behalf of the Connecticut Light and Power Company (CL&P) and Public Service company of New Hampshire (PSNH) tendered for filing two Unit Power Supply Agreements for purchases by Rowley Municipal Light Plant (ROWLEY).

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedules to become effective November 1, 1992.

NUSCO states that the filing is in accordance with Section 35 of the Commission's regulations.

Comment date: November 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Co.

[Docket No. ER93–99–000]

November 10, 1992.

Take notice that on November 2, 1992, Southern California Edison Company (Edison) tendered for filing a change of rate for scheduling and dispatching services under the provisions of Edison's agreements with the parties listed below as embodies in their FERC Rate Schedules. Edison requests that the new rates for these services be made effective January 1, 1993.

Entity	Rate schedule FERC No.
1. City of Anaheim	130, 164, 241, 246
2. City of Azusa	160, 242, 247
3. City of Banning	159, 243, 248
4. City of Colton	162, 244, 249
5. City of Riverside	129, 245, 250
6. City of Vernon	149, 154, 172, 207, 257 263, NA[1]
7. Arizona Electric Power Cooperative (AEPCO).	132, 161
8. Arizona Public Service Company (APS).	185
9. California Department of Water Resources (CDWR).	112, 113, 181
10. City of Burbank (Burbank).	166
11. City of Glendale (Glendale).	143
12. City of Los Angeles Department of Water and Power (LA).	102, 118, 140, 141, 163, 188
13. City of Pasadena (Pasadena).	158
14. Imperial Irrigation District (IID).	259
15. M–S–R Public Power Agency (M–S–R).	153
16. Northern California Power Agency (NCPA).	240
17. Pacific Gas and Electric Company (PG&E).	117, 147, 256
18. San Diego Gas and Electric Company (SDG&E).	151, 232
19. Western Area Power Administration (WAPA).	120

[1] FERC rate number "not available", pending approval, filed on October 30, 1992.

Copies of this filing were served upon the public Utilities Commission of the State of California and all interested parties.

Comment date: November 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. The Montana Power Co.

[Docket No. ER93–114–000]

November 10, 1992.

Take notice that on November 6, 1992, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 of a Transmission Agreement executed by the United States of America, Department of Energy acting by and through the Bonneville Power Administration and Montana Intertie Users (Colstrip Project). Montana requests that the Commission (a) accept the rate schedule for filing, to be effective on April 17, 1981; and (b) grant a waiver of notice pursuant to 18 CFR 35.11, so as to allow the filing of the rate schedule less than 60 days prior to the date on which service under the Agreement is commenced.

Montana states that is filing Certificates of Concurrence by Portland General Electric Company, Puget Sound Power & Light Company and The Washington Water Power Company. Copies of the filing were served upon the Bonneville Power Administration, PacifiCorp and each of the companies listed above.

Comment date: November 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp, Inc.

[Docket No. ER92–870–000]

November 12, 1992.

Take notice that on October 30, 1992, PacifiCorp tendered for filing an amendment to its earlier filing in this docket, consisting of further explanatory detail regarding its filing.

Comment date: November 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER93–125–000]

November 12, 1992.

Take notice that on November 9, 1992, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Agreement dated July 18, 1972 between PacifiCorp and Portland General Electric Company.

Copies of this filing were supplied to Portland General Electric Company and the Public Utility Commission of Oregon.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Co.

[Docket Nos. ER92–595–002, ER92–596–002, ER92–626–002]

November 12, 1992.

Take notice that on November 2, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing modifications to Rate Schedule FERC Nos. 144 and 145 as directed by the Commission in its order issued September 30, 1992 in the above referenced dockets. The modifications include: (1) Revised pages 12 and 37 of Rate Schedule FERC No. 144, the California-Oregon Transmission Project (COTP) Interconnection Rate Schedule, filed on June 1, 1992 as corrected on June 10, 1992, in FERC Docket No. ER92–595–000, which indicates deletion of section 20 (Expansion of Obligations or Material Modification) of the rate schedule; (2) revised sections 3.9, 3.9.1, and 3.9.2 of Rate Schedule FERC No. 145, the "COTP Transmission Service" rate schedule, filed on June 1, 1992 as corrected on June 9, 1992, in FERC Docket No. ER92–596–000, which describe certain conditions precedent to receiving service pursuant to the rate schedule; and (3) revised pages 9, 31 and 32 of Rate Schedule FERC No. 145 which indicates deletion of section 7.9 (Expansion of Obligation or Material Modification) of the rate schedule in FERC Docket No. ER92–596–000.

Comment date: November 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corp.

[Docket No. ER93–115–000]

November 12, 1992.

Take notice that on November 6, 1992, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and the New York Power Authority (NYPA) dated October 29, 1992 providing for certain interruptible transmission services, with an option to convert to firm service in the future, for NYPA.

The October 29, 1992 agreement provides for transmission service from NYPA's Crescent, Vischers Ferry and Jarvis Hydroelectric plants to Niagara Mohawk's existing interconnection with Consolidated Edison.

The effective date of January 10, 1993 is requested by Niagara Mohawk.

Copies of this filing were served upon NYPA and the New York State Public Service Commission.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Co.

[Docket No. ER93–120–000]

November 12, 1992.

Take notice that on November 6, 1992, Puget Sound Power & Light Company (Puget) tendered for filing its Certificate of Concurrence to the Western Systems Power Pool (WSPP) Agreement and to certain agreements with parties to the WSPP Agreement for the purchase and sale of system capacity and energy under the WSPP Agreement (Purchase and Sale Agreements).

Puget states that the Purchase and Sale Agreements relate to service under the WSPP Agreement. A copy of the filing was served upon the parties to the WSPP Agreement.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Co.

[Docket No. ER93–124–000]

November 12, 1992.

Take notice that on November 6, 1992, Arizona Public Service Company (APS) tendered for filing revised Exhibit I (Exhibit) to the Wholesale Power Supply Agreement (Agreement) between APS and Tohono O'Odham Utility Authority (TOUA) (APS–FPC Rate Schedule No. 52). The Exhibit lists Maximum and Contract Demands applicable under the Agreement.

No change to the rate and revenue levels currently on file with the Commission for the 12 months immediately after the proposed effective date is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on TOUA and the Arizona Corporation Commission.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Gulf States Utilities Co.

[Docket No. ER93–123–000]

November 12, 1992.

Take notice that on November 6, 1992, Gulf States Utilities Company (Gulf States), tendered for filing Amendment No. 1 to its Agreement for Wholesale Electric Service, dated August 23, 1990, with Tex-La Electric Cooperative of Texas, Inc. (Tex-La), Rate Schedule FERC No. 173. Amendment No. 1: (1) Deletes a provision regarding the negotiation of other agreements upon the termination of the parties' agreement; (2) allows Tex-La to establish an interconnection with another utility, Jasper Newton Electric Cooperative, Inc. (JNEC), such that JNEC will move the power and energy that Gulf States delivers to Tex-La to the interconnection point between Tex-La and JNEC; and (3) revises the Successors and assigns provision of the agreement.

Gulf States requests an effective date for Amendment No. 1 of October 1, 1992, and requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations in order to allow such effective date.

Copies of the filing were served upon Tex-La.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Puget Sound Power & Light Co.

[Docket No. ER93–119–000]

November 12, 1992.

Take notice that on November 6, 1992, Puget Sound Power & Light Company (Puget) tendered for filing an Agreement for Exchange or Sale of Power with Pacific Gas and Electric Company (Pacific).

A copy of the filing were served upon Pacific.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Power & Light Co.

[Docket No. ER93–117–000]

November 12, 1992.

Take notice that on November 6, 1992, Puget Sound Power & Light Company (Puget) tendered for filing Storage Arrangements and Operating Procedures for the Pacific Northwest Coordination Agreement (PNCA).

Puget states that the Storage Arrangements and Operating Procedures relate to service under the PNCA. A copy of the filing was served upon the parties to the PNCA.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Power & Light Co.

[Docket No. ER93–116–000]

November 12, 1992.

Take notice that on November 6, 1992, Puget Sound Power & Light Company (Puget) tendered for filing arrangements with Boneville Power Administration (BPA) under Rate Schedules 12 and 63.

A copy of the filing was served upon BPA.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Power & Light Co.

[Docket No. ER93–121–000]

November 12, 1992.

Take notice that on November 6, 1992, Puget Sound Power & Light Company (Puget) tendered for filing under its Electric Tariff Original Volume No. 3 certain Service Agreements with Colockum Transmission Company, Pacific Gas and Electric Company, Public Utility District No. 1 of Douglas County, Seattle City Light, and Western Area Power Administration (the Service Agreements) and supplementary agreements thereto.

The Service Agreements make service under the referenced tariff available to those purchasers identified on the Service Agreements. A copy of the filing was served upon those purchasers.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Madison Gas and Electric Co. and Wisconsin Power and Light Co.

[Docket No. EC93–4–000]

November 12, 1992.

Take notice that on November 9, 1992, Madison Gas and Electric Company (MGE) and Wisconsin Power and Light Company (WPL) tendered for filing with the Federal Energy Regulatory Commission an application for disposition of and acquisition of facilities by sale and transfer, respectively. The facilities consist of a portion of the north circuit of MGE's Rockdale to Fitchburg double circuit 138 kV tower line, MGE's Waunakee substation, and MGE's 138–69 kV North Madison substation.

Copies of the filing have been provided to the Public Service Commission of Wisconsin.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Genesee Power Station Limited Partnership

[Docket No. ER93–131–000]

November 12, 1992.

Take notice that on November 6, 1992, Genesee Power Station Limited Partnership (Genesee), a Michigan limited partnership, tendered for filing, pursuant to 18 CFR 35.1 and 35.12, proposed Rate Schedule FERC No. 1 and supplements thereto applicable to the sale of energy and capacity to Consumers Power Co. (Consumers) from a biomass waste wood generating facility located in Genesee Township, Michigan. The facility is a qualifying small power production plant of more than 30 MW and less than 80 MW within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978. Genesee's rate is set at consumers' avoided costs, as determined by the Michigan Public Service Commission, which has approved Genesee's contract with Consumers.

Genesee also is requesting that the 120-day rule set forth in 18 CFR 35.3 be waived, that the cost of service support required of § 35.12(b)(5) be waived, that all regulations not appropriately applicable to qualifying facilities to be waived, and expedited consideration to facilitate construction financing (which will need to be arranged by December 31, 1992) be granted.

Comment date: November 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Portland General Exchange, Inc.

[Docket No. ER93–132–000]

November 13, 1992.

Take notice that on November 9, 1992, Portland General Exchange, Inc., tendered for filing with the Commission a letter agreement dated October 31, 1988, providing for the sale by Portland General Exchange to Bonneville Power Administration firm power in blocks ranging from 3 MW to 33 MW, during the period November 1, 1988, to December 31, 1988, under generally applicable tariff PGX–1.

Copies of the filing have been served on the distribution list, as included in the filing.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Staten Island Cogeneration Corp.

[Docket No. QF93–18–000]

November 13, 1992.

On November 6, 1992, Staten Island Cogeneration Corporation, c/o Thermo Energy Systems Corporation, 81 Wyman Street, Post Office Box 9046, Waltham, Massachusetts 02254–9046, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Mobil Oil Storage Corporation's Port Mobil Terminal, Arthur Kill Road, Staten Island, New York. The facility will consist of a combustion turbine generator, a heat recovery boiler (HRB), and an extraction/condensing steam turbine generator. Thermal energy from the facility, in the form of extraction steam and steam from the HRB, will be used for storage tank heating and petroleum transportation vessel cleaning. The electric power production capacity of the facility will be approximately 55 MW. The primary energy source for the facility will be natural gas, with No. 2 fuel oil used as a back-up fuel source. Installation of the facility is expected to begin in 1993.

Comment date: January 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

21. Altamont Cogeneration Corp.

[Docket No. QF90–133–001]

November 13, 1992.

On November 9, 1992, Altamont Cogeneration Corporation (Applicant), tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership structure and clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: November 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Onondaga Cogeneration Limited Partnership

[Docket No. QF87–429–002]

November 13, 1992.

On November 10, 1992, Onondaga Cogeneration Limited Partnership tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The Supplement provides additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Comment date: December 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Puget Sound Power & Light Co.

[Docket No. ER93–128–000]

November 13, 1992.

Take notice that on November 9, 1992, Puget Sound Power & Light Company (Puget) tendered for filing under its Electric Tariff Original Volume No. 3 a certain Service Agreement (The Service Agreement) with the United States of America acting by and through the Bonneville Power Administration of the Department of Energy (Bonneville).

The Service Agreement makes service under the referenced tariff available to Bonneville. A copy of the filing was served upon Bonneville.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Atlantic City Electric Co.

[Docket No. ER93-126-000]

November 13, 1992.

Take notice that on November 9, 1992, Atlantic City Electric Company (AE or a Party) with the concurrence of Public Service Electric & Gas Company (PSE&G or a Party) tendered for filing as an initial rate schedule under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between AE and PSE&G dated October 27, 1992.

AE states that the Agreement sets forth the terms and conditions for import capability transactions between the Parties, as both Parties expect to have import capability available for sale from time to time, and such transaction will be economically advantageous to both Parties. The rates for services are negotiated between the Parties but will not exceed $5.50 per MWHR. In order to optimize the economic advantages to the Parties, AE requests that the Commission waive its customary notice period and allow this Agreement to become effective on November 30, 1992.

AE states that a copy of this filing has been sent to PSE&G and will be furnished to the New Jersey Board of Regulatory Commissioners.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. The Washington Water Power Co.

[Docket No. ER93-127-000]

November 13, 1992.

Take notice that on November 6, 1992, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR part 35, additional Service Agreements to FERC Electric Tariff 2, FERC Electric Tariff 3, and FERC Electric Tariff 4. WWP also requests waiver of the Commission's 60 day notice requirement.

A copy of the filing was mailed to the parties of the new Service Agreements.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Hardee Power Partners Limited

[Docket No. ER93-134-000]

November 13, 1992.

Take notice that on November 9, 1992, Hardee Power Partners Limited (Hardee Power) tendered for filing an agreement dated April 3, 1992 between Hardee Power and Tampa Electric Company (Tampa Electric) pursuant to which Hardee Power sells and Tampa Electric purchases test energy produced by the Hardee Power Station.

This agreement is being filed with the Commission because it may relate to FERC-jurisdictional "service, rates and charges" pursuant to § 35.2(b) of the Commission's regulations (18 CFR 35.2(b)). In addition, Hardee Power requests waiver of the notice requirements of § 35.11 of the Commission's regulations.

Hardee Power states that a copy of its filing was served on Tampa Electric Company and on the Florida Public Service Commission.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. ER93-135-000]

November 13, 1992.

Take notice that on November 9, 1992, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP Companies) tendered for filing certain Transmission Service Agreements entered into by the NSP Companies pursuant to the NSP Companies FERC Electric Tariff Original Volume No. 1 (Original Tariff) and the NSP Companies FERC Electric Tariff Original Volume No. 2 (Settlement Tariff). This administrative filing was required under the Federal Energy Regulatory Commission's Policy Statement issued October 9, 1992, regarding filing of service agreements under tariffs of general applicability.

The NSP Companies request acceptance for filing of three standard form Transmission Service Agreements under the Original Tariff: With Wisconsin Power and Light effective May 1, 1991; with Citizens Power & Light Company effective August 1, 1991; and with the Wisconsin Public Power Inc., SYSTEM effective November 1, 1991.

The NSP Companies request acceptance for filing of two standard form Transmission Service Agreements under the Settlement Tariff: With Wisconsin Electric Power Company effective January 1, 1992; and with the Wisconsin Public Power Inc. SYSTEM effective November 1, 1991 (this agreement would supersede the agreement under the Original Tariff).

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. Florida Power Corp.

[Docket No. ER93-136-000]

November 13, 1992.

Take notice that on November 9, 1992, Florida Power Corporation (Florida Power) filed a tariff service agreement under Florida Power's tariff for all requirements service (FPC Electric Tariff, Volume No. 1) for service to Sebring Utilities Commission and an Exhibit C under the tariff showing supplemental service specifications for that service. The service agreement and Exhibit C are filed pursuant to the amnesty established in New England Power Company, Docket No. ER92-286-001, Order issued October 5, 1992. Florida Power requests that the service agreement and Exhibit C be allowed to become effective as of January 1, 1992 and requests waiver of the 60 day notice requirement to permit that effective date.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. The Narragansett Electric Co.

[Docket No. ER93-129-000]

November 13, 1992.

Take notice that on November 9, 1992, The Narragansett Electric Company (Narragansett) tendered an initial rate schedule filing, termed The Narragansett Electric Company, FERC Electric Tariff, Original Volume No. 1. According to Narragansett, the proposed rate schedule would govern Narragansett's borderline sales to other utilities. Narragansett also tendered for filing and termination two earlier contracts which governed its borderline sales to Eastern Edison Company and Blackstone Valley Electric Company.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. Montaup Electric Co.

[Docket No. ER93-137-000]

November 13, 1992.

Take notice that on November 9, 1992, Montaup Electric Company (Montaup) in accordance with the amnesty granted in New England Power Company, Docket No. ER92-286-001, order issued October 5, 1992, filed two transmission service agreements with the town of Hingham and Exhibit A's under Montaup's FERC Electric Tariff, Original Volume No. II, together with Exhibit A's identifying transactions under the agreements. Montaup requests waiver of the notice requirements so that the service agreements may be allowed to become effective as of the effective dates stated therein, March 1, 1977 and November 1, 1988, respectively.

Montaup also filed an Exhibit A to a previously filed tariff service agreement with the Town of Middleborough. Montaup requests waiver of the notice

requirement to permit that Exhibit A become effective November 1, 1986.

Montaup also filed a Notice of Cancellation of the earlier Hingham service agreement and Exhibit A, which expired on April 30, 1977, and a Notice of Cancellation of the Middleborough Exhibit A, which expired October 31, 1992.

The filing further included a revised Exhibit A to Montaup's previously filed transmission service agreement with the New England Power Company updating the point of interconnection, voltage level and metering.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. Niagara Mohawk Power Corp.

[Docket No. ER93–139–000]

November 13, 1992.

Take notice that on November 10, 1992, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Selkirk Cogen Partners, L. P. (Selkirk) dated October 20, 1992 providing for the terms and conditions of an interconnect between Selkirk's cogeneration facility and Niagara Mohawk's transmission system.

The effective date of January 8, 1993 is requested by Niagara Mohawk.

Copies of this filing were served upon Selkirk and the New York State Public Service Commission.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

32. New England Power Co.

[Docket No. ER93–130–000]

November 13, 1992.

Take notice that on November 9, 1992, New England Power Company (NEP), tendered for filing proposed service agreements, amendments to service agreements and terminations of services under its FERC Electric Tariff, Original Volume No. 3.

Comment date: November 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–28231 Filed 11–19–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–51–000, et al.]

Northwest Pipeline Corporation, et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP93–51–000]

November 10, 1992.

Take notice that on November 5, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed a request with the Commission in Docket No. CP93–51–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate replacement facilities at the Spokane West and Connell meter stations in Spokane and Franklin Counties, Washington, respectively, in order to more efficiently accommodate its existing firm delivery obligations to The Washington Water Power Company (Water Power), under Northwest's blanket certificate issued in Docket No. CP82–433–000, all as more fully set forth in the application which is open to public inspection.

Northwest states that the current maximum delivery capacities of the Spokane West and Connell meter stations are less than Northwest's existing firm delivery obligations to Water Power at these points under its currently authorized FERC Rate Schedules TF–1 and SGS–1 service agreements with Water Power. Northwest, therefore, proposes to replace the two six-inch orifice meters and the two two-inch regulators and appurtenances at the Spokane West meter station with two six-inch turbine meters and two three-inch regulators and appurtenances. Northwest states that these replacement facilities would increase the daily maximum design delivery capacity of the Spokane West meter station from 15,150 MMBtu to approximately 35,570 MMBtu at a pressure of 350 psig.

Northwest also proposes to replace an undersized three-quarter inch inner valve in one of the two two-inch regulators at the Connell meter station with a one-inch inner valve. Northwest also states that this replacement valve would increase the daily maximum design delivery capacity of the Connell meter station from 2,500 MMBtu to approximately 5,760 MMBtu at a pressure of 150 psig.

Northwest estimates that it would cost approximately $155,590 and $1,045, respectively, to remove and replace the existing facilities at the Spokane West and Connell meter stations. Northwest states that replacing these facilities would enable Northwest to deliver up to its current daily firm obligations to Water Power at the Spokane West and Connell meter stations and would not require any reimbursement from Water Power.

Comment date: December 26, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Kentucky West Virginia Gas Company

[Docket No. CP93–61–000]

November 10, 1992.

Take notice that on November 10, 1992, Kentucky West Virginia Gas Company (Kentucky West), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP93–61–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon sales to Columbia Gas Transmission Corporation (Columbia), under a service agreement dated October 18, 1977, under Kentucky West's Rate Schedule PLS–1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Kentucky West proposes to abandon the sale of 16,089 dt equivalent of natural gas per day for Columbia, effective September 30, 1992. It is stated that on November 6, 1992, the United States Bankruptcy Court of the District of Delaware in Case No. 91–804 issued an order, upon Columbia's motion, authorizing Columbia to reject pursuant to the bankruptcy laws the PLS–1 service agreement between Columbia and Kentucky West. It is indicated that the authorization was granted effective on September 30, 1992. Kentucky West states that it requests emergency abandonment authorization similar to that provided in Producer/Suppliers of Columbia Gas Transmission Corp., 56 FERC ¶ 61,335 (1991). Kentucky West indicates that expeditious abandonment authorization would provide it the opportunity to market the firm capacity

for other uses in advance of the upcoming winter heating season. It is also stated that it would be unreasonable not to grant immediately the abandonment since failure to do so would require Kentucky West to keep capacity available for Columbia even though Columbia, a competitor of Kentucky West, has rejected the service agreement under the bankruptcy code.

Kentucky West further states that in filing for abandonment it does not support, condone or concur in Columbia's rejection of the service agreement and reserves the right to recover from Columbia in any proceeding appropriate damages as a result of Columbia's rejection of the service agreement.

Comment date: November 25, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP93–53–000]

November 10, 1992.

Take notice that on November 5, 1992, Arkla Energy Resources, a division of Arkla, Inc. (AER), Post Office Box 21734, Shreveport, Louisiana, 71151, filed in Docket No. CP93–53–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to upgrade an existing delivery point under AER's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, AER proposes to replace an existing 1-inch above-ground meter station with an 8-inch skid mounted turbine meter on AER's Line AM–139 in Clark County, Arkansas. AER states that the facilities will be used to deliver transportation gas to Reynolds Metal Patterson Plant (Reynolds). AER further states that Reynolds will reimburse it for the cost of constructing the facilities.

Comment date: December 26, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Natural Gas Company

[Docket No. CI93–4–000]

November 10, 1992.

Take notice that on November 3, 1992, Northwest Natural Gas Company (Northwest) filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of natural gas imported from Canada and gas subject to the Commission's NGA jurisdiction. The application is on file with the Commission and open to public inspection.

Comment date: November 24, 1992, in accordance with Standard Paragraph J at the end of the notice.

5. United Gas Pipe Line Company

[Docket No. CP93–46–000]

November 13, 1992.

Take notice that on November 2, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–46–000, a petition pursuant to section 16 of the Natural Gas Act and rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)), for a declaratory order authorizing the refunctionalization of certain of its facilities from gathering plant to transmission plant,[1] all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

United asserts that it has reevaluated its gathering facilities and has determined that under the Commission's "modified primary function test" certain of those facilities should be classified as transmission facilities. United states that these facilities are located in Texas, Louisiana, Mississippi and Alabama.

United asserts that the refunctionalization of certain of its facilities from gathering plant to transmission plant is a further step in a complete unbundling of its services and is intended to serve as a companion filing to its restructuring filing in Docket No. RS92–26–000 in compliance with Order Nos. 636 and 636–A.

United and United Gas Service Company (UGS) have filed a companion application in Docket No. CP93–47–000 to transfer the remainder of United's gathering facilities to UGS.

Comment date: December 4, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company United Gas Services Company

[Docket No. CP93–47–000]

November 13, 1992.

Take notice that on November 3, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, and United Gas Services Company (UGS), P.O. Box 1478, Houston, Texas 77251–1478 (Applicants), filed in Docket No. CP93–47–000, a joint application pursuant to section 7(b) of the Natural Gas Act, and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, (18 CFR 385.207(a)(2), seeking authorization for United to abandon certain gathering facilities which will be transferred to UGS after the abandonment and petitioning the Commission to determine that the gathering facilities will not be subject to Commission rate and certificate regulation after the abandonment and transfer of the facilities to UGS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it would abandon and transfer to UGS pursuant to a Transfer and Assignment Agreement, certain of its gathering facilities located in Texas, Louisiana and Mississippi and offshore areas of Texas and Louisiana. The onshore facilities consist of 2,150 miles of predominately small diameter pipeline and 6,440 horsepower of field compression and the offshore facilities consist of 256 miles of pipeline, it is stated.

United would continue to operate and maintain the facilities pursuant to an Operating and Maintenance Agreement between the Applicants, it is stated.

UGS states that it would continue to gather gas for United pursuant to a Gathering Agreement between the Applicants until such purchase obligations cease, and also gather volumes for section 7(c) transportation customers connected to the gathering system and deliver gas for United to those remaining small city gate and farm tap customers connected to the gathering facilities until those service obligations terminate.

Applicants assert that open-access transportation would continue to be provided after the proposed transfer of facilities and that UGS would provide nondiscriminatory access to its gathering facilities.

United asserts that this transfer of certain of its gathering facilities is a further step in a complete unbundling of its services and is intended to serve as a companion filing to its restructuring filing in Docket No. RS92–26–000 in compliance with Order Nos. 636 and 636–A.

Applicants also request an order declaring that the gathering facilities are exempt from Commission regulation under section 1(b) of the Natural Gas Act and that the Commission will not exercise rate jurisdiction over the gathering facilities.

United has filed a companion application in Docket No. CP93–46–000

[1] The petition will be treated as a request for a declaratory order finding that the facilities are transmission facilities. The refunctionalization should take place in the restructuring proceeding, based on the findings in the declaratory order.

to refunctionalize the remainder of its gathering facilities from gathering plant to transmission plant.

Comment date: December 4, 1992, in accordance with Standard Paragraph F at the end of the notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP93–49–000]

November 13, 1992.

Take notice that on November 4, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–49–000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon a firm sales service provided to the Village of Franklin, Illinois (Village of Franklin), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle has stated in its application that pursuant to section 7(b) of the Natural Gas Act, it is requesting authorization to abandon firm sales service provided to the Village of Franklin under Rate Schedule SSS–2 as a result of the Village of Franklin's election to terminate its firm sales service with Panhandle effective November 1, 1992. It is also stated that the Village of Franklin has converted to firm transportation service provided under Panhandle's Rate Schedule SCT effective November 1, 1992.

Panhandle also stated that it has filed revised tariff sheets at Docket Nos. RP91–53, RP91–52 and RP92–118, *et. al.*, to recover take-or-pay costs from each of its customers, including the Village of Franklin. Additionally, Panhandle stated that it has filed revised tariff sheets to recover portions of other costs in Docket Nos. RP92–125, RP92–127 and RP92–128, *et. al.* The portion of such costs attributable to the Village of Franklin are described therein, and may be amended, supplemented, revised or modified pursuant to Commission authorizations or as required by law. By this filing, Panhandle states, it is not waiving or relieving the Village of Franklin from any of its cost responsibilities associated with these take-or-pay costs or any other costs properly attributable to the Village of Franklin.

No facilities are proposed to be abandoned herein.

Comment date: December 4, 1992, in accordance with Standard Paragraph F at the end of this notice.

Paiute Pipeline Company

[Docket No. CP93–56–000]

November 13, 1992.

Take notice that on November 6, 1992, Paiute Pipeline Company (Paiute), P. O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP93–56–000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate a new sales tap and related facilities for delivery of natural gas to Southwest Gas Corporation-Northern Nevada (Southwest), an existing local distribution company customer, for resale to the Lovelock Correctional Institution (Lovelock) in Pershing County, Nevada under Paiute's blanket certificate issued in Docket No. CP84–739–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Paiute proposes to construct and operate the Lovelock Prison sales tap on Paiute's Lovelock Lateral in Pershing County, Nevada for the transportation and delivery of natural gas to Southwest for resale to Lovelock, a new end-user customer, of approximately 63,000 Mcf of natural gas per year and 265 Mcf of natural gas per peak day at an estimated cost of $65,958, which would be reimbursed by Southwest. Paiute states that it presently provides firm transportation of up to 61,651 Dth per day of natural gas to various delivery points in northern Nevada for Southwest under Paiute's Rate Schedule FT–1 and that deliveries to Southwest for Lovelock would be within Southwest's existing entitlements. Paiute states that the construction of the proposed facilities is not prohibited by Paiute's existing tariff and that it has sufficient capacity to provide the proposed deliveries without any detriment or disadvantage to any of Paiute's existing customers.

Comment date: December 28, 1992, in accordance with Standard Paragraph G at the end of this notice.

Texas Eastern Transmission Corporation

[Docket No. CP93–60–000]

November 13, 1992.

Take notice that on November 10, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–60–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point under an existing service agreement with Panhandle Trading Company (PTC), a marketer, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to install a new delivery point to enable natural gas deliveries for the account of PTC, pursuant to Rate Schedule IT–1, to be delivered to Louisiana Intrastate Gas Corporation (LIG), an intrastate pipeline company. Texas Eastern states than an 8-inch hot tap would be constructed on Texas Eastern's 36-inch Line No. 40 at milepost 127.15 in Iberville Parish, Louisiana, where LIG's 18-inch pipeline and Texas Eastern's line intersect. Texas Eastern further states that the peak and average day deliveries at the new location would be 50,000 Dekatherms per day. Texas Eastern also states that LIG would reimburse it for the cost of the facilities, estimated to be approximately $44,000.

Comment date: December 28, 1992, in accordance with Standard Paragraph G at the end of this notice.

10. Indicated Shippers v. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP93–62–000]

November 13, 1992.

Take notice that on November 10, 1992, Anadarko Petroleum Corp. (Anadarko), 17001 Northchase Drive, Houston, Texas 77252, ARCO Oil & Gas Company & ARCO Natural Gas Marketing Inc. (ARCO), 1601 Bryan, room 46–508, Dallas, Texas 75201, and Marathon Oil Company (Marathon), 5555 San Felipe Street, Houston, Texas 77056, collectively referred to as Indicated Shippers, filed in Docket No. CP93–62–000 an emergency motion for technical conference, for leave to supplement its protest in the Order No. 636 restructuring proceeding in Docket No. RS92–3–000 involving Arkla Energy Resources, a Division of Arkla, Inc. (AER), and a request for hearing based on newly discovered evidence,[2] all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Indicated Shippers alleges that AER was embarking on a program to transfer to selected entities a number of its gathering systems during the restructuring process under Order Nos. 636 and 636–A. It is indicated although there is nothing inherently wrong in the *bona fide* sale of gathering facilities, in

[2] The motion is being construed as a complaint against AER.

the context of AER's restructuring proceeding, there are material issues relating to compliance with Order Nos. 636 and 636–A. Indicated Shippers lists among those issues the impact on cost of service and therefore rates, the availability of unbundled capacity for firm and interruptible service through the facilities and the impact on the allocation and assignment of receipt point capacity. Indicated Shippers states that inquiries were made of AER at the public conference at the FERC on August 26, 1992, as well as other forma and AER's answers gave little indication of what was to come. In addition, it is alleged that there was no material information related to this matter provided in the Order No. 636 compliance filing or in the contemporaneously filed section 4 filing case.

Indicated Shippers states that by letter received on October 21, 1992, from Bayou South Gathering Company, L.C. (Bayou) and effective November 1, 1992, a producer utilizing certain of AER's gathering systems was given the Hobson's choice of either shutting in production or selling gas to the putative new owner of the gathering system at a take-it-or-leave-it price less a take-it-or-leave-it gathering rate. It is also alleged that if the producer is selling gas to AER, there would be no price change since it appears that AER has negotiated a special deal for itself with the new owners. Indicated Shippers also states that the situation would be even more serious if it turns out that the new owner is a seller of gas to AER or to an affiliate of AER.

Indicated Shippers states that if the correspondence is true, AER may at the minimum have failed to disclose material facts that relate to both its pending rate case and to its restructuring proposal. To clear up this matter, Indicated Shippers requests the Commission staff to:

(1) Convene a technical conference and to direct AER to provide all relevant information under oath with the full rights to participate or such other action as the Commission deems most appropriate;

(2) Make the record of the technical conference part of the record in the restructuring docket and take such action as the Commission deems appropriate; and

(3) Grant leave for this document to be included as a supplement to the protest of Indicated Shippers in this docket and provide an opportunity for further supplementation of the protest following conference.

Indicated Shippers also lists issues of possible violations of law to be examined at the technical conference:

(1) Unauthorized abandonment of certificated facilities;

(2) Unauthorized abandonment of jurisdictional facilities;

(3) Failure of Bayou or any other similar entity to obtain a certificate;

(4) Evasion of the section 5 unbundling requirement;

(5) Undue discrimination;

(6) Undue preference due to a possible affiliation between AER and Bayou and any other similar entity;

(7) Violations of AER's certificates and violations of sections 311(a)(1) and 504(a)(2) of the Natural Gas Policy Act of 1978 by violating part 284 of the Commission's Regulations.

Indicated Shippers also point out that even assuming that the facilities and services in question are not within the Commission's jurisdiction, and assuming that the person or persons who have acquired or will acquire control are not affiliates of AER in fact or in law, the fundamental issue here is whether AER has voluntarily placed itself in a position where it cannot comply with Order Nos. 636 and 636–A. It is also noted that if the claims in the correspondence are true, then AER has so arranged matters that it alone can get unbundled transmission and/or gathering service to support its merchant service on some segments of its former system.

Comment date: December 4, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Texas Gas Transmission Corporation

[Docket No. CP93–52–000]

November 13, 1992.

Take notice that on November 5, 1992, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP93–52–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon partially the sale of natural gas to the Citizens Gas & Coke Utility (Citizens), a firm sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to abandon the sale of 25,000 MMBtu equivalent of natural gas per day to Citizens by converting firm sales to firm transportation service. Texas Gas proposes the abandonment in response to a request by Citizens. It is stated that Texas Gas requests an effective date for the abandonment of November 1, 1992. It is asserted that no customers of Texas Gas would be affected by the proposed abandonment, since the sales volumes are proposed to be replaced by equivalent transportation volumes.

No facilities are proposed to be abandoned.

Comment date: November 27, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor,

the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .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 the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-28234 Filed 11-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-4-000]

Costanera Power Corp.; Filing

November 13, 1992.

Take notice that on November 9, 1992, Costanera Power Corp. (CPC) tendered for filing its application for a determination by the Commission, pursuant to the Public Utility Holding Company Act of 1935, as amended by title VII of Public Law 102-486, dated October 24, 1992, that it is an exempt wholesale generator (EWG), based on its interest in Central Costanera S.A., an Argentine electric generating company that owns and operates a 1260 megawatt (gross) generating facility in Buenos Aires, Argentina. To the extent necessary and appropriate, CPC requests an EWG determination for its affiliates Costanera S.A. and Argelec S.A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 27, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-28230 Filed 11-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-183-003]

Florida Power Corporation; Order Staying Amnesty Deadline for the Filing of Jurisdictional Agreements Involving Contributions in Aid of Construction and Granting Rehearing for Purpose of Further Consideration

Issued November 16, 1992.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic

Background

On October 13, 1992, the Commission issued a supplemental order in the above-captioned proceeding announcing an additional amnesty period for the filing of jurisdictional contracts providing for contributions in aid of construction (CIAC payments). *Florida Power Corporation*, 61 FERC ¶ 61,063 (1992). The October 13 order, issued on the Commission's own initiative, followed earlier orders finding that certain interconnection agreements filed by Florida Power Corporation (Florida Power) and providing for lump-sum CIAC payments are jurisdictional. *Florida Power Corporation*, 58 FERC ¶ 61,161, *reh'g denied*, 60 FERC ¶ 61,003 (1992). The earlier orders directed Florida Power to make refunds for its failure to file three of the interconnection agreements before the commencement of jurisdictional service under the agreements, in violation of the prior notice and filing requirement of the Federal Power Act (FPA). The Commission ordered refunds pursuant to its policy articulated in *Central Maine Power Company*, 56 FERC ¶ 61,200 *reh'g denied*, 57 FERC ¶ 61,083 (1991) (*Central Maine*).

The October 13 order specified that public utilities have 30 additional days, calculated from the date of publication of the order in the **Federal Register**, in which to file with the Commission any now-unfiled CIAC agreements under which jurisdictional service currently is, or has been, provided. The October 13 order was published in the **Federal Register** on October 19, 1992. 57 FR 47,628 (1992). Accordingly, the 30-day amnesty window for the filing of jurisdictional agreements involving CIAC payments is scheduled to expire on November 18, 1992.

On November 10, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) and the Edison Electric Institute (EEI) filed separate pleadings in this docket. Con Edison and EEI each seek leave to intervene out-of-time in this proceeding, and rehearing of the October 13 order. Con Edison and EEI also seek to "stay" the effectiveness of the October 13 order.

In support of their requests for prompt Commission action, both entities note the November 18 close of the amnesty window for CIAC agreements. They explain that considerable uncertainty remains throughout the electric utility industry concerning the obligation of public utilities to file jurisdictional rates and contracts for Commission consideration under the FPA and under the *Central Maine* policy (as applied in a number of recent cases). Con Edison and EEI raise concerns about the limited time available in which to search files for potentially thousands of current and expired agreements that may involve CIAC payments and that may be jurisdictional.

EEI seeks an opportunity for its members to address the Commission directly to obtain greater clarity regarding filing obligations, and enumerates a number of issues which are of concern to its members. Questions raised include: Whether utilities must search files for agreements dating back to the passage of the FPA; whether the *Central Maine* policy applies to agreements which had already terminated before issuance of the *Central Maine* decision; the scope of transactions considered to be jurisdictional; and the extent to which utilities may continue to rely on past advice from Commission Staff. EEI submits that a formal process, in which affected parties may present their views and the Commission may respond before files are searched and documents retrieved, is necessary in order to provide a reasonable and efficient approach to addressing the concerns raised by *Central Maine* and related orders.

Discussion

In order to have sufficient time to consider the matters raised by EEI and Con Edison, the Commission will defer the close of the amnesty period articulated in the October 13 order until 30 days after the Commission issues a further order addressing the merits of Con Edison's and EEI's filings. In other words, we take no action now on Con Edison's and EEI's motions for late intervention and their request that we engage in a comprehensive and orderly review of Commission filing requirements under the FPA, as clarified in *Central Maine* and subsequent orders. However, we intend to act on their filings as soon as possible.

This order is intended to stay the requirement that public utilities file with the Commission any now-unfiled jurisdictional CIAC agreements without the risk of *Central Maine*-type refunds. Nothing in this order is intended to stay the effectiveness of the *Central Maine* policy or any of the *Central Maine* line of cases or otherwise relieve utilities of their obligation to file jurisdictional rates and contracts at least 60 days in advance of the commencement of service.

We will also grant rehearing for purpose of further consideration.

The Commission Orders

(A) The close of the amnesty period articulated in the October 13 order is hereby extended as discussed in the body of this order.

(B) Con Edison's and EEI's rehearings are hereby granted for the purpose of further consideration.

(C) The Secretary shall promptly publish a copy of this order in the **Federal Register.**

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-28229 Filed 11-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR93-3-000]

The Montana Power Co.; Petition for Rate Approval

November 13, 1992.

Take notice that on October 30, 1992, The Montana Power Co. (Montana Power) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum monthly demand charge of $13.1648 per MMBtu and a maximum commodity charge of $0.1015 per MMBtu for firm offpeak transportation and a maximum rate of $0.5515 per MMBtu for interruptible transportation plus an allowance of 3.15 percent for fuel for services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Montana Power states that it is a local distribution company as defined by the NGPA doing business in the State of Montana. It provides interruptible transportation to offsystem customers under a blanket transportation certificate issued in Docket No. CP91-312-000. Montana Power states that it presently offers interruptible transportation under that blanket certificate at a maximum rate of $0.7377 per MMBtu. Montana Power is proposing to offer a new firm service subject to interruption 14 days per year and requests an effective date of November 1, 1992, for this service.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before November 30, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-28232 Filed 11-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR93-4-000]

Transok, Inc.; Petition for Rate Approval

November 13, 1992.

Take notice that on October 30, 1992, Transok, Inc. filed pursuant to section 284.123(b)(2) of the Commission's regulations, petition for rate approval requesting that the Commission approve as fair and equitable a monthly demand charge of $3.0004 per MMBtu and a maximum commodity charge of $0.1145 per MMBtu for firm transportation and a maximum rate of $0.2605 per MMBtu for interruptible transportation plus an allowance of 2.0% for fuel use for services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Transok states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates two intrastate pipeline systems in the State of Oklahoma and one intrastate system in the State of Louisiana. The larger of the two systems in Oklahoma is referred to as the "Traditional System" and is the subject of this petition. Transok states the proposed rates do not include costs for storage service that Transok proposes in its Petition for Rate Approval of Market Based Rates for Storage Services filed in Docket No. PR93-2-000. Transok proposes an effective date of November 1, 1992, and requests that rates remain in effect through the earlier of October 31, 1997, or the effective date of a subsequent petition for rate approval.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before November 30, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-28233 Filed 11-19-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-120-NG]

The Brooklyn Union Gas Co.; Order Granting Blanket Authorization to Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Brooklyn Union Gas Company authorization to import up to 50 Bcf of Canadian natural gas over a two-year

term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. the docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC November 13, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–28276 Filed 11–19–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–104–NG]

Great Falls Gas Co.; Order Granting Long-Term Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Great Falls Gas Company authorization to import from Canada up to 5,000 Mcf per day of natural gas on a firm basis and an additional 5,000 Mcf of natural gas on an interruptible basis beginning on the date of first delivery through October 31, 2007.

A copy of this order is available for inspection and copying in the Office of Fuels Program Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 13, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–28275 Filed 11–19–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–110–NG]

Wes Cana Energy Marketing (U.S.) Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and To Canada, Mexico, and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wes Cana Energy Marketing (U.S.) Inc. authorization to import or export up to 200 Bcf of natural gas, including liquefied natural gas, from and to Canada, Mexico, and other countries over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 16, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–28277 Filed 11–19–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Final Filing Deadline in Special Refund Proceeding No. KEF–0095 Involving Murphy Oil Corp.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of setting final deadline for filing Applications for Refund in Special Refund Proceeding KEF–0095, Murphy Oil Corporation.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) has set the final deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and Murphy Oil Corporation. Special Refund Proceeding No. KEF–0095. The previous deadline was March 31, 1989. The final deadline is December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2383.

SUPPLEMENTARY INFORMATION: On September 19, 1988, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and the Murphy Oil Corporation. See Murphy Oil Corporation, 17 DOE ¶ 85,782 (1988), 53 FR 186 (September 26, 1988). That Decision established March 31, 1989, as the filing deadline for the submission of refund applications for direct restitution by purchasers of Murphy's refined petroleum products. 17 DOE at 89,476,53 FR 37340.

We commenced accepting refund applications in the Murphy refund proceeding on September 18, 1988, more than four years ago. While the deadline for such submission was March 31, 1989, we previously accepted applications after the deadline if the applicant could demonstrate good cause for its lateness. However, we have now concluded that eligible applicants have been provided with more than ample time to file. Therefore, we will not accept applications that are postmarked after December 31, 1992. All Applications for Refund from the Murphy Consent Order fund postmarked after the final filing date of December 31, 1992, are subject to summary dismissal. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: November 16, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–28279 Filed 11–19–92; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Parker-Davis Project Power Marketing and Allocation Criteria; Corrections

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of corrections.

SUMMARY: In **Federal Register** Volume 49 FR 50582, December 28, 1984, make the following correction:

On page 50584: In the third column, fourth paragraph, line three, change "2007" to "2008".

In **Federal Register** Volume 52 FR 28333, July 29, 1987, make the following correction:

On page 28336: In the second column, last line, change "2007" to "2008".

SUPPLEMENTARY INFORMATION: On December 28, 1984, the Western Area Power Administration (Western) published the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Marketing Criteria), at 49 FR 50582. The Criteria provided, among other things, for the long-term sale of Parker-Davis Project power. On July 29, 1987, at 52 FR 28333, Western published

the Final Allocation Criteria and Allocations of Capacity and Associated Energy From the Parker-Davis Project (Allocation Criteria). The Allocation Criteria provided for, among other things, the amounts of capacity and associated energy Western was allocating to the Parker-Davis Project power customers.

It was Western's intention at the time it published the Marketing and Allocation Criteria that the new Parker-Davis Project power contracts would be effective for 20 years. The existing contracts were to be extended until the new contracts became effective. The new contracts were to become effective when operational integration with the Boulder City Area was implemented, which was expected to occur in 1987. Operational integration did not, however, occur until 1988. Therefore, all of the new long-term Parker-Davis Project power contracts provided that they would remain effective until September 30, 2008.

It was recently discovered that the notices of the Marketing and Allocation Criteria state that the contracts will terminate in 2007. This notice corrects that error. The long-term Parker-Davis Project power contracts will terminate September 30, 2008.

Issued at Golden, Colorado, November 5, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-28278 Filed 11-19-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4536-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 02, 1992 through November 06, 1992 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D1-AFS-G61009-AR

Rating EC2, Mount Magazine State Park, Construction, Operation and Maintenance, Special Use Permit, Ozark National Forest, Logan County, AR.

Summary: EPA had environmental concerns with the proposed action. Additional information was requested on the following topics: The mitigation measures to be implemented; the environmental monitoring anticipated; socioeconomic impacts from the increased visitation; the management and maintenance of sensitive vegetative communities; a description of the probable impacts to the Mountain's springs; public review of the resource management plan yet to be developed and a more thorough discussion of the purpose and need for the proposed action.

Final EISs

ERP No. F-AFS-L65167-AK

Alaska Pulp Corporation (APC) Long-Term Timber Sale Contract, Implementation, Southeast Chichagof Project Area, Tongass National Forest, AK.

Summary: EPA had no objections to the preferred alternative as described in the final EIS.

ERP No. F-BLM-J02024-UT

Castlegate Coalbed Methane Gas Production Project, Construction, Operation, Maintenance and Abandonment, Approval, Drilling Control, Temporary Use, Federal Antiquities, COE Section 404 and DOT Federal Pipeline Safety and Operations Permits and Right-of-Way Grants, Carbon County, UT.

Summary: EPA continued to have environmental concerns with the final EIS. As discussed in EPA's comments on the DEIS the primary concern with the project continues to be the potentially adverse effects to surface and groundwater resources. The alternative of injecting all produced water has not been fully analyzed and selection of mitigation measures should be included in the ROD.

ERP No. F-FAA-C51012-NY

Stewart International Airport Properties Improvement, Funding and Plan Approval, Orange County, NJ.

Summary: EPA believed the preferred alternative is the least environmentally damaging alternative. EPA asked for additional information regarding wetlands mitigation, oil/water separators and noise analysis.

Dated: November 17, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-28272 Filed 11-19-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4536-2]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federa Activities, General Information (202) 260-5076 OR (202) 260-5075. Availability of Environmental Impact Statements Filed November 09, 1992 Through November 13, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920445, DRAFT SUPPLEMENT, COE, PR, Portugues and Bucana Rivers Flood Control Project, Rio Portugues Dam and Reservoir Construction, Updated Information concerning Project Modifications, Municipality of Ponce, PR, Due: January 04, 1993, Contact: William L. Porter (904) 232-2259.

EIS No. 920446, DRAFT EIS, FHW, MD, East-West Boulevard Corridor Improvements, Veterans Highway to MD-2 Funding and Section 404 Permit, Anne Arundel County, MD, Due: January 11, 1993, Contact: David Lawton (410) 962-4010.

EIS No. 920447, DRAFT EIS, DOE, AK, Healy 50 Megawatt-Electric Coal Fired Power Plant Construction and Operation, Clean Coal Technologies Demonstration, Funding, NPDES and Section 404 Permits, Borough of Denali, AK, Due: January 05, 1993, Contact: Dr. Earl W. Evans (412) 892-5709.

EIS No. 920448, FINAL EIS, FHW, PA, Morgantown Connector Construction, Pennsylvania Turnpike to I-176, Funding, Berks County, PA, Due: January 08, 1993, Contact: Manual A. Marks (717) 782-2222.

EIS No. 920449, DRAFT EIS, FAA, NJ, Expanded East Coast Plan, Changes in Aircraft Flight Patterns over the State of New Jersey, Implementation, NJ, Due: January 22, 1993, Contact: Charles R. Reavis (202) 267-9367.

EIS No. 920450, DRAFT EIS, AFS, OR, ELK Wild and Scenic River Management Plan, Implementation, Elk River, Siskiyou National Forest, Power Ranger District, Curry County, OR, Due: February 26, 1993, Contact: Joel King (503) 479-5301.

EIS No. 920451, FINAL EIS, DOE, WA, Washington Water Power and British Columbia Hydro 230kV Transmission Interconnection, Construction, Operation and Maintenance, Presidential Permit, Pend Oreille, Spokane, Stevens and Lincoln Counties, WA, Due: December 21, 1992, Contact: Anthony J. Como (202) 586-5935.

EIS No. 920452, DRAFT EIS, FTA, MA, South Boston Piers/Fort Point

Channel Transit Project, Boylston Station to the World Trade Center, Funding, MA, Due: January 04, 1993, Contact: Mary Beth Mello (617) 494–2444.

EIS No. 920453, DRAFT SUPPLEMENT, FHW, WV, VA, Appalachian Corridor Construction, Elkins, WV to I–81 in VA, Updated Information concerning Legislative, Procedural and Project Surrounding Changes, Funding, Possible Section 10, 404 and CGD Permits and Right-of-Way Acquisition, several Counties, WV and VA, Due: January 25, 1993, Contact: Billy R. Higginbotham (304) 558–3093.

Amended Notices

EIS No. 920406, DRAFT EIS, AFS, AK, Central Prince of Wales Ketchikan Pulp Long-Term Timber Sale, Implementation, Tongass National Forest, Prince of Wales Island, AK, Due: December 14, 1992, Contact: David Arrasmith (907) 225–3101.

EIS No. 920440, REVISED DRAFT EIS, COE, NH, Nashua-Hudson Circumferential Highway Improvements, Approval, Towns of Hudson, Litchfield, Merrimack and Nashua, Hillsborough County, NH, Due: January 11, 1993, Contact: Col. Brink Miller (617) 647–8336. Published FR–11–13–92—Review period extended.

Dated: November 17, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–28271 Filed 11–19–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4536–4]

Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) on Effluent Discharges From Oil and Gas Operations to Territorial Waters of the United States in the Central and Western Gulf of Mexico

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed issuance of a new source National Pollutant Discharge Elimination System (NPDES) general permit for effluent discharges from oil and gas operations in the central and western Gulf of Mexico.

PURPOSE: EPA has determined that the issuance of the NPDES general permit represents a major Federal action that may significantly affect the quality of the human environment. Therefore, a SDEIS will be prepared to assess the potential environmental consequences of EPA's permit action.

SUMMARY: The Minerals Management Service (MMS), Gulf of Mexico Outer Continental Shelf (OCS) Region, and the EPA, Region 6, are cooperating agencies pursuant to the Council on Environmental Quality's (CEQ) regulations on the MMS's EIS for oil and gas lease sales in the central and western Gulf of Mexico (areas #142 and #143). The EPA's proposal to issue a NPDES general permit for oil and gas operations in the central and western Gulf will be evaluated in a SEIS which adopts those portions of the MMS's EIS meeting the standards for adequacy under the CEQ's regulations.

ALTERNATIVES: The EPA, Region 6, may issue or deny the NPDES general permit.

FOR FURTHER INFORMATION OR TO BE PLACED ON THE SEIS MAILING LIST: Contact Mr. Norm Thomas, U.S. EPA (6E–F), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone: 214–655–2260.

ESTIMATED RELEASE DATE OF SUPPLEMENTAL DRAFT EIS: January, 1993.

RESPONSIBLE OFFICIAL: B. J. Wynne, Regional Administrator

Dated: November 12, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–28273 Filed 11–19–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4536–9]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; In re H. Brown Company, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the remedial action at the H. Brown Superfund Site Walker, Kent County, Michigan. The agreement was proposed by EPA Region V on July 8, 1992. Subject to review by the public pursuant to this Notice, the agreement was approved by the United States Department of Justice on November 16, 1992.

DATES: Comments must be provided on or before December 21, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In Re H. Brown Superfund Site in Walker, Michigan.

FOR FURTHER INFORMATION CONTACT: Ceil Price, U.S. Environmental Protection Agency, Office of Enforcement, Superfund Division, 401 M Street, SW., Washington, DC 20460 ((202) 260–3840).

SUPPLEMENTARY INFORMATION: The 139 signatories will pay a total of $642,814 in settlement payments for the remediation under the agreement, subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. This amount will reimburse EPA for a portion of its past response costs at the H. Brown Superfund Site.

EPA is entering into this agreement under the authority of section 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties for the remediation at the H. Brown Superfund Site who are responsible for less than 0.1% percent of the total volume of waste sent to the site between 1962 and 1981, The proposed settlement reflects, and was agreed to based on, conditions as known to the parties as of July 8, 1992. Settling Parties will be required to pay their volumetric share of the government's past response costs and the estimated future response costs for the remediation at the Site. Settling parties will also be required to pay a settlement premium of 1.0 (i.e., a 2.0 multiplier) of the estimated future response costs for the remediation, based on the potential for cost overruns in implementing the remedy, based on the fact the remedy was not chosen at the time the settlement was entered into, and based on the potential for remedy failure. In exchange, Settling Parties will receive a complete release from further civil or administrative liabilities for the remediation at the Site. The settlement, as it is now proposed, includes several minor adjustments to the identity of settling parties and the volumetric shares of settling parties, which were made after the proposal was sent to all eligible parties on July 8, 1992, in response to additional information provided by those parties. In addition, the settlement makes certain allowances for those parties that demonstrated an inability to pay defense.

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement or additional background information relating to the settlement is available for review and may be obtained in person or by mail from Ceil Price, U.S. Environmental Protection Agency, Office of Enforcement, Superfund Division, 401 M Street, SW., Washington, DC 20460, or Mary Kay Faryan, U.S. Environmental Protection Agency, Office of Regional Counsel, CS–3T, 77 West Jackson Boulevard, Chicago, Illinois, 60614.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

Ceil Price,

Attorney Advisor, Office of Enforcement.

[FR Doc. 92–28261 Filed 11–19–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Proposed Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 12, 1992.

The Federal Communications Commission has submitted the following proposed information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3504(h)).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814. A copy of any comments should also be sent to the Federal Communications Commission, Information and Records Management Branch, room 416, 1919 M Street, NW., Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0057.

Title: Application for Equipment Authorization (Further Notice of Proposed Rulemaking, Gen. Docket No. 90–413).

Form Number: FCC Form 731.

Action: Proposed revision.

Response: On occasion reporting.

Estimated Annual Burden: 8,900 responses; 24 hours average burden per response; 213,600 hours total annual burden.

Needs and Uses: The Further Notice of Proposed Rulemaking (FNPRM) proposes to amend parts 2 and 15 of the Rules to reduce the number of certification applications that a manufacturer must submit for its line of modular computer systems. The rules would require that all central processing unit (CPU) boards and power supplies designed to be used in personal computers and marketed to the general public to be authorized under its certification procedure. Under this proposal, manufacturers of modular computer systems would be allowed to interchange CPU boards and power supplies within computer systems without having to obtain a separate grant of certification for every combination of components provided: The CPU boards and power supplies are separately certified; the CPU boards and power supplies are used in computer systems for which the manufacturer has obtained certification; and, the manufacturer verifies that the resulting combinations continue to comply with the standards. The party manufacturing the computer systems would continue to be responsible for ensuring that the resulting systems comply with the standards. This proposed revision may affect 47 CFR parts 2 and 15; however, the FCC Form 731 will remain unchanged.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–28180 Filed 11–19–92; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 12, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0062.

Title: Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s).

Form Number: FCC Form 330.

Action: Revision of a currently approved collection.

Respondents: Non-profit institutions.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 700 responses; 6.83 hours average burden per response; 4,781 hours total annual burden.

Needs and Uses: FCC Form is used by licensees when applying for authority to construct or make changes in an Instructional Television Fixed or response station and low power relay station. On 5/10/90, the Commission adopted a Policy Regarding Character Qualifications in Broadcast Licensing. This policy statement modified policies concerning adjudicated or pending adjudications of relevant misconduct by broadcast applicants. On 8/1/91, the Commission adopted a Stay in the Policy Regarding Character Qualifications in Broadcast Licensing. The Commission stayed the effectiveness of 47 CFR 1.65(c) and we are therefore eliminating the portion of the question referring to § 1.65(c). In addition, the Commission has revised the FCC Form 330 to clarify and update the requirements of questions and to eliminate redundant information. The data is used by FCC staff to determine if the applicant meets basic statutory requirements and is qualified to become a licensee of the Commission.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–2818 Filed 11–19–92; 8:45 am]

BILLING CODE 6712–01–M

Agency Information Collection Activities Under OMB Review

November 12, 1992.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1989, (44 U.S.C. 3507). For further information contact Judy Boley, Federal Communications Commission, (202) 632–7513.

OMB No.: 3060–0010.

Title: Ownership Report.
Form No.: FCC 323.

A revised report FCC 323 has been approved for use through 6/30/95. The February 1990 edition with the previous expiration date of 6/30/92 will remain in use until revised forms are available.

OMB No.: 3060–0027.
Title: Application for Construction Permit for Commercial Broadcast Station.
Form No.: FCC 301.

A revised application form FCC 301 has been approved for use through 6/30/95. The current edition of the form is dated August 1992. All previous editions are usable with the new multiple ownership supplemental exhibit.

OMB No.: 3060–0031.
Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License.
Form No.: FCC 314.

A revised application form FCC 314 has been approved for use through 6/30/95. The current edition of the form is dated August 1991. All previous editions are obsolete.

OMB No.: 3060–0032.
Title: Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.
Form No.: FCC 315.

A revised application form FCC 315 has been approved for use through 6/30/95. The current edition of the form is dated August 1992. All previous editions are obsolete.

OMB No.: 3060–0046.
Title: Application for New or Modified Common Carrier Radio Station Authorization Under part 22.
Form No.: FCC 401.

A revised application form FCC 401 has been approved for use through 1/31/93. The December 1990 edition with the previous edition of 1/31/93 will remain in use.

OMB No.: 3060–0057.
Title: Application for Equipment Authorization.
Form No.: FCC 731.

A revised application form FCC 731 has been approved for use through 4/30/95. The current edition of the form is dated October 1992.

OMB No.: 3060–0355
Title: Rate of Return Report.
Form No.: FCC 492.

A revised report form FCC 492 has been approved for use through 4/30/95. The current edition of the form is dated August 1992.

OMB No.: 3060–0506.
Title: Application for FM Broadcast Station License.
Form No.: FCC 302–FM.

A new application form FCC 302–FM has been approved for use through 1/31/94. The current edition of the form is August 1992.

OMB No.: 3060–0507.
Title: EBS Closed Circuit Test (CCT) Survey.
Form No.: FCC 716.

A new survey form FCC 716 has been approved for use through 8/31/95. A Public Notice will be issued containing information on availability and implementation date.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92–28182 Filed 11–19–92; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

ACNB Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 1992.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. ACNB Corporation, Gettysburg, Pennsylvania; to engage *de novo* through the parent company, in community development activities by making an equity investment, as the sole limited partner with two other general partners, in Gettysburg Scattered Site Associates, Gettysburg, Pennsylvania, a Pennsylvania limited partnership whose purpose is to develop, manage and operate a residential low-income housing project in the Adams County, Pennsylvania area, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capital Directions, Inc., Mason, Michigan; to engage *de novo* through its subsidiary, Monex Investment Company, Inc., Mason, Michigan, in full service brokerage activities throughout the State of Michigan pursuant to § 225.25(b)(15)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1992.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 92-28220 Filed 11-19-92; 8:45 am]
BILLING CODE 6210-01-F

FCNB Corp, 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 December 14, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCNB Corp, Frederick, Maryland; to acquire 14.9 percent of the voting shares of HomeTown Bancorp, Inc., Myersville, Maryland, and thereby indirectly acquire Myersville Bank, Myersville, Maryland.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Eva Bancshares, Inc., Eva, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Eva, Eva, Alabama.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Guaranty Financial, M.H.C., Milwaukee, Wisconsin; to become a bank holding company by acquiring 51 percent of the voting shares of Guaranty Bank, S.S.B., Milwaukee, Wisconsin.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Lucan Bancshares, Inc., Lucan, Minnesota; to become a bank holding company by acquiring at least 95.4 percent of the voting shares of State Bank of Lucan, Lucan, Minnesota.

Board of Governors of the Federal Reserve System, November 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-28222 Filed 11-19-92; 8:45 am]

BILLING CODE 6210-01-F

Jackson Thomas Stephens; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y-(12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 10, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Jackson Thomas Stephens, Little Rock, Arkansas; to retain 11.97 percent of the voting shares of Worthen Banking Corporation, Little Rock, Arkansas, and thereby indirectly acquire Worthen National Bank of Batesville, Batesville, Arkansas; Worthen National Bank of Camden, Camden, Arkansas; Worthen National Bank of Conway, Conway, Arkansas; Worthen National Bank of Northwest Arkansas, Springdale, Arkansas; Worthen National Bank of Harrison, Harrison, Arkansas; Worthen National Bank of Hot Springs, Hot Springs, Arkansas; Worthen National Bank of Arkansas, Little Rock, Arkansas; Worthen National Bank of Newark, Newark, Arkansas; Worthen National Bank of Pine Bluff, Pine Bluff, Arkansas; and Worthen National Bank of Russellville, Russellville, Arkansas.

Board of Governors of the Federal Reserve System, November 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-28221 Filed 11-19-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

[Federal Travel Reg., GSA Bulletin FTR 7, Supplement 1]

Reimbursement for Actual Subsistence Expenses in Presidentially Declared Florida Disaster Area

November 17, 1992.

To: Heads of Federal agencies.

Subject: Reimbursement for actual subsistence expenses in Presidentially declared Florida disaster area.

1. *Purpose.* This supplement informs agencies of the extension for an additional 90-day period of the special actual subsistence expense ceiling described in GSA Bulletin FTR 7 (57 FR 44751, September 29, 1992) for official travel to Collier County, Florida, designated a Presidentially declared disaster area as a result of Hurricane Andrew.

2. *Explanation of change.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the official request of the Director of the Federal Emergency Management Agency (FEMA), has extended for an additional 90 days the period during which agencies may approve, in accordance with paragraph 3 of GSA Bulletin FTR 7, actual and necessary subsistence expense reimbursement not to exceed 300 percent of the applicable maximum locality per diem rate for official travel to the Presidentially declared disaster area of Collier County, Florida named in paragraph 4 of GSA Bulletin FTR 7. For Collier County, Florida the extended period covers October 23, 1992 through January 20, 1993. Since the FEMA request did not cover Louisiana, this supplement does not extend the higher subsistence rate for the Louisiana parish named in GSA Bulletin FTR 7.

3. *Expiration date.* This supplement expires on April 30, 1993.

4. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS or commercial 703–305–5253.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 92-28328 Filed 11-19-92; 8:45 am]

BILLING CODE 6820-24-M

[Federal Travel Reg., GSA Bulletin FTR 6, Supplement 2]

Reimbursement for Actual Subsistence Expenses in Presidentially Declared Disaster Areas of Florida

November 17, 1992

To: Heads of Federal agencies.

Subject: Reimbursement for actual subsistence expenses in Presidentially declared disaster areas of Florida.

1. *Purpose.* This supplement informs agencies of the extension for an additional 90-day period of the special actual subsistence expense ceiling described in GSA Bulletin FTR 6 (57 FR 40466, Sept. 3, 1992), as extended by

Supplement 1 (57 FR 44751, Sept. 29, 1992) for official travel to certain Florida localities designated as Presidentially declared disaster areas as a result of Hurricane Andrew.

2. *Explanation of change.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the official request of the Director of the Federal Emergency Management Agency (FEMA), has extended for an additional 90 days the period during which agencies may approve, in accordance with paragraph 3 of GSA Bulletin FTR 6, actual and necessary subsistence expense reimbursement not to exceed 300 percent of the applicable maximum locality per diem rate for official travel to the Presidentially declared disaster areas in Florida named in paragraph 4 of GSA Bulletin FTR 6. For Florida counties named in GSA Bulletin FTR 6 the extended period covers October 23, 1992 through January 20, 1993. Since the FEMA request did not cover Louisiana, this supplement does not extend the higher subsistence rate for the Louisiana parishes named in GSA Bulletin FTR 6.

3 *Expiration date.* This supplement expires on April 30, 1993.

4. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS or commercial 703–305–5253.

By delegation of the Commissioner, Federal Supply Service

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 92–28329 Filed 11–19–92; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Implementation of Provisions of the Ryan White CARE Act Regarding Emergency Response Employees

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice and request for comments.

SUMMARY: The Ryan White Comprehensive AIDS Resources Emergency Act (Pub. L. 101–381) includes provisions regarding emergency response employees (EREs). This notice sets forth the proposed list of infectious diseases to which EREs can be exposed; proposed guidelines describing circumstances under which such exposure can occur and for determining whether such exposure did occur; and steps to implement the law. This legislation contains significant implications for state and local health departments and medical facilities. Accordingly, CDC solicits comments on the draft list, the guidelines, and the implementation steps.

DATES: Comments must be received by January 19, 1992.

ADDRESSES: Comments on the content of this Notice should be in writing and addressed to Centers for Disease Control and Prevention, Attention: ERE Notice, 1600 Clifton Road NE., (Mail Stop ERE), Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT: James D. Bloom, (404) 639–1709.

SUPPLEMENTARY INFORMATION: The Ryan White Comprehensive AIDS Resources Emergency Act amended the Public Health Service Act (PHS Act) to include provisions regarding emergency response employees (EREs). (See sections 2681–2690 of the PHS Act, 42 U.S.C. 300ff–81 to 300ff–90. References are to the PHS Act.)

Section 2681 requires the development and publication of a list of infectious diseases to which EREs can be exposed and guidelines describing circumstances of possible exposure and for determining whether such exposure occurred.

Sections 2682 through 2685 specify that EREs must be notified of exposure to any of the airborne infectious diseases on the list and may request notification of exposure to other listed diseases. Under section 2686, every state public health officer must designate an official or officer of every employer of EREs in the state who will be responsible for notifying EREs of exposure. This official or officer is referred to as the Designated Officer. The medical facility that received the patient to which the ERE may have been exposed is responsible for notifying the Designated Officer.

Section 2687 limits the time period for which medical facilities must maintain medical information on patients and respond to the request under section 2683.

Section 2688 provides that these provisions may not be construed to authorize civil actions or penalties against a medical facility or Designated Officer; to require a medical facility to test patients for any infectious disease; to authorize or require the disclosure of identifying information; nor to authorize the failure to respond or the denial of services to victims of emergencies.

Section 2689 requires the Secretary of Health and Human Services (the Secretary) to establish an administrative process through which the Department can be notified of alleged violations of the provisions and, as appropriate, investigate such alleged violations. The Secretary may seek injunctive relief for violations of these provisions. The requirements of the notification process take effect 30 days after the publication of the list and guidelines specified in section 2681.

Under section 2690, the provisions of the Act and the notification system do not apply in a state that has certified to the Secretary that its notification laws are in substantial compliance with the Act.

Authority for developing the list of infectious diseases and guidelines under section 2681 was delegated to CDC on June 4, 1991, (56 FR 25438). On June 2, 1992, CDC was delegated authority for implementing sections 2682–2690 of the Act (57 FR 29326).

To aid in the implementation of these provisions, CDC solicits information and comments in response to the following questions:

- What procedural steps can be taken to protect the confidentiality of patient information?
- Can the ERE notification process be carried out within existing state confidentiality laws?
- What will be the resource implications in carrying out this legislation?
- What are the likely benefits to be gained in implementing these requirements?
- Which states have notification laws that, under Section 2690, could be viewed as being in substantial compliance with the Act?

This notice includes proposed definitions (Part I), the proposed list of potentially life-threatening diseases under Section 2681 (Part II), the proposed guidelines required under Section 2681 (Part III), and steps to implement sections 2682–2690 (Part IV). Three addenda are provided for background and informational purposes: A. The Text of Sections 2681–2690 of the Act; B. Excerpts concerning Hepatitis B vaccination, and C. References. Comments are invited on the list, the guidelines, the implementation steps, and the questions posed above.

Part I. Definitions

Aerosol. Small particles of matter that float on air currents.

Airborne transmission. Person-to-person transmission of an infectious agent by an aerosol.

Bloodborne transmission. Person-to-person transmission of an infectious agent through contact with an infected person's blood or other body fluids.

Emergency. "* * * an emergency involving injury or illness." (1)

Emergency response employees (EREs). "* * * Firefighters, law enforcement officers, paramedics, emergency medical technicians, and other persons (including employees of legally organized and recognized volunteer organizations, without regard to whether such employees receive normal compensation) who, in the course of professional duties, respond to emergencies in the geographic area involved." (2)

Exposed. Circumstances in which there is a significant risk of becoming infected either through an airborne route or by contact with blood or other body fluid with the etiologic agent of a disease listed in Part II.

Patient. A victim of an emergency who has been aided by an ERE and has been transported to a medical facility.

Potentially life-threatening infectious disease. An infectious disease which can cause death in a healthy, susceptible host.

Routinely transmitted by aerosol. A disease that is usually transmitted via the aerosol route.

Part II.—List of Potentially Life-Threatening Infectious Diseases to Which Emergency Response Employees Can Be Exposed

In developing the list of infectious diseases to which EREs can be exposed, CDC used the following criteria:

1. The disease is life-threatening, i.e., it carries a substantial risk of death if acquired by a healthy, susceptible host, and
2. The disease can be transmitted from person to person.

A. Airborne Diseases

Infectious tuberculosis (*Mycobacterium tuberculosis*)

B. Bloodborne Diseases

1. Hepatitis B and C
2. Human immunodeficiency virus infection (including acquired immunodeficiency syndrome [AIDS])

C. Uncommon or Rare Diseases

1. Diphtheria
2. Hemorrhagic fevers (Lassa, Marburg, Ebola, Congo-Crimean, and others yet to be identified)
3. Meningococcal disease
4. Plague (*Yersinia pestis*) [1]
5. Rabies

Part III.—Guidelines for Determining Exposure

A. Circumstances Under Which Exposure Can Occur

1. Airborne Pathogens

Mycobacterium tuberculosis

Occupational exposure to airborne pathogens may occur when an ERE shares air space with a patient who has an infectious disease caused by an airborne pathogen.

2. Bloodborne Pathogens

Human immunodeficiency virus
Hepatitis B and C viruses

Occupational exposure to bloodborne pathogens may occur as the result of contact during the performance of normal job duties with blood or other body fluids to which universal precautions apply, through percutaneous injury (e.g., a needlestick or cut with a sharp object), contact with mucous membranes, or contact with skin, especially when the exposed skin is chapped, abraded, or afflicted with dermatitis or when contact is prolonged or involves an extensive area. When EREs have contact with body fluids under emergency circumstances in which differentiation between fluid types is difficult, if not impossible, all body fluids are considered potentially hazardous. Universal precautions, as outlined in "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers," are recommended for all EREs to reduce the risk of exposure to bloodborne pathogens.[2]

These precautions, and other provisions of the Occupational Safety and Health Administration (OSHA) rule governing occupational exposure to bloodborne pathogens (29 CFR 1910.1030), may be mandatory for some EREs, depending upon whether they are employed in the public or private sector and whether the state in which they are employed has an approved occupational safety and health plan.

Also, it is recommended that workers with occupational exposure to blood be vaccinated with hepatitis B vaccine (see Addendum B).

3. Uncommon or Rare Pathogens

Corynebacterium diphtheriae
Neisseria meningitidis
Yersinia pestis
Hemorrhagic fever viruses
Rabies

While person-to-person transmission of pathogens in this category is rare or theoretical, infection with any of these pathogens could be life-threatening. Under special circumstances, *C. diphtheriae, N. meningitidis,* and *Y. pestis* could be transmitted to EREs by direct contact with droplets from the respiratory tract of infected persons. However, such transmission is rare. Person-to-person transmission of plague, for example, has not been documented since 1924. Hemorrhagic fever viruses are primarily bloodborne pathogens, but none occur naturally in the U.S. Any suspected importation of these infectious agents are thoroughly investigated by the PHS.

B. Guidelines for Determining Exposure to an Airborne Infectious Disease Listed in Part II

Under section 2682, if it is determined that a patient has an airborne infectious disease, the medical facility must notify the Designated Officer of the EREs who transported the patient as soon as practicable but not later than 48 hours after the determination has been made.

C. Guidelines for Determining Exposure to a Bloodborne or Other Infectious Disease Listed in Part II

1. Under Section 2683(a), an ERE may submit a request for a determination whether he or she was exposed to an infectious disease.

2. Upon receipt of such a request from an ERE, under section 2683(b) and (c) the Designated Officer must:

a. Collect facts relating to the circumstances under which the ERE may have been exposed to an infectious disease, and

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[1] During the 1980s, a mean of 18 cases of plague was reported annually in persons exposed in enzootic areas of the southwestern United States. Thus, normally only EREs in this area face potential occupational exposure to plague.

[2] In the Occupational Safety and Health Administration's Occupational Exposure to Bloodborne Pathogens standard, an occupational exposure is defined as "reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties." Bloodborne pathogens are defined as "pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV)." (29 CFR part 1910.1030[b]).

b. Evaluate the facts and determine if the ERE would have been exposed to an infectious disease. (See Part III.A.)

c. If the Designated Officer determines that the ERE may have been exposed to an infectious disease, he or she must send to the medical facility to which the patient was transported a signed written request, along with the facts collected, for a determination of whether the ERE was exposed to a listed disease.

3. When a medical facility receives such a request, under subsection 2683(d), it must:

a. Determine if there is sufficient information in the request to identify the patient suspected of having an infectious disease (see Part III).

b. If the medical facility can identify the patient in question, medical records should be reviewed for:

(1) Results of tests diagnostic for any of the diseases listed in Part II.

(2) Signs or symptoms compatible with any of the diseases listed in Part II.

c. If it is determined that the patient is infected with any of the diseases listed in Part II, the medical facility must review the information sent with the request to determine if the ERE was exposed.

(1) Under subsection 2683(e), if a determination of exposure is made, the medical facility must notify the Designated Officer in writing as soon as practicable, but not later than 48 hours after receiving the request, that the ERE was exposed to a listed disease.

(2) If the information provided by the Designated Officer is insufficient to make a determination, the medical facility must so notify the Designated Officer in writing as soon as practicable but not later than 48 hours after receiving the request.

(3) Under section 2683(g), if the Designated Officer receives notice of insufficient information, he or she may request the public health officer for the community in which the medical facility is located to evaluate the request and the medical facility's response. The public health officer must then evaluate the request and the medical facility's response and report his or her findings to the Designated Officer as soon as practicable but not later than 48 hours after receiving the request.

(a) If the public health officer finds the information provided is sufficient to make a determination of exposure, he or she must submit the request to the medical facility.

(b) If the public health officer finds the information provided was insufficient to make a determination of exposure, he or she must advise the Designated Officer about collecting more information. If sufficient facts are subsequently collected by the Designated Officer, the public health officer must resubmit the request to the medical facility.

D. References

In making determinations or evaluations described in this Part, the Designated Officer, the medical facility, or the public health officer may use standard medical references or the latest edition of The Control of Communicable Diseases in Man. Additional references are listed in Addendum C.

Part IV. Implementation of the Law

A. Within 30 days of the publication of the final notice of the list and guidelines, state public health officers should have selected persons to serve as Designated Officers of EREs for each employer of EREs in their states. The state public health officer in the selection of Designated Officers shall give preference to individuals who are trained in the provision of health care or the control of infectious diseases. [Section 2686]

B. Within 30 days of the publication of the final notice, medical facilities should have in place procedures for:

1. Notifying Designated Officers within 48 hours of any instances in which it is known that a patient who has been transported to the medical facility is infected with an airborne disease listed in Part II. [Section 2682 (a) and (b)]

2. Responding within 48 hours to written requests from Designated Officers for determination of possible exposure to diseases listed in Part II. [Section 2683(e)]

C. Within 30 days of the publication of the final notice, ERE employers should have in place procedures by which EREs can make requests of Designated Officers and procedures by which the Designated Officers would make appropriate disposition of such requests. [Section 2683(a)]

D. Within 30 days of the publication of the final notice, local health agencies should have in place procedures for handling requests for evaluations from Designated Officers. [Section 2683(g)]

E. Within 30 days of the publication of the final notice, the Secretary of Health and Human Services will:

1. Send copies of the list of potentially life-threatening diseases and the exposure guidelines to state public health officers requesting appropriate distribution. [Section 2681(c)(1)]

2. Make copies of the list and guidelines available to the public. [Section 2681(c)(2)]

3. Have in place procedures for receiving and handling allegations of violations of the exposure notification process. [Section 2689(b)]

Citations

1. PHS Act § 2676(3), 42 U.S.C. 300ff–76(3).
2. PHS Act § 2676(4), 42 U.S.C. 300ff–76(4).

Addendum A

Background—Text of Sections 2681–2690 of the PHS Act as amended by Pub. L. 101–381 (42 U.S.C. 300ff–81 to 300ff–90).

Subpart II—Notifications of Possible Exposure to Infectious Diseases

Sec. 2681. Infectious Diseases and Circumstances Relevant to Notification Requirements

(a) In General.—Not later than 180 days after the date of the enactment of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, the Secretary shall complete the development of—

(1) a list of potentially life-threatening infectious diseases to which emergency response employees may be exposed in responding to emergencies;

(2) guidelines describing the circumstances in which such employees may be exposed to such diseases, taking into account the conditions under which emergency response is provided; and

(3) guidelines describing the manner in which medical facilities should make determinations for purposes of section 2683(d).

(b) Specification of Airborne Infectious Diseases.—The list developed by the Secretary under subsection (a)(1) shall include a specification of those infectious diseases on the list that are routinely transmitted through airborne or aerosolized means.

(c) Dissemination.—The Secretary shall—

(1) transmit to the state public health officers copies of the list and guidelines developed by the Secretary under subsection (a) with the request that the officers disseminate such copies as appropriate throughout the states; and

(2) make such copies available to the public.

Sec. 2682. Routine Notifications With Respect to Airborne Infectious Diseases in Victims Assisted

(a) Routine Notification of Designated Officer.—

(1) Determination by Treating Facility.—If a victim of an emergency is transported by emergency response employees to a medical facility and the medical facility makes a determination that the victim has an airborne infectious disease, the medical facility shall notify the designated officer of the emergency response employees who transported the victim to the medical facility of the determination.

(2) Determination by Facility Ascertaining Cause of Death.—If a victim of an emergency is transported by emergency response employees to a medical facility, the medical facility ascertaining the cause of death shall notify the designated officer of the emergency

response employees who transported the victim to the initial medical facility of any determination by the medical facility that the victim had an airborne infectious disease.

(b) Requirement of Prompt Notification.—With respect to a determination described in paragraph (1) or (2), the notification required in each of such paragraphs shall be made as soon as is practicable, but not later than 48 hours after the determination is made.

Sec. 2683. Request for Notifications with Respect to Victims Assisted

(a) Initiation of Process by Employee.—If an emergency response employee believes that the employee may have been exposed to an infectious disease by a victim of an emergency who was transported to a medical facility as a result of the emergency, and if the employee attended, treated, assisted, or transported the victim pursuant to the emergency, then the designated officer of the employee shall, upon the request of the employee, carry out the duties described in subsection (b) regarding a determination of whether the employee may have been exposed to an infectious disease by the victim.

(b) Initial Determination by Designated Officer.—The duties referred to in subsection (a) are that—

(1) the designated officer involved collect the facts relating to the circumstances under which, for purposes of subsection (a), the employee involved may have been exposed to an infectious disease; and

(2) the designated officer evaluate such facts and make a determination of whether, if the victim involved had any infectious disease included on the list issued under paragraph (1) of section 2681(a), the employee would have been exposed to the disease under such facts, as indicated by the guidelines issued under paragraph (2) of such section.

(c) Submission of Request to Medical Facility.—

(1) In General.—If a designated officer makes a determination under subsection (b)(2) that an emergency response employee may have been exposed to an infectious disease, the designated officer shall submit to the medical facility to which the victim involved was transported a request for a response under subsection (d) regarding the victim of the emergency involved.

(2) Form of Request.—A request under paragraph (1) shall be in writing and be signed by the designated officer involved, and shall contain a statement of the facts collected pursuant to subsection (b)(1).

(d) Evaluation and Response Regarding Request to Medical Facility.—

(1) In General.—If a medical facility receives a request under subsection (c), the medical facility shall evaluate the facts submitted in the request and make a determination of whether, on the basis of the medical information possessed by the facility regarding the victim involved, the emergency response employee was exposed to an infectious disease included on the list issued under paragraph (1) of section 2681(a), as indicated by the guidelines issued under paragraph (2) of such section.

(2) Notification of Exposure.—If a medical facility makes a determination under paragraph (1) that the emergency response employee involved has been exposed to an infectious disease, the medical facility shall, in writing, notify the designated officer who submitted the request under subsection (c) of the determination.

(3) Finding of No Exposure.—If a medical facility makes a determination under paragraph (1) that the emergency response employee involved has not been exposed to an infectious disease, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of the determination.

(4) Insufficient Information.—

(A) If a medical facility finds in evaluating facts for purposes of paragraph (1) that the facts are insufficient to make the determination described in such paragraph, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of the insufficiency of the facts.

(B)(i) If a medical facility finds in making a determination under paragraph (1) that the facility possesses no information on whether the victim involved has an infectious disease included on the list under section 2681(a), the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of the insufficiency of such medical information.

(ii) If after making a response under clause (i) a medical facility determines that the victim involved has an infectious disease, the medical facility shall make the determination described in paragraph (1) and provide the applicable response specified in this subsection.

(e) Time for Making Response.—After receiving a request under subsection (c) (including any such request resubmitted under subsection (g)(2)), a medical facility shall make the applicable response specified in subsection (d) as soon as is practicable, but not later than 48 hours after receiving the request.

(f) Death of Victim of Emergency.—

(1) Facility Ascertaining Cause of Death.—If a victim described in subsection (a) dies at or before reaching the medical facility involved, and the medical facility receives a request under subsection (c), the medical facility shall provide a copy of the request to the medical facility ascertaining the cause of death of the victim, if such facility is a different medical facility than the facility that received the original request.

(2) Responsibility of Facility.—Upon the receipt of a copy of a request for purposes of paragraph (1), the duties otherwise established in this subpart regarding medical facilities shall apply to the medical facility ascertaining the cause of death of the victim in the same manner and to the same extent as such duties apply to the medical facility originally receiving the request.

(g) Assistance of Public Health Officer.—

(1) Evaluation of Response of Medical Facility Regarding Insufficient Facts.—

(A) In the case of a request under subsection (c) to which a medical facility has made the response specified in subsection (d)(4)(A) regarding the insufficiency of facts, the public health officer for the community in which the medical facility is located shall evaluate the request and the response, if the designated officer involved submits such documents to the officer with the request that the officer make such an evaluation.

(B) As soon as is practicable after a public health officer receives a request under paragraph (1), but not later than 48 hours after receipt of the request, the public health officer shall complete the evaluation required in such paragraph and inform the designated officer of the results of the evaluation.

(2) Finding of Evaluation.—

(A) If an evaluation under paragraph (1)(A) indicates that the facts provided to the medical facility pursuant to subsection (c) were sufficient for purposes of determinations under subsection (d)(1)—

(i) the public health officer shall, on behalf of the designated officer involved, resubmit the request to the medical facility and

(ii) the medical facility shall provide to the designated officer the applicable response specified in subsection (d).

(B) If an evaluation under paragraph (1)(A) indicates that the facts provided in the request to the medical facility were insufficient for purposes of determinations specified in subsection (c)—

(i) the public health officer shall provide advice to the designated officer regarding the collection and description of appropriate facts; and

(ii) if sufficient facts are obtained by the designated officer—

(I) the public health officer shall, on behalf of the designated officer involved, resubmit the request to the medical facility; and

(II) the medical facility shall provide to the designated officer the appropriate response under subsection (c).

Sec. 2684. Procedures for Notification of Exposure

(a) Contents of Notification to Officer.—In making a notification required under section 2682 or section 2683(d)(2), a medical facility shall provide—

(1) the name of the infectious disease involved; and

(2) the date on which the victim of the emergency involved was transported by emergency response employees to the medical facility involved.

(b) Manner of Notification.—If a notification under section 2682 or section 2682(d)(2) *[sic]* is mailed or otherwise indirectly made—

(1) the medical facility sending the notification shall, upon sending the notification, inform the designated officer to whom the notification is sent of the fact that the notification has been sent; and

(2) such designated officer shall, not later than 10 days after being informed by the medical facility that the notification has been sent, inform such medical facility whether the designated officer has received the notification.

Sec. 2685. Notification of Employee

(a) In General.—After receiving a notification for purposes or section 2682 or 2683(d)(2), a designated officer of emergency response employees shall, to the extent practicable, immediately notify each of such employees who—

(1) responded to the emergency involved; and

(2) as indicated by guidelines developed by the Secretary, may have been exposed to an infectious disease.

(b) Certain Contents of Notification to Employee.—A notification under this subsection to an emergency response employee shall inform the employee of—

(1) the fact that the employee may have been exposed to an infectious disease and the name of the disease involved;

(2) any action by the employee that, as indicated by guidelines developed by the Secretary, is medically appropriate; and

(3) if medically appropriate under such criteria, the date of such emergency.

(c) Responses Other Than Notification of Exposure.—After receiving a response under paragraph (3) or (4) of subsection (d) of section 2683, or a response under subsection (g)(1) of such section, the designated officer for the employee shall, to the extent practicable, immediately inform the employee of the response.

Sec. 2686. Selection of Designated Officers

(a) In General.—For the purposes of receiving notifications and responses and making requests under this subpart on behalf of emergency response employees, the public health officer of each state shall designate 1 official or officer of each employer of emergency response employees in the state.

(b) Preference in Making Designations.—In making the designations required in subsection (a), a public health officer shall give preference to individuals who are trained in the provision of health care or in the control of infectious diseases.

Sec. 2687. Limitations With Respect to Duties of Medical Facilities

The duties established in this subpart for a medical facility—

(1) shall apply only to medical information possessed by the facility during the period in which the facility is treating the victim for conditions arising from the emergency, or during the 60-day period beginning on the date on which the victim is transported by emergency response employees to the facility, whichever period expires first; and

(2) shall not apply to any extent after the expiration of the 30-day period beginning on the expiration of the applicable period referred to in paragraph (1), except that such duties shall apply with respect to any request under section 2683(c) received by a medical facility before the expiration of such 30-day period.

Sec. 2688. Rules of Construction

(a) Liability of Medical Facilities and Designated Officers.—This subpart may not be construed to authorize any cause of action for damages or any civil penalty against any medical facility, or any designated officer, for failure to comply with the duties established in this subpart.

(b) Testing.—This subpart may not, with respect to victims of emergencies, be construed to authorize or require a medical facility to test any such victim for any infectious disease.

(c) Confidentiality.—This subpart may not be construed to authorize or require any medical facility, any designated officer of emergency response employees, or any such employee, to disclose identifying information with respect to a victim of an emergency or with respect to any emergency response employee.

(d) Failure to Provide Emergency Services.—This subpart may not be construed to authorize any emergency response employee to fail to respond, or to deny services, to any victim of an emergency.

Sec. 2689. Injunctions Regarding Violation of Prohibition

(a) In General.—The Secretary may, in any court of competent jurisdiction, commence a civil action for the purpose of obtaining temporary or permanent injunctive relief with respect to any violation of this subpart.

(b) Facilitation of Information on Violations.—The Secretary shall establish an administrative process for encouraging emergency response employees to provide information to the Secretary regarding violations of this subpart. As appropriate, the Secretary shall investigate such alleged violations and seek appropriate injunctive relief.

Sec. 2690. Applicability of Subpart

This subpart shall not apply in a state if the chief executive officer of the state certifies to the Secretary that the law of the state is in substantial compliance with this subpart.

(b) Effective Date.—Sections 2680 and 2681 of part E of title XXVI of the Public Health Service Act, as added by subsection (a) of this section, shall take effect upon the date of the enactment of this Act. Such part shall otherwise take effect upon the expiration of the 30-day period beginning on the date on which the Secretary issues guidelines under section 2681(a).

Addendum B

Excerpts Concerning Hepatitis B Vaccination

Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers. Morbidity and Mortality Weekly Report 1989; 38 (supplement no. S–6).

Emergency medical workers have an increased risk for hepatitis B infection (. . .). The degree of risk correlates with the frequency and extent of blood exposure during the conduct of work activities. A few studies are available concerning risk of HBV infection for other groups of public-safety workers (law-enforcement personnel and correctional-facility workers), but reports that have been published do not document any increased risk for HBV infection (. . .). Nevertheless, in occupational settings in which workers may be routinely exposed to blood or other body fluids as described below, an increased risk for occupational acquisition of HBV infection must be assumed to be present.

Occupational Safety and Health Administration's Occupational Exposure to Bloodborne Pathogens Standard, 29 CFR Part 1910.1030.

(f) Hepatitis B vaccination and post-exposure evaluation and follow-up—(1) General. (i) The employer shall make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure . . .

(ii) The employer shall ensure that the hepatitis B vaccine and vaccination series and post-exposure evaluation and follow-up, including prophylaxis, are:

(A) Made available at no cost to the employee . . .

Addendum C

References

General

Benenson AS (ed). Control of communicable diseases in man. Washington, DC: The American Public Health Association, 15th edition, 1990.

For hepatitis B and human immunodeficiency virus:

Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers. Morbidity and Mortality Weekly Report 1989; 38 (supplement no. S–6).

Occupational Safety and Health Administration's Occupational Exposure to Bloodborne Pathogens Standard, 29 CFR Part 1910.1030.

For tuberculosis:

American Thoracic Society/Centers for Disease Control. Diagnostic standards and classification of tuberculosis. American Review of Respiratory Diseases 1009;142:725–35.

American Thoracic Society/Centers for Disease Control. Control of Tuberculosis. American Review of Respiratory Diseases. 1983;128:336–342.

Dated: November 16, 1992.

Walter R. Dowdle,

Acting Director, Centers for Disease Control and Prevention.

[FR Doc. 92–28206 Filed 11–19–92; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

[BPD–645–FN]

RIN 0938–AF18

Medicare Program; Withdrawal of Coverage of Thermography

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice announces the withdrawal of Medicare coverage of thermography for all indications. Evidence indicates that thermography is not effective in diagnosing or treating illness or injury.

EFFECTIVE DATE: This notice is effective on December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon E. Hippler, (410) 966–4633.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Administration of the Medicare program is governed by the Medicare statute, title XVIII of the Social Security Act (the Act). The Medicare law provides coverage for broad categories of benefits, including inpatient and outpatient hospital care, skilled nursing facility (SNF) care, home health care, and physicians' services. It places general and categorical limitations on the coverage of the services furnished by certain health care practitioners, such as dentists, chiropractors and podiatrists, and it specifically excludes some categories of services from coverage, such as cosmetic surgery, personal comfort items, custodial care, routine physical checkups, and procedures that are not reasonable and necessary for diagnosis or treatment of an illness or injury. The statute also provides direction as to the manner in which payment is made for Medicare services, the rules governing eligibility for services, and the health, safety, and quality standards to be met by institutions furnishing services to Medicare beneficiaries.

The Medicare law does not, however, provide an all-inclusive list of specific items, services, treatments, procedures, or technologies covered by Medicare. Thus, except for the examples of durable medical equipment in section 1861(n) of the Act, some of the medical and other health services listed in section 1861(s) of the Act, and exclusions from coverage listed in section 1862(a) of the Act, the statute does not specify medical devices, surgical procedures, or diagnostic or therapeutic services that are covered or excluded from coverage.

The Congress understood that questions as to coverage of specific services would invariably arise and would require a specific decision of coverage by the Secretary. Thus, it vested in the Secretary the authority to make those decisions. Among the provisions relevant to the determination of coverage is section 1862(a)(1)(A) of the Act, which prohibits payment for any expenses incurred for items or services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

We have interpreted the term "reasonable and necessary" to exclude from Medicare coverage those medical and other health care services that are not safe and effective, as established by acceptable clinical evidence. Generally stated, we consider effectiveness to mean that there is probability of benefit to individuals from a medical item, service, or procedure for a given medical problem under average conditions of use; that is, in day-to-day medical practice. In day-to-day medical practice, physicians diagnose and treat clinical conditions following inquiry into an individual's medical history, performance of a physical examination, and interpretations of a variety of diagnostic tests and procedures. Among other things, we expect that a covered diagnostic test or procedure will provide useful data to establish or rule out the presence of a given disease or injury.

B. Medicare Coverage of Thermography

Thermography is the measurement of self-emanating infrared radiation that reveals temperature variation at the surface of the body. The thermographic device senses body temperature and demonstrates areas of differing heat emission by producing brightly colored patterns. Each color represents a specific temperature level. Proponents of the device believe that interpretations of the color patterns according to designated anatomic distributions are a useful aid in diagnosing a vast array of diseases.

Currently thermography is covered under Medicare, if it is reasonable and necessary, for the following indications when disease or injury is suspected (see the Medicare Coverage Issues Manual (HCFA Pub. 6)—Section 50–5, Thermography):

1. Peripheral vascular disease (for example, thrombophlebitis and arterial insufficiency).

2. Musculoskeletal injury (for example, low back injury involving musculoligamentous soft tissue or herniated disc).

3. Cervical thermography for diagnosis of extra-cranial vessel disease causing carotid insufficiency (CNS) symptoms, and for diagnosis of inflammatory, neoplastic, and hyperplastic lesions. The following are some examples, by category, of the use of cervical thermography in diagnosing lesions:

a. Inflammatory lesions: i. Soft tissue injury (for example, whiplash).

ii. Presence of a foreign body (for example, loa loa, a filarial roundworm infestation).

b. Neoplastic lesions: i. Parathyroid adenoma.

ii. Istopically cold thyroid nodule.

iii. Tumor of the larynx with metastases to neck lymph nodes.

c. Hyperplastic lesions: i. Parathyroid adenoma.

ii. Isotopically hot thyroid nodule.

C. Recommendations To Withdraw Coverage of Thermography

Early in 1982, contractors who process Medicare claims recommended that HCFA limit coverage of thermography. Their recommendation was based on the belief that more precise techniques had been developed, since the advent of thermography, for diagnosing disease. More importantly, the contractors believed that thermography was ineffective as a diagnostic technique. As a result of the contractors' recommendation, a compilation of the latest medical and scientific evidence was presented to the HCFA Physicians Panel. The HCFA Physicians Panel, which meets approximately once every 6 to 8 weeks, is composed of physicians and other health professionals in HCFA's Central Office and their counterparts from the Public Health Service (PHS). The Panel recommended that PHS's Office of Health Technology Assessment (OHTA) conduct an assessment of the safety and effectiveness of thermography as a diagnostic technique in accordance with HCFA's longstanding policy, discussed in the proposed rule published on January 30, 1989 in the **Federal Register** (54 FR 4302)—"Medicare Program Criteria and Procedures for Making Medical Services Coverage Decisions that Relate to Health Care Technology." OHTA, now a part of the PHS' Agency for Health Care Policy and Research (AHCPR), conducts assessments of the effectiveness of health care technologies on behalf of the PHS. Based on these assessments, the Administrator of AHCPR recommends whether specific technologies should be reimbursable under Medicare and other Federally financed health programs. HCFA and OHTA agreed that two separate assessments would be conducted, the first assessment on thermography for use in detecting breast disease, and the other on thermography for indications other than breast disease. HCFA forwarded this request for assessment to the PHS on May 27, 1982.

We received the OHTA assessment on thermography for use in detecting breast disease early in 1984 (assessment report dated December 21, 1983). The assessment was entitled "Public Health Service Medical and Scientific Evaluation—Thermography for Breast Cancer Detection (1983)" and included a bibliography of studies evaluating thermography's effectiveness in breast cancer detection. Based on the conclusion of the assessment, we revised our policy to exclude coverage of this particular use of thermography,

effective July 20, 1984. However, coverage of thermography continued for the diagnosis of conditions in anatomic areas other than the breast. Thermography, when used for diagnosing conditions in anatomic areas other than the breast, is listed as a covered technology in the Medicare Coverage Issues Manual (HCFA Pub. 6)—Section 50–5, Thermography. (See also "National Coverage Decisions," published in the **Federal Register** on August 21, 1989 (54 FR 34555).)

On March 21, 1985, OHTA issued an assessment on thermography for indications other than breast disease. On August 5, 1985, OHTA withdrew this assessment in order to review additional, recently submitted information. After reviewing the latest scientific data, OHTA issued its assessment on January 26, 1989 on thermography for diagnosing indications other than breast disease. The assessment was entitled "Public Health Service Assessment—Thermography for Indications Other than Breast Lesions (1989)" and included a bibliography of studies evaluating thermography's effectiveness for non-breast indications. A copy of this assessment is attached as Addendum A. (Note: The reference on page 74 of the assessment to the "1987 assessment" is a typographical error. The correct year is 1989.) OHTA recommended that we discontinue coverage of thermography for the diagnosis of conditions in anatomic areas other than the breast. During the assessment process, OHTA had solicited information and advice from other PHS components, including the Food and Drug Administration (FDA) and the National Institutes of Health (NIH). It also evaluated the information from medical speciality groups and respondents to a **Federal Register** notice it had published on March 16, 1984 (49 FR 9961). In that notice, OHTA announced that it was conducting an assessment of diagnostic thermography for all indications other than breast lesions. Finally, OHTA researched and analyzed published medical and scientific literature and relevant studies and reports.

The assessment found that the available evidence indicated that thermography was not a clinically effective diagnostic procedure for non-breast indications. The issues studied that related to the clinical use of thermography were its sensitivity, specificity, and predictive value as a means of arriving at specific diagnoses. The evidence indicated that thermography did not assist in accurately diagnosing an illness or injury. Moreover, there was no evidence to indicate that thermography provided a useful guide in monitoring the effect of treatment of any disease entity. In seeking advice from NIH, OHTA was advised that while thermography might confirm the presence of temperature differences, temperature differences in themselves added very little useful information to a physician's assessment based on the patient's history, physical examination, and other studies, thereby necessitating the use of other procedures to reach a diagnosis.

To date, there have been no controlled clinical trials that provide evidence establishing the usefulness of thermography as a primary diagnostic guide. In other words, this procedure only confirms the presence of temperature differences, which, in themselves, do not indicate a specific diagnosis; other tests are necessary before a specific diagnosis can be made. NIH has advised that the available published literature does not support the use of thermography as a valuable addition to other diagnostic modalities. Thermography cannot currently be considered a diagnostic tool because it does not, by itself or as a diagnostic adjunct, add to the accuracy of diagnosing disease. NIH concluded that the diagnostic efficacy of thermography cannot be resolved in the absence of additional research and that there is a need for well-designed studies to validate its usefulness. Furthermore, FDA in its advice to OHTA supported the conclusion that thermography neither detects any conditions nor provides diagnoses of those conditions. FDA currently requires that labeling for thermography instrumentation specify only adjunctive use, since, in the agency's view, the clinical implications of anomalous temperature patterns can be ascertained only by other diagnostic means.

II. Provisions of the Proposed Notice

Based on the conclusion of the assessment that the available scientific evidence does not substantiate the effectiveness of thermography, we proposed to exclude Medicare coverage of thermography for all indications in our notice published in the **Federal Register** on October 9, 1990 (55 FR 41140).

The provisions of the proposed notice would not affect any existing Medicare regulations. They would affect the following manual instruction: Medicare Coverage Issues Manual (HCFA Pub. 6)—Section 50–5, Thermography.

III. Summary and Analysis of Comments

We received 114 timely items of correspondence in response to the proposed notice. Of these, 65 were from private individuals (mainly patients), 45 were from physicians, 3 were from professional associations, and 1 was from a member of the Congress. The comments ranged from general support for or opposition to the proposed withdrawal of thermography for all indications, to specific comments with accompanying data on the OHTA assessment report. A summary of the comments and our responses follows.

Comment: Several commenters supported our proposal to withdraw coverage of thermography for all indications, agreeing that it is not an effective diagnostic test.

Response: We agree with the commenters, and consequently we are publishing this final notice to withdraw Medicare coverage of thermography.

Comment: Several commenters stated that current evidence supports the effectiveness of thermography and that OHTA did not review the latest data available.

Response: We submitted to OHTA for its review of all of the latest scientific and published material received in response to the proposed notice. On August 19, 1991, OHTA advised us that the new data verifies its earlier conclusion that the technique of thermography is not effective for the evaluation of any clinical conditions.

A summary of OHTA's comments, which are attached to this notice as Addendum B, is presented below:

- The new data do not contain sufficient evidence to support the effectiveness (clinical utility) of thermography. At least half of the material submitted by the commenters contained no primary clinical data but rather consisted of review articles, textbook chapters, commentary, thermography publications (manuals and newsletters), and letters. None of this material provides objective evidence of the clinical effectiveness of thermography.
- Nearly all of the studies have serious methodological flaws. The lack of detail in the studies regarding patient selection criteria makes it difficult, if not impossible, to confidently extrapolate results from these studies. Thus, replication of studies is impossible.
- The emphasis of the studies on correlational analysis provides no evidence of thermography's effectiveness. Correlation merely estimates functional relationships. It does not demonstrate causation.

• The studies calculating the sensitivity and specificity of thermography do not address the significance of pre- and post-test probabilities of disease or injury in determining the usefulness of thermography as a diagnostic test. Post-test probability of the presence of a given disease is dependent not only on the sensitivity and specificity of the test, but on the pre-test probability of disease. That is to say that one must take into account what was known about the patient before the test in order to interpret the meaning of the test result. This concept is critical in determining the usefulness of a diagnostic test.

• The lack of peer appreciation of the value of the cited studies is evident. For example, thermography is not accepted by clinicians directly involved in patient care at the same institution as that of the author of a number of cited studies. The Director of the Neurology Clinic at this institution testified in court that the high number of false positives and false negatives makes thermography not only unreliable but dangerous. The Director of the Pain Treatment Center at the same institution testified that thermography was used as a confirming test in the majority of patients who were misdiagnosed as having reflex sympathetic dystrophy (RSD) and subsequently had been referred to his clinic. These clinicians concluded that the use of thermography on these patients resulted in invalid and even harmful diagnosis and referral. (Baltimore City Circuit Court, Sahatier vs. State Farm Mutual, #86021043/CL45199.)

Comment: Several commenters stated that the OHTA assessment did not evaluate computerized infrared thermographic imaging, which is state-of-the-art thermography, but rather evaluated the outdated liquid crystal or electronic thermography.

Response: OHTA has reviewed all relevant data on computerized infrared thermographic imaging, the state-of-the-art technology, and found no evidence to support the effectiveness of thermography as a diagnostic test.

Comment: Several commenters stated that the OHTA assessment reviewed thermography as an anatomic test, when, in fact, it is a physiological test whose purpose is to channel diagnosis and treatment in the proper direction. Other commenters stated that thermography is the only non-invasive test to show physiological changes.

Response: OHTA considered both physiological and anatomic aspects of thermography in the initial assessment as well as in the subsequent review of the new data submitted in response to our **Federal Register** proposed notice of withdrawal of coverage. The statement that thermography is the only non-invasive test that shows physiological changes does not establish effectiveness.

Comment: Several commenters stated that the OHTA assessment did not address the use of thermography in diagnosing RSD. Others suggested that thermography is the only or best available method for the early diagnosis of RSD. Some commenters stated that RSD is the only appropriate indication for thermography.

Response: OHTA addressed the use of thermography for the diagnosis of RSD in its review of the data submitted in response to the proposed notice. OHTA has informed us that the data do not support the conclusion that thermography is the only or the best method for the diagnosis of RSD. OHTA noted the following problems with the cited studies:

• Insufficient information was provided on patient selection criteria.

• No evidence was provided illustrating that thermography aided in making diagnoses.

• If thermography correlated with the presence of pain, it remained unproven that thermography added significantly to the history and physical examination of the patient.

• When authors concluded that thermography was instrumental in establishing the correct diagnosis, the diagnosis had already been established on clinical grounds, thereby rendering the conclusion useless.

Comment: Several commenters stated that thermography is the only imaging modality that evaluates the patho-physiology of the autonomic system associated with pain and often predicts anatomical abnormalities. These commenters believe, therefore, that it is useful in the evaluation of chronic pain for such conditions as carpal tunnel syndrome, peripheral nerve entrapment syndrome, nerve root impingement problems, spinal axis pathology, radiculopathy, myofacial pathology, and arthritis.

Response: OHTA found that objective data do not support these suggested uses for thermography. There are serious methodological flaws with the studies cited: Small sample size, vague patient selection criteria, and use of correlation analysis to establish causation, when it merely allows an estimate of functional relationships. As previously stated, the data do not support the clinical usefulness of thermography.

Comment: Several commenters believe that thermography is a cost-effective screening test that would make the use of other more expensive tests, such as magnetic resonance imaging (MRI) and computerized axial tomography (CT) scans, unnecessary in many cases.

Response: OHTA responded that one of the studies cited had a 15% false-negative rate and a 12% false-positive rate, which indicate that the use of thermography as a screening test is questionable. Furthermore, routine physical check-ups and screening tests, with the exception of mammography and pap smears, for which coverage is mandated by the Medicare statute, are specifically excluded from coverage by section 1862(a)(7) of the Act.

Comment: Several commenters stated that thermography reveals temperature variation at the surface of the body and that these temperature differences reflect changes in the sympathetic or autonomic nervous system and are important in the evaluation of illness.

Response: OHTA stated that the studies cited by these commenters to support this assertion have serious methodological flaws: Lack of patient selection criteria, diagnoses made on clinical grounds (actual observation of patient) with no evidence that thermography contributed to the diagnoses, and lack of data supporting the commenters' observations that thermography abnormalities were coexistent with pain. Furthermore, OHTA reported that in a study on the use of thermography in quantifying inflammation in rheumatic conditions, the authors concluded that there were no temperature differences that might have helped in diagnosis.

Comment: Several commenters believe that thermography is a legitimate diagnostic methodology germane to chiropractic practice.

Response: The data do not support this belief. A recently published study (Hoffman, Kent, and Deyo, "Diagnostic Accuracy and Clinical Utility of Thermography for Lumbar Radiculopathy: a Meta-Analysis," Spine, 1991; 16(6): 623–8) concluded that thermography could not be recommended for routine clinical use in evaluating back pain.

Comment: Other commenters favored the use of thermography for diagnosing breast disease.

Response: The use of thermography for diagnosing breast disease has been universally discredited. Based on the OHTA assessment of thermography for diagnosing breast disease, we withdrew coverage of thermography for this

purpose on July 20, 1984. We have found no credible medical evidence that would alter this conclusion.

Comment: A number of commenters believe that the 1987 review entitled "Thermology in Neurological and Musculoskeletal Conditions" by the Council on Scientific Affairs of the American Medical Association (AMA) supports the effectiveness of thermography.

Response: OHTA evaluated this study as part of its analysis of the additional data submitted, and concluded that it does not support the effectiveness of thermography. Rather, the AMA report states only that thermography *may* be useful (emphasis added) in selected neurological and musculoskeletal conditions. Further, the report states that thermography "*may* aid in the interpretation of the significance of information obtained by other tests" (emphasis added). In the summary of the published literature concerning thermography, the AMA review itself concludes that in recent years an increasing number of correlative studies have been published, but that few of these studies can be characterized as well-controlled, and that this limits the analysis of the value of thermography. The review concludes that "More research will help to clarify the exact contribution of thermography to diagnostic problems."

It should be noted, however, that this report has since, in effect, been "recalled." On December 10, 1991 at the meeting of the AMA House of Delegates, it was resolved that the following represents the position of the AMA: Thermography has no value as a medical diagnostic test based on the information contained in the Council on Scientific Affairs Report of 1987 and other recent reviews by other qualified medical groups. The AMA's Council on Scientific Affairs has been directed to restudy thermography.

Comment: Several commenters pointed out that in 1990 the American Academy of Physical Medicine and Rehabilitation (AAPM&R) issued a paper entitled "Neuromusculoskeletal Thermography" that was favorable to thermography.

Response: OHTA evaluated the AAPM&R review and concluded that there were no data presented to support the effectiveness of thermography. The review stated that thermography "*may* aid in the interpretation of the significance of information *obtained by other tests* * * * *can be useful* in the diagnosis of selected neurological and musculoskeletal conditions * * * *may* facilitate the determination of * * *" (emphases added). These comments were taken into consideration in OHTA's evaluation of thermography and its subsequent recommendation that thermography is not useful.

Comment: One commenter stated that a review published in 1988 by the Joint Council of State Neurosurgical Societies of the American Association of Neurological Surgeons and the Congress of Neurological Surgeons entitled "Neurosurgical Cervical Procedure Review" was favorable toward thermography.

Response: OHTA evaluated this review and determined that while the review concluded that thermography was "safe and effective * * * for evaluation of vasomotor instability" it was "considered an adjunctive test and not solely diagnostic except in cases of reflex sympathetic dystrophy." OHTA noted, however, that in the section entitled "Available Proof of Efficacy," the five references cited did not address the use of thermography in RSD.

Comment: Several commenters favored the regulation of the quality of thermography performed.

Response: Since thermography has not been proven to be effective, this concern is not relevant to the coverage issue.

Comment: Two commenters allege that thermography has been subject to more rigorous criteria than MRI and CT scanning, that is, controlled clinical trials proving usefulness.

Response: Data to support this belief were not submitted. Both MRI and CT scans have gone through a similar assessment and review process within HCFA and OHTA. In contrast to thermography, they are well-established in the medical community as effective diagnostic tools in specific circumstances.

Comment: Several commenters stated that the evidence cited in the reference section of the assessment report clearly favored the effectiveness of thermography and that the assessors unfairly assigned greater weight to unfavorable articles. They also stated that those articles cited in the assessment report that were critical of thermography have serious methodological flaws.

Response: The OHTA assigned a ranking formula, accepted and acknowledged in the medical research community, to the data submitted to them for both the assessment itself and the subsequent review of the additional data submitted. The data were weighted according to the following criteria, with those categories in descending order having less importance than those in the previous category:

1. Controlled clinical trials (most weight).
2. Case series.
3. Case reports.
4. Medical opinion (least weight).

OHTA received and uncovered through its research very few controlled clinical trials, the category that is considered most important when assessing scientific validity; moreover, those few clinical trials that have been cited had serious methodological flaws, as discussed above.

Comment: Several commenters pointed out that the assessment report cites the need for further well-designed studies to validate the effectiveness of thermography. They argued the prematurity and inappropriateness of withdrawing coverage before the studies are done.

Response: As previously stated in the "Background" section of this notice, section 1862(a)(1)(A) of the Act prohibits payment for any expenses incurred for items or services "which are not considered reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." We have interpreted this statutory provision to exclude from Medicare coverage those medical and other health care services that are not safe and effective as determined by acceptable clinical evidence. After years of study, we have found no credible medical evidence that thermography is effective. Under these circumstances, it would be inappropriate to continue to cover thermography based on currently available clinical evidence.

Comment: One commenter noted that while the OHTA report alleges the lack of absolute and unassailable data demonstrating thermography's effectiveness, these comments can be made about any test.

Response: The HCFA coverage decision process includes a longstanding policy of relying on the advice and expertise of OHTA. If OHTA has concluded, based on a careful review of the available medical evidence, that there is no persuasive medical data demonstrating the effectiveness of a procedure, as it has for thermography (that is, the evidence for its clinical use has not been convincing to the medical community), we believe it is reasonable and responsible for HCFA to rely on this advice and recommendation in making its final coverage decision.

Comment: Some commenters allege that OHTA sought information from irrelevant and disinterested medical groups while ignoring pertinent specialty groups.

Response: All interested medical specialty groups were afforded the opportunity to present relevant data in response to the proposed notice published in the **Federal Register** announcing the assessment being conducted by OHTA. Further, all persons had an opportunity to submit additional data, and some did. All data submitted in response to our notice proposing withdrawal of coverage of thermography were again reviewed by HCFA, with OHTA reviewing all of the additionally submitted scientific data. As discussed, the data did not establish that thermography is an effective diagnostic tool.

Comment: Several commenters noted that since thermography equipment is being used in research at NIH, thermography is an accepted medical technology.

Response: NIH requested the use of thermography equipment for research purposes. NIH has not yet received any thermography equipment to date, and, thus, cannot evaluate its effectiveness. Based on current information, however, NIH concurred with the OHTA conclusion that thermography is not an effective diagnostic test.

Comment: Several commenters noted that there have been tremendous strides in the use of thermography in other advanced nations—the United Kingdom, Australia, China, Russia, Japan, and Europe.

Response: We are aware only of the use of thermography in Australia. The Australian Institute of Health published an assessment of thermography in 1990 entitled "Medical Thermography" by Wolodja Dankiew in its Health Care Technology Series No. 4, which both HCFA and OHTA have reviewed. The conclusions of this assessment do not differ substantively from the 1989 OHTA assessment upon which we based our proposal to withdraw Medicare coverage.

Comment: Several commenters questioned the qualifications of the OHTA reviewer and the overall HCFA and OHTA review process.

Response: Technology assessments are subject to a rigorous process within HCFA and OHTA. Our review of thermography involved a compilation of the latest medical and scientific evidence, which was then presented to the HCFA Physicians Panel for its review and discussion. The Panel recommended that OHTA conduct an assessment of the safety and effectiveness of thermography for indications other than breast disease.

The rigorous OHTA assessment involved announcement of the assessment in the **Federal Register** and solicitation of comments regarding the safety and effectiveness of thermography from interested parties and medical specialty groups. OHTA also asked for information and advice from other expert medical and health components of PHS, including NIH and FDA. OHTA conducted an exhaustive search of the published medical and scientific literature. It carefully analyzed the findings of the relevant studies and reports. OHTA then synthesized all the available information in developing the final PHS recommendation to HCFA. It summarized all pertinent information (including expert opinions), weighted the various sources of information according to their comparative validity and significance, developed conclusions regarding the safety and effectiveness of thermography, and formulated its recommendations to us. The assessment report and recommendations were then subjected to a final review by all contributing and interested agencies within PHS. HCFA carefully evaluated and considered the report and the recommendations and reached its final decision, set forth here. The assessment is an objective review and analysis of thermography and does not reflect any one individual's opinion.

Comment: Several commenters alleged that our proposal to withdraw coverage of thermography in the Medicare program is an attempt on the part of the insurance industry in the United States to force the withdrawal of thermography as an accepted diagnostic test within the general medical community. Others have stated that if Medicare withdraws coverage of thermography, other insurers will follow.

Response: While private health insurers sometimes adopt policies similar to those of Medicare, Medicare coverage policies are applicable only to the Medicare program. Private insurers and other third party payers determine whether services are reimbursable based on their own coverage guidelines. We are making this coverage decision on the basis of widely available medical evidence, statutory authority, and policy precedents. Other insurers may weigh the same medical evidence similarly or differently in light of their own guidelines.

IV. Provisions of This Final Notice

We are withdrawing Medicare coverage of thermography for all indications. Our decision is based on our review of all public comments submitted in response to the proposed notice, as well as OHTA's 1989 assessment and its review of all published scientific literature submitted as public comments.

The provisions of this notice do not affect any existing Medicare regulations. However, they affect the following manual instruction:

Medicare Coverage Issues Manual (HCFA Pub. 6)—Section 50–5, Thermography.

V. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. 12291 criteria for a "major rule:" that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises of compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (FRA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final notice such as this does not have a significant economic impact on a substantial number of small entities. For purposes of the FRA, we consider all physicians and facilities that are providing this diagnostic technique to be small entities.

In 1990, the total Medicare charges for thermography were significantly less than $500,000. Thus, this final notice does not meet the $100 million criterion; nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this final notice is not a major rule under Executive Order 12291.

Some providers who routinely perform thermograms will be affected to a degree by this notice; however, since relatively few Medicare beneficiaries receive these services, we do not believe that the number of providers significantly affected will be substantial. Accordingly, we believe that the impact of this notice both on Medicare program expenditures and on providers of services will be minimal.

A few commenters on the proposed notice expressed concern that private insurance companies might follow Medicare's lead and also exclude thermography from coverage. While private health insurers sometimes adopt policies similar to those of Medicare, Medicare coverage policies are applicable only to the Medicare

program. We are making this coverage decision on the basis of widely available medical evidence, statutory authority, and policy precedents. Private insurers and other third party payers determine whether services are reimbursable based on their own coverage guidelines.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies that this final notice will not have a substantial impact on a substantial number of small entities, and, therefore, we have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Collection of Information Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Sections 1861 and 1862 of the Social Security Act (42 U.S.C. 1395x and 1395y))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare Supplementary Medical Insurance)

Dated: August 18, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: October 19, 1992.

Louis W. Sullivan,

Secretary.

Public Health Service Assessment Thermography for Indications Other Than Breast Lesions

Prepared by: Harry Handelsman, D.O.

Introduction

Clinical thermography is a technique to quantitatively measure and map the self-emanating infrared and microwave radiation that reveals temperature variations at the surface of the body. In its broad use as a scanning technique, thermography gives a visual display of skin surface temperature using various types of telethermographic infrared detector/imagers that sense and convert the invisible radiation from the body into a patterned thermographic representation (1). Patterns from heat-sensitive cholesteric liquid crystal systems that are applied to the skin can also be displayed. These displays can be photographed for recordkeeping.

Thermography is employed as a diagnostic aid. It can be used to assess physiologic functions associated with the emission of heat and the thermal control of the skin. The assessment of skin temperature patterns is widely used in clinical medicine for the detection of disease and the evaluation of peripheral nerve function (2).

The precise mechanisms that produce the thermal changes in the skin have not been elucidated. However, it has been proposed that there is a change in skin temperature as a result of heat generated by muscular activity. Change may occur indirectly as a result of stimulation of sensory nerves, stimulation of spinal parasympathetic nerves, stimulation of the sympathetic vasoconstrictor or vasodilator system, and segmental regulation by the somatosympathetic reflex. Each neurological process can modify cutaneous and subcutaneous blood flow and thereby affect the temperature of the skin. (3).

In 1974, Nilson, using implanted thermistors that could generate heat and record temperature at various levels below the skin surface, demonstrated that heat production generated 0.6 cm below the skin surface is not reflected on the surface due to the thermal equilibration process in the vasculature. This finding would suggest that thermography is primarily related to the effects of superficial blood flow in the dermis (4).

Although thermography has ancient medical origins, there has only recently been growing enthusiasm for this diagnostic procedure. In 1938, Fay and Henny noted a difference in the temperature of the skin overlying cancers of the breast before and after irradiation of the ovaries (5). They speculated that radiation-induced disturbances in the hormonal relationship between the ovaries and breast might have resulted in hyperemia and a temperature increase. In 1956, Lawson demonstrated similar temperature increases in a group of nonirradiated breast cancer patients and suggested thermometry might be used for diagnostic purposes (6). Subsequently, in 1957, Lawson published the first example of thermographic imaging and reported that the skin overlying malignant tumors is usually between 1 °C and 3 °C warmer than other areas of the breast (7). These findings were confirmed by Lloyd Williams who reported temperature changes in other disease processes (8, 9, 10).

Lawson's work on thermal imaging associated with breast cancer may have provided the impetus for thermography research in several countries. Virtually every section of the body has been studied. In the 30 years since Lawson's initial report, many thermal measuring techniques have been described. The instruments fall into two categories: contact thermometers and radiometers. The latter are more reliable. They include infrared thermometers and infrared scanning devices. Radiometers were described as early as 1934. Thermal discrimination on the order of 0.1 °C is obtainable with most of these instruments and appears adequate for the level of measurement used in clinical practice. It is possible that faster scans, digitized images, improved color displays, and simplified methods may improve the examination of patients. Recently introduced cholesterol impregnated sheaths have been improved and now have a thermal resolution capability similar to that of the other devices mentioned.

Background

Electronic (infrared) thermography

This scanning technique utilizes an infrared camera that encloses oscillating mirrors and prisms as well as tiny temperature-sensitive chips cooled by liquid nitrogen to −321 °F. The camera senses the body temperature and translates that into brightly colored image patterns representing areas of differing heat emission. Images are taken of areas of the body in which symptoms occur. These images are transmitted to a television monitor and 35 mm slides are produced. The slides may be mounted in sequence for interpretation and a television image may be stored on tape for subsequent retrieval (11).

The sensitivity for this type of thermography equipment is set so that each color represents a 1°C difference relative to other adjacent colors, thus yielding a quantitative relationship on color film. If black and white film is used, the picture presents a continuous shade of gray as a qualitative pattern that does not identify specific temperature relationships (12).

Liquid crystal thermography

Cholesteric liquid crystals occur in nature and have the ability to change color in response to variations in temperature. These changes are graphically demonstrated by contact color thermography (13). This thermographic technique commonly utilizes a soft and flexible liquid crystal sheet (cholesteric liquid crystals embedded in a rubberized base) mounted on a transparent plastic box that can be filled with air, which places the rubberized sheet under positive pressure; or using the sheeting to form inflatable pillows. The box or pillow is pressed against the part of the body to be examined and readily adjusts to the contours (11,12). The contact creates an image that represents the heat pattern in that area. The image is then photographed with ordinary film or Polaroid. Temperature gradients are determined using a standard color scale and interpretation is based on dermatomic distribution or other factors (11). The system is portable and relatively economical.

Thermographic studies are performed in a draft-free room. The body area to be examined is sponged with water and dried with cool air. After a period of 20 minutes,

during which time the patient is allowed to equilibrate, three sets of pictures of the affected area are taken at 20-minute intervals.

Both black and white (qualitative) and colored (quantitative) pictures may be taken. Using electronic thermography, interpretation of color pictures is dependent upon the color assignment given by a particular technician. Each color hue represents a 1°C difference relative to any adjacent color. Using liquid crystal thermography, the color scale is fixed. The lowest temperature is displayed as dark brown. With progressive rises in temperature the color changes to tan, reddish brown, yellow-green, light blue, and dark blue. Since the color scale is fixed, the picture is both qualitative and quantitative (12).

Efforts are being made to improve the methods of measuring skin temperature particularly with regard to accuracy, qualitative differences, and the reliability of quantitative differences. Uematsu, in study in thermographic imaging of sensory dermatomes, noted that examination to a certain extent is based on the patient's subjective reaction to sensation. However, he believes that the cutaneous temperature is altered with peripheral nerve impairment and can be measured by employing a telethermograph with a built-in computer for data compilation and analysis (14). Several computerized systems have now become available.

Cutaneous temperatures were measured in 37 segmental areas of the body on 32 controls (12–65 years old) and in selected areas on 38 patients with peripheral nerve impairment. Average temperatures were obtained in corresponding areas on each side of the body and then compared. In the normal controls the average temperature differences between sides of the body were extremely small. On the trunk the difference was 0.17°C; on the extremities, 0.20°C; and on the fingers and toes, 0.45°C. The difference in the nerve-damaged patient, however, averaged 1.63°C from the corresponding normal site on the body. In all 38 cases, outlines of the sensory dermatomes were obtained by pinpricks and neurological examination. Thermograms matched those areas very well. In cases of completely sectioned nerves, the anesthetic area was 2–4°C warmer than the surrounding skin. In nerve irritation lesions such as herniation of an intervertebral disk, the hyperesthetic area was colder than the surrounding areas. Uematsu's conclusion was that computerized color telethermography makes thermographic imaging of the sensory dermatome practical for use in clinical examination with results that can be duplicated. Subsequently the same investigator extended his work to include examination of 32 peripheral nerves in 30 individuals with lumbar disk herniation (15). When they were compared with 32 healthy control subjects, the patients with complete loss of sensation the area of interest showed an average temperature 1.95°C higher than that of the opposite intact limb. In patients with nerve root pressure, the average temperature difference between the normal side and the side with suspected or proven pathology was 0.83°C. Overall, the deviation in all cases of damaged nerves averaged 1.55°C. The conclusion was that computerized telethermography demonstrated statistically significant changes in response to injury (16).

Using an in vitro laboratory model, Ash and associates reported substantial recording errors of 1–4°C when measuring curved surfaces using thermography. These results suggested that the same technique applied to curved surfaces on the body, as seen in "trigger points" and dermatomes, would be associated with a margin of error that would vitiate the usefulness of the technology (17). The use of thermography for the detection of lesions of the breast has been addressed by the Public Health Service in a separate assessment (18). Articles in the published literature propose the use of this technology in the evaluation of many disorders.

LeRoy and associates discussed their use of diagnostic thermography at the Delaware Pain Clinic (19). Thermography, whether by telethermography or liquid crystal technique, was felt to be a useful test for assessment and management of patients with back pain syndrome. No case reports or data are included, but the paper does present a broad range of uses and problems associated with thermography. The authors point to the complexity and diversity of the patient population being examined and the vast array of thermography measures being used. They describe how thermography measures the temperature of a particular body area in comparison with the temperature of surrounding skin areas or with the contralateral anatomic equivalent. The rise or fall of temperature in the area being measured is due to a change in the blood supply to the area. Pathological changes leading to the blood supply variation and, therefore, to abnormal overlying skin temperature changes can be the result of pathophysiologic events associated with neurological, vascular, or inflammatory processes.

Neurologic mechanisms

A change in neurological innervation of an area may be due to changes in the central or peripheral nervous system. In the former, the neurological injury may be in the brain, brainstem, or spinal cord. Peripheral nerve damage, on the other hand, may occur anywhere along the course of the nerve distal to its exit from the CNS and may be caused by a variety of problems including demyelinization, compression, and partial or complete traumatic interruption. In such cases there is a loss of sensation in a discrete area associated with a loss of sympathetic control of the blood circulation in the same area. This loss results in a local increase in temperature. When there is pressure on or irritation of a nerve or nerve root, it is thought that the autonomic fibers affect the microcirculation to the skin along the course of the nerve or, as in the case of a nerve root, to the dermatome. It is unusual for a radiculopathy to conform to a single specific dermatome pattern. More often, thermal patterns exhibit dermatome overlap (19).

It has been anatomically estimated that every nerve, both motor and sensory, has in it approximately 8 percent autonomic fibers. It is also believed that there is a connection at the site of the vertebral nerve ramification with autonomic fibers coursing along the sinovertebral nerve resulting in overlap of one vertebral level of innervation either up or down in the spinal cord. That is to say, stimulation of the nerves emerging at the L–3 level will produce some excitation of the nerves at the L–2 and L–4 levels as well. It is therefore possible that discogenic pain from a single level may involve more than one recurrent branch of spinal nerve with the resulting thermogram showing skin temperature changes covering more than one dermatome.

Vascular mechanisms

Vascular causes of thermographic change may involve either arterial or deep venous thrombosis or the interruption of blood flow in the extremities or elsewhere (e.g., cavernous sinus). Vascular change is frequently the result of trauma, blood clot, or tumor. Usually, secondary inflammatory mechanisms will become activated resulting in a change in blood flow from the deep venous system to the superficial veins. In addition, chemotactic factors mediate the inflammatory process by enhancing the blood flow in peripheral superficial vessels. This change may cause changes in skin temperature. Arterial insufficiency may also cause thermal changes. Thermal changes associated with arterial insufficiency of the extremities can be demonstrated by thermography but these are not pathognomonic. If the insufficiency is caused by an embolism of an artery of the extremity, the sudden change in temperature occurs almost instantaneously. When the circulation improves in response to expansion of the collateral circulation, the temperature change will lessen gradually. When there is complete healing the temperature may revert to normal. Similarly, thermal changes associated with chronic arterial insufficiency, such as that due to arteriosclerotic disease with or without diabetes, are demonstrable on thermography. These changes can be used to reinforce the findings of the battery of tests often used to measure the circulatory status (20,21). Certain vascular problems in the head and neck are demonstrable on thermography, particularly arteriosclerotic disease of the extracranial carotid complex, which is responsible for nearly half of all strokes (22).

Both cluster and migraine headaches are associated with changes demonstrable on thermography. Most patients show an increase in forehead temperature on the painful side in the later stages of an attack, but this increase may be preceded by a decrease in temperature above the affected eye (20).

Inflammatory mechanisms

Thermography may also be used when both the nervous and vascular support to an area are intact. Neoplasms, infections, and toxic and immunologic reactions can invoke inflammatory responses that may be demonstrated thermographically (23,24). The inflammatory response involves complex biochemical and biophysical events including histamine release and activation of the kinin-generating systems. These events have potent vasoactive effects on the microcirculation of the skin and are reflected in temperature

changes. Increased blood flow may be due to the pressure of edema or infection below the fascia. General and local infections, such as abcesses or cellulitis, show up quickly and accurately on thermography (25). Thyroid nodules, both hot and cold, may be outlined, and skin malignancy shows a much higher degree of hyperemia than nonmalignant but similar lesions (26). Skeletal pathology may be demonstrated with thermography (19). Stress fractures are demonstrable in sports medicine situations (27). Osteomeyelitis can be outlined and the progress of a course of treatment followed. Arthritis in a clinical setting is demonstrable on a thermogram of the joint area compared with the contralateral member (28,29).

Rationale

Skin temperature changes may be caused by heat generated by muscular activity, stimulation of sensory nerves, stimulation of spinal parasympathetic nerves, stimulation of the sympathetic vasoconstrictor or vasodilator system, and segmental regulation by the somato-sympathetic reflex (3). Chemotactic factors are also known to play an important role in the regulation of core and surface temperature. The primary rationale for the clinical use of thermography is the assumption that there are no significant differences in temperatures between anatomically symmetrical regions in a normal individual. Thermographically observed asymmetries are assumed to indicate the presence or absence of regional pathology.

Proponents of thermography believe there are two important advantages to this mode of imaging. First, it does not subject the patient to radiation or any extraneous medication. Second, it is not invasive or manipulative. The rationale for using thermography when evaluating neurological dysfunction is that the effects of nerve root pressure can be visualized and demonstrated along the lines of one or more dermatomes by changes in skin temperature. This test has none of the invasiveness or postexamination sequelae of myelograms or the radiation exposure of myclography or CT scans. In cases of peripheral nerve involvement, nonspecific thermal changes associated with nerve pressure or injury can be demonstrated without discomfort to the patient.

While temperature changes are not specific, proponents argue that they are easily detectable with a high degree of sensitivity. It may be possible to diagnose deep venous thrombosis of the extremity in the acute stages without the attendant hazards of a venogram, including manipulation and x-ray exposure. In cases of deep venous thrombosis, there is a diffuse rise of about 1–2°C in the temperature of the limb or part of it; the normal thermographic pattern is disrupted (30).

Thermography has also been proposed as a way to demonstrate and follow chronic venous problems. Arterial insufficiency of the extremities can be demonstrated whether it is acute, the result of an embolus for example, or chronic, the result of progressive arteriosclerosis. It may also be possible to demonstrate vascular problems of the head and neck, such as carotid artery insufficiency. Cluster and migraine headaches can be verified and localized.

In addition to eliminating the exposure to radiation and manipulation, proponents of thermography claim that it allows valid diagnoses to be made more quickly, with consequent reductions in hospital stays. Proponents also claim that thermography offers an excellent method for documenting progress during or subsequent to a surgical procedure. Cost of care is said to be reduced by avoiding more expensive procedures such as CT scan and myelography. This conclusion is not supported by published data. Finally, it is suggested that long-term savings will follow if a pre-employment baseline thermogram is taken for use in evaluating possible future claims of injury in those individuals who are in strenuous occupations (31).

Review of available information

Neurological-nerve root compression

The use of thermography for the diagnosis of back problems has stimulated more research than any of its other clinical applications. Thermography in the practice of orthopedics was first reported in 1964 by Albert. His report described a thermographic scan of a herniated disk in which a definite "hot spot" was seen overlying the area of pathology (32). In 1966, Goldberg reported finding abnormal thermographic patterns in 4 of 21 patients with herniated disks (33). In that same year Edeiken reported on the findings from 93 thermographic back scans in patients who presented with signs and symptoms of herniated lumbar disks (34). Thermographic back scans of 29 normal controls were used for comparison with patients with symptoms. Each patient also received a myelogram. Twenty-nine of the 93 patients subsequently had laminectomies to remove herniated disks. Thermographic findings were positive in 23 of the 29 patients with herniated disks identified at surgery. There were five false-negative and one false-positive thermogram. Myelographic findings were also confirmed in 23 of the 29 with herniated disks removed at surgery. There were three false-positive myelograms. The thermogram and myelogram results were consistent in 19 patients and different in 10 patients. In five instances the thermograms were correct. In five other instances the myelograms were correct. The author concluded that the results of the thermographic studies compared favorably with the results of the myelographic studies. However, in a more recent reevaluation of thermography, Edeiken and Shaber concluded that appropriate data do not exist to support its clinical use (35).

Raskin did thermographic studies on 82 patients (36). Sixty had lumbar disk symptoms and 12 had cervical disk symptoms. The other 10 included 6 with vertebral metastases in the thoracic area and 4 with other neurological disorders. The normal lumbar thermographic pattern was determined in 85 asymptomatic volunteers. Each patient received a myelogram. Following these studies, 38 of the 82 patients had surgery, which confirmed a herniated lumbar disk in 24 and spinal stenosis in 14. As seen in table 1, the myelogram was accurate in 88 percent and the thermogram in 71 percent of patients with a surgically proven herniated lumbar disk.

TABLE 1.—ACCURACY OF THERMOGRAM AND MYELOGRAM

	Surgical confirmation in 38 patients			
	Total	Positive thermogram	Negative thermogram	Diagnosed by myelography
Disk	24	17 (71%)	7 (29%)	21 (88%)
Spinal stenosis	14	3 (21%)	11 (79%)	10 (71%)

Source: Raskin MM, Martinez-Lopez M, Sheldon JJ. Lumbar thermography in discogenic disease. Radiology 1976; 119:149–152

These data indicate a 29 percent false-negative detection rate for lumbar disks and a 79 percent false-negative rate for spinal stenosis. Apparently, there were no false-positive findings in this relatively small sample size of cases.

As seen in table 2, the determination of the level of the herniated disk as almost as accurate by thermography as myelography at the L 4–5 interspace but inferior to myelography at the L 5–S 1 space.

TABLE 2.—LOCALIZATION ACCURACY BY THERMOGRAPHY AND MYELOGRAPHY FOR 24 HERNIATED DISKS AT SURGERY

	Level	
	L4–5	L5–S1
Total	16	8
Thermography	13	4

TABLE 2.—LOCALIZATION ACCURACY BY THERMOGRAPHY AND MYELOGRAPHY FOR 24 HERNIATED DISKS AT SURGERY—Continued

	Level	
	L4–5	L5–S1
Myelography	14	7

Source: Raskin MM. Martinez-Lopez M. Sheldon JJ. Lumbar thermography in discogenic disease. Radiology 1976, 119:149–152.

In the group of 44 patients who did not have surgery but had both examinations, 32 had a normal lumbar myelogram and 29, a normal thermogram. The 12 other patients who had an abnormal myelogram had clinical contraindications for surgery. The positive thermogram rate for these patients was approximately the same as that in the surgically confirmed group; but again, the number of cases is extremely small.

Raskin concluded that lumbar thermography may be a useful procedure for patients with symptoms of a herniated disk. He noted that patients with a positive thermogram are likely to have an abnormal myelogram. However, the myelographic findings could not be predicted by a negative thermogram.

In 1978, Ching and Wexler (37) introduced thermograms of the lower extremities to evaluate peripheral changes secondary to lumbar nerve root irritation. The routine lumbar thermographic evaluation by this team included black and white thermograms of the lumbar area and toes, along with color thermograms of the lumbar area, buttocks, anterior and posterior lateral thighs, legs, and anterior part of the feet. The authors presented four case reports selected from a group of approximately 70 cases of abnormal lumbar disks demonstrated by discogram, myelogram, and/or surgery. In these cases, the thermograms demonstrated focal areas of increased heat in the lumbar area and a relative decrease in the heat emission patterns in the buttocks and legs. Although other conditions may cause peripheral thermographic changes, they stated that persistence of abnormal findings on repeat examination along with clinical complaints related to the thermographic pattern validates the significance of the findings. Ching and Wexler noted that lumbar and peripheral thermographic findings studied together may help to establish the specificity of abnormal thermographic lumbar findings. They suggested that such studies may also help to validate the nature of a complaint or may raise possible causes of problems not otherwise detected in the clinical examination.

In 1980, Wexler (24) reported the results of a series of 86 patients whose problems seemed to be associated with nerve root irritation and were diagnosed by a combination of objective clinical findings and thermography. Fifty-four of the 86 patients were also screened by electromyogram (EMG). The results of thermography and EMG correlated in 41 out of 54 patients (76%) subjected to both tests. Among the 13 patients whose thermography and EMG test results were discordant, 9 (24%) had objective clinical findings that correlated with thermography. Four had objective clinical findings that correlated with EMG. The results of thermographic screening alone correlated with objective clinical findings in 30 out of 32 patients. Those objective findings included muscle spasm, straight jog-raising test, Lasegue test, sensory and reflex changes, verve stretching tests, and muscle grip strength readings. The overall correlation between thermography and objective clinical findings was 92 percent, which that with EMG was 83 percent EMG demonstrated a 71 percent sensitivity and a 100 percent specificity when compared with objective clinical findings. Thermography, on the other hand, was 85 percent specific when compared with objective clinical findings. The author concluded that thermography provides a graphic complementary adjunct to EMG and myelography for the evaluation of nerve root irritation. These clinical findings were not confirmed by surgical findings.

Pochaczevsky (38) reported on 101 patients given liquid crystal thermographic studies following the onset of symptoms indicative of nerve root irritation. Patients were not randomized or matched. Sixty-one patients were referred for myelography based on positive clinical findings and/or a positive EMG. Myelographic and thermographic results correlated in 51 out of 61 patients (84%) who had positive clinical findings. Thirty-eight patients who had thermographic and myelographic procedures also had surgery. Table 3 compares the results of thermography and myelography in the patients who had surgery. The author stated that although this is a preliminary study with a small number of patients, the accuracy of thermography appears to be equal to better than the accuracy of myelography.

In 1983, Meek and Gilbert reported on the results of a series of 200 patients in whom thermograms were used as a screening device to diagnose and treat low back pain and "sciatica-like" complaints (39). CT scans were done on 58 of these 200 patients. Both thermographic and CT scans were classified as "significantly abnormal," "mildly abnormal," or "completely normal."

A significantly abnormal thermogram was defined as one showing temperature changes in the leg (below the knee) and the foot, with or without other changes, in three successive examinations done at 20-minute intervals. A mildly abnormal thermogram was defined as temperature changes in at least two areas (for example, buttocks or extremities) in three examinations at 20-minute intervals. A completely normal thermogram was defined as the absence of temperature changes seen in the thermograms. A significantly abnormal CT scan was defined as one showing encroachment of the disk into the foramen with or without swelling and displacement of the nerve root. A mildly abnormal scan was defined as one exhibiting some disk protrusion, no swelling or displacement of the nerve root, and an "adequate" spinal canal. A completely normal scan was one exhibiting none of the above conditions. A comparison of the thermograms and CT scans is seen in table 4.

Of the 12 patients who had significantly abnormal CT scans, 7 had significantly abnormal thermograms. Six of these patients had either a laminectomy or chemonucleolysis. None of the significantly abnormal scan patients with mildly abnormal thermograms had surgery or chemonucleolysis. None of the 26 mildly abnormal scan patients, including 3 who had significantly abnormal thermograms, had surgery or chemonucleolysis. None of the 20 patients with normal scans had surgery or chemonucleolysis. Criteria for selection for surgery or chemonucleolysis were not stated.

TABLE 3.—COMPARISON OF SURGICAL FINDINGS WITH THERMOGRAPHY AND MYELOGRAPHY

Results	Thermography	Myelography
True positive	35	31
True negative	1	1
False positive	2	0
False negative	0	6
Total cases	38	38
Accuracy (%)	5	84

Source: Pochaczevsky R. Liquid crystal thermography of the spine and extremities. J. Neurosurg 1982; 56:386–395.

The four patients with mildly abnormal scans and normal thermograms were those with no objective physical findings and were believed to have false-positive scans. The incidence of positive thermograms was found to be much higher than the frequency of significantly abnormal scans. The authors concluded that thermography was a good screening procedure relative to CT scans in the evaluation of low back disorders.

In 1983, Uricchio reported on the results of a series of nonrandomized or matched patients evaluated for cervical, thoracic, or lumbosacral nerve root irritation (40). Three hundred and fourteen examinations in 243 patients resulted in 101 abnormal, 198 normal, and 15 equivocal readings (abnormal, normal, and equivocal were not defined). Sixty three patients received myelograms (indications for myelography were not stated). Comparison of thermographic and myelographic results showed 32 were positive on both tests, 24 were negative on both, and 7 cases were in disagreement (no surgical confirmation).

TABLE 4.—COMPARISON OF THERMOGRAPHY WITH CT SCAN FINDINGS

CT	N	Thermogram		
		Normal	Mildly abnormal	Significantly abnormal
Normal	20	7	10	3
Mildly abnormal	26	4	19	3
Significantly abnormal	12	0	5	7

Source: Mock JB, Gilbert SK. The role of thermography in low back disorders J Neuro Orthopaed Surg 1983;4:235–239.

There was an 89 percent correlation between thermographic and myelographic

findings. Uricchio concluded that thermography is becoming a useful adjunctive diagnostic procedure. He has found that it provides objective documentation of sensory nerve fiber insult and may corroborate subjective radicular pain complaints. He did not recommend thermography as a replacement for physical examination, CT scan, EMG, or myelography. However, Uricchio has found that thermography can be used with discretion to make intelligent decisions regarding the use of more invasive procedures.

In 1984, Perelman reported a comparison of thermography with CT scanning of the lumbar spine (41). This was a prospective study with 116 patients ranging in age from 17 to 65; there were 50 men and 66 women. A control group of 16 individuals was established. CT scans were performed in four separate institutional units. Of the 16 normal patients, there were 12 normal and 4 abnormal thermograms. The abnormal findings were all in women. No explanation was offered as to the causes of these abnormal thermograms. Of the 116 patients who underwent both examinations there was consistency in the finding of abnormalities in 99 patients (85%). There were 89 patients who had positive thermograms associated with positive scans and 10 patients who had negative thermograms associated with negative scans. Overall correlation was reported as 85 percent. Seventeen patients had positive thermograms and negative CT scans. There were, however, no patients who had negative thermograms and positive CT scans. These findings were not confirmed by surgery. The author concluded that thermography appears to have a clinical role in the evaluation of low back pain. He stated that thermography is a physiological test of sensory nerve irritation that appears to correlate well with anatomical tests such as a CT scan. He hesitated to assess its exact role in patient management but suggested a further clinical study would be needed to determine its true efficacy and the exact place for it as a diagnostic aid for the evaluation of lumbar disk disease.

In 1985, Hubbard and Hoyt reported on a major study comparing thermography with other diagnostic modalities (42). In this prospective study of 495 patients, consecutive thermographic examinations for complaints of pain were studied. Pain was noted in the lumbar area in 208 patients, in the cervical area in 245, in the thoracic area in 34, and in the facial area in 8. The thermographic findings were compared with topographic pain mapping drawn by the patients. The thermographic findings were also compared with EMG, myelography, and CT scanning results in the corresponding areas. A small control group of 23 asymptomatic medical students was also evaluated with complete cervical and lumbar studies. In the abnormal lumbar studies in the patient group, a positive symptom/thermogram correlation was present in 93 percent. The correlation in the cervical studies was 96 percent. Correlation between EMG and the thermogram was 57 percent in the lumbar area and lower extremities and 71 percent in the cervical areas and upper extremities. Myelographic and thermographic correlations were 93 percent in the lumbar area and 84 percent in the cervical regions. CT scan correlations were 76 percent in the lumbar and 84 percent in the cervical regions. The control group exhibited asymmetric temperature distribution in 87 percent of the cervical studies and 82 percent of the lumbar studies (indicating temperature differences among normals). The correlation between the thermographic abnormalities and the topographic pain diagrams drawn by patients of the location of their discomfort was comparable. The authors point out that the literature generally indicated a 90–96 percent correlation of patient's clinical symptoms and thermographic abnormalities. The authors suggest that in those cases where thermography disagrees with the radiological studies, one should remember that thermography is a test of physiology while the myelogram and the CT scan are anatomic studies demonstrating form and structure. None of these findings were confirmed by surgery.

Weinstein and Weinstein have data from an unpublished, uncontrolled study on the effectiveness of thermography in 500 patients (43). Patients were examined by thermography using a standardized examination protocol. In the study, an initial 250 patients were chosen on the basis of having a radicular complaint. The remaining 250 patients were consecutive cases that were chosen on the basis of having a persistent radicular complaint and were possible surgical candidates. Lumbar spine thermograms of the 500 patients revealed 308 positive findings, 181 without positive findings, and 11 equivocal readings. In comparison with EMG done on the patients who had positive thermograms, there was an agreement level of 85 percent in 80 cases. With the 76 EMGs done on the patients with negative thermograms there was 100 percent agreement. CT scans done on 151 positive thermogram patients showed a correlation of 77 percent. CT on 54 negative thermogram patients show a correlation of 98 percent. In comparing the myelograms of 51 patients who had positive thermograms, a correlation of 68 percent was observed. The myelograms in three patients with negative thermograms showed agreement in all cases. In the 34 patients with positive thermograms who underwent surgery there was 100-percent agreement. The investigators considered thermography to be a highly accurate diagnostic tool. They also concluded that the thermogram, when positive, was approximately 10 percent more sensitive than the diagnostic modalities with which it was compared. The true value of the study was thought to be the relationship between the negative thermograms and the absence of disease. Here the relationship was 100 percent. The investigators concluded that thermograms may be among the most valuable tools clinicians have to work with in evaluating low back pain. They recommended that thermography should be in the diagnostic armamentarium as a cost-effective modality. They also believe that utilization of the thermogram as a screening tool allows patient management to more quickly proceed to aggressive treatment in approximately 40 percent of the patients, thereby shortening the treatment process. In another unpublished paper, Dagi and associates used thermography in the diagnosis of lumbo-sacral radiculopathy (44). A prospective study of 57 patients with a complaint of low back pain referable to the lumbosacral region was performed using thermography prior to myelography and surgery. In 49 of the 57 patients, the thermograms correlated with myelograms and surgical findings. There were 18 negative studies with a 100 percent correlation. In 23 patients with suspected herniated disks, 19 thermograms exhibited changes compatible with radicular irritation. In 3 out of 23 (13%), the thermographic pattern suggested radicular irritation, but myelography was not diagnostic and no operation was performed. Thermography was described as a sensitive, noninvasive physiological screening procedure with the ability to detect nerve root irritation that correlates well with myelographic findings and surgery.

In 1985, Abernathy and associates reported in 85 cases of lumbosacral radiculopathy (44). Patients were admitted to the hospital for myelogram, which served as the standard against which thermography was evaluated. Thermography of the spine and lower extremities was performed prior to myelography. The result was a thermographic sensitivity of 93 percent and specificity of 71 percent when compared with myelography. In this series the authors felt the results justified the use of thermography as a cost-effective, first-line screening modality to identify those patients who must be subjected to more costly, invasive tests such as myelography.

Liquid crystal thermography (LCT) continues to be used in many clinical situations. In 1984 a prospective study of 155 chronic low back pain patients was reported by Newman and associates (45). The protocol was designed to compare LCT with physical examination, myelography, EMG, and CT scanning. All thermograms were interpreted by two independent examiners. Selection of patients was limited to those with chronic low back pain. Patients ranged in age from 16–69 years. There were 107 males and 48 females. In addition to having chronic back pain these patients had failed previous treatment programs and had pain for 6 months or more. Forty eight percent had previous lumbar surgery and 52 percent had no operation on their spine. They had undergone a variety of previous diagnostic examinations. All patients had neurological examinations and underwent LCT of the back and lower extremities.

Interpretive reliability was 96 percent. The two independent readers were in agreement in 149 of 155 cases. Thermography was considered to be positive for nerve root compromise in 72 of 155 patients. Neurological findings were positive in 49 patients. A positive finding was defined as objective evidence of nerve root compromise, such as asymmetrical absence of or markedly diminished reflexes with or without asymmetrical weakness. Of the 63 EMG studies done, 44 percent were found to be positive. Myelograms on 115 of the patients were positive in 41 percent; and CT scans, which were available on 55 patients, were

positive in 29 percent (16 cases). There was a 75-percent agreement, both positive and negative, between neurological findings and thermography.

Thermography was found to be accurate in 80 percent of the cases for which there was evidence of disturbance in neurological function as compared with 57 percent of those cases that suggested structural and anatomical pathology. The authors point out that it is difficult to tell in most reported series whether patients have acute back pain or chronic pain. They believe that there is a tendency to select acute back pain patients with strongly positive neurological findings and to correlate the results with one or two diagnostic procedures. Another issue addressed by the authors is the determination of what constitutes an absolute standard. The most common standard is correlated with findings at surgery, even though the results of these operations are not often clearly objective. The authors believe that in addition to very acute cases, there is a group of marginal patients in whom diagnostic procedures should be most valuable in predicting the presence or absence of surgically correctable pain-producing lesions.

Examination of the test results also showed a significantly greater tendency for patients with previous back surgery to have positive findings on myelography and CT. The authors concluded that LCT may be a useful tool in the evaluation of chronic low back pain from nerve root compression only, because unlike myelography and CT scan it does not delineate structure. Liquid crystal thermography has the following advantages over other procedures in the chronic back pain population: It provides a pictorial presentation; there is less opportunity for manipulation of outcome depending upon the patient's word alone; it is less invasive than myelography; it is a sensitive technique with a relatively low percentage of false-negative results; (5–8%), there is interobserver reliability; and there is close association with sensory as opposed to motor abnormalities. The authors point out that thermography appears limited in differentiating the exact nerve root in question in many cases and must be supplemented by other tests prior to surgical intervention. They conclude that LCT shows promise as an adjunctive diagnostic tool in the assessment of chronic back pain patients. They recommend that further data be obtained to determine its value in the diagnosis of both acute and chronic pain syndromes.

In a more recent study, Mills and associates compared the results of thermography with clinical assessment, myelography, CT scans, EMG, and surgical findings in 107 patients suspected of having nerve root compression. Thermography was found to be the least reliable of these techniques in making the diagnosis (46). Agreement between thermography and the other modalities was demonstrated in only 48 percent of cases.

In 1984, Nakano reported on the use of LCT in low back pain (48). In the patients selected, the back pain could be traced directly to an episode of trauma. Among 109 traumatic low back pain patients in the study population, 43 (39%) had abnormal thermographic findings. The age range of the patients was from 15–72 years. The most common cause of back pain was automobile accidents. However, work-related low back pain injuries were most common in the age groups of 31–50, with a preponderance of men involved. Sixty-six patients with normal thermograms did not require surgical intervention or invasive neurodiagnostic procedures. The author concluded that the use of LCT is appropriate in the following clinical situations:

1. Screening patients who require myelograms
2. Assessing traumatic low back pain in patients with negative or equivocal myelograms
3. Acting as a complementary procedure to CT and myelography in determining which abnormalities may be clinically relevant
4. Distinguishing lumbar nerve root compression between disks and spinal stenosis
5. Separating nerve irritation from facet syndrome patients and separating nerve irritation patients from others

Nakano suggested that LCT may be useful in pre-employment examinations for strenuous occupations and might also be a worthwhile tool in evaluating suspected malingering. He pointed out that in the 43 patients with traumatic back pain where thermography documented specific abnormalities, the findings were consistently confirmed by CT scan, myelography, and surgery. He concluded that thermography represents a reliable, noninvasive, and painless physiological procedure in patients with symptomatic low back pain.

Delcour reported the results of CT and thermographic examinations in 80 patients with herniated disk lesions (49). His impression was that thermography appears to be a reliable screening method enabling optimal selection of patients for scanning.

In 1985, Chang and associates investigated the previously reported findings of temperature increases overlying the vertebral spine (50). Four classes of thermal sensors were used: thermography, thermocouple, thermistor, and LCT. Reference points at the midline overlying the lower thoracic spinous process and the paramedian area overlying the latissimus dorsi muscle were studied in 30 consecutive subjects. No artificial cooling was employed. All four thermal sensors furnished comparable data demonstrating a temperature increase overlying the midline with a relative temperature decrease over the paramedian area. The mean temperature change from midline to paramedian reference points varied somewhat depending on the thermal sensor being used but were generally between .81 and 1.50 °C. Liquid crystal thermography demonstrated results comparable to other thermal sensors in the evaluation of midline heat. The average midline reference temperatures were 1.18 °C higher than the average paramedian reference points. No attempt was made to explain the presence of the temperature change.

Most instances of pathology of the cervical spine and its related thermographic findings have been reported in concert with thoracolumbar and other vertebral problems. In addition, cervical surgical results are not usually separated from the results from other areas of the spine. Wexler tabulated 16 thermogram studies associated with the spine (51). Only three of these were limited to the cervical vertebral area. In his review of thermogram correlations with other diagnostic procedures in the cervical area, Wexler found that Weinstein's report had an 83 percent correlation of abnormal findings with myelograms, 85 percent with CT scans, and 96 percent with EMG (43). Hubbard found a correlation of 84 percent with myelogram and CT scan, 71 percent with EMG, and 96 percent with patients symptoms (42).

Part of the reporting difficulty with thermography is the inability of the interpreter to differentiate the exact vertebral body or bodies involved; for example, the lowest cervical or uppermost lumbar vertebrae. Another problem is related to the relative frequency of soft tissue injury accompanying back pain originating in this area. This problem was addressed in 1984 by Uricchio (52). A total of 891 patients who had a total 1,117 thermographic studies were evaluated. Some had complaints in more than one spinal area. Of the set, 469 thermograms (42%) were thought to be abnormal and 629 (56%) were negative. Equivocal results were found in 19 (2%). A total of 155 myelograms were also done. Eighty-three were positive, and 77 patients (49%) had both a positive myelogram and thermogram. Sixty two patients (40%) were negative on both tests. It is noted that if a thermogram suggests nerve fiber or nerve root pressure, it does not indicate how long that condition has prevailed nor does it specify the level at which to operate. The combination of studies appears to give a much more specific understanding of back pain and neck injuries than had previously been enjoyed. However, the extent to which thermography enhances the prediction of specific pathology has not been definitively demonstrated.

Indications for thermography vary. It has been proposed as a way to monitor the progress of bone or soft tissue injuries, such as fractures or joint sprains, and detect the presence or absence of soft tissue reactions in patients. Uricchio concluded that thermography provided assistance in diagnosing soft tissue injuries of the neck and back. In his study where 155 patients had both myelograms and thermograms, the thermogram was shown to directly correlate with the myelogram in 90 percent of the cases.

In 1985, Mahoney undertook a prospective study of the use of thermography in whiplash injuries (53). The question was whether thermography was a valuable diagnostic tool in whiplash injuries of the neck and upper back. The study sought to determine if significant changes could be found in patients suffering from whiplash injuries and, if so, whether they could be tracked during the period of treatment and recovery. Thermographic examinations were performed on the neck, upper back, and upper extremities of 44 normal volunteers. Asymmetrical emissions exeeding 1 °C were found in five, and all were distal to the wrist. Twenty-one patients disabled with whiplash

injury for 3–24 months were examined. Six demonstrated asymmetrical areas of heat exceeding 1 °C. Four of these were in areas corresponding to the patient's symptoms and clinical findings. Four patients were reexamined after a 3- to 6-month interval. Two were still disabled with pain, and their thermograms had not changed. One had completely recovered after a 6-month disability period and the abnormal thermogram had reverted to normal. The fourth had almost completely recovered and the abnormal thermogram had reverted to normal.

A problem of cervical spine thermography has been the lack of definition of normal versus abnormal conditions and findings. No analyses are based on simultaneous thermograms of the posterior neck and shoulders. In 1984, a study was designed by Feldman and Nickoloff utilizing LCT to demonstrate the range of thermal variations in the upper torso and the lower extremities in an essentially symptomatic population (54). It was noted that thermography predominately serves to define physiologic and sensory aberrations. One hundred relatively asymptomatic, active factory workers were selected for standardized thermographic examinations. Simultaneous thermograms of the neck and shoulders were considered equivocally normal and showed symmetric heat emission at the base of the neck and between both shoulders and the upper extremities. Asymmetry down to 0.3 °C was tabulated.

The normal progression of proximally warmer to distally cooler lower limbs was evident. They found that C–6, C–7, and C–8 each have their own distinctive nerve root patterns in thermography. It was also noted that time-related degenerative problems or old injuries may affect visable symmetry in thermography. Nevertheless, exact symmetric thermograms with temperature differentials of less than 0.3 °C were found in 82 percent of the patients. Some asymmetries were found to be the result of skin lesions such as psoriasis, or congenital hemangiomas. Feldman and Nickoloff determined that there was excellent correlation of thermal symmetry in the normal population studied. There was persistent thermal asymmetry in only 6 percent of the 100 workers and that was limited to small zone areas. However, in general clinical use the authors suggest that a 1.0 °C thermal asymmetry should be regarded as definitely abnormal. They concluded that the study showed that thermograms provide reliable and useful means for documentation of physiological dysfunction by reinforcing the concept that symmetry should exist in normal individuals. Organic pathology should be sought for any variation in cases of asymmetry.

Neck and shoulder pain after trauma is very often the result of soft tissue injury. Ferenc has attempted to explain the reason for the local increase in heat production (55). On a micropathologic level, there is a disruption of muscle cells and capillaries at the time of injury, with a disorganization of the contractible elements, a decrease of local oxygen levels, and augmentation of carbon dioxide levels. The repair phase is associated with new capillaries. Local hypothermia or local hyperthermia may exist. Hyperthermia is due to an increase in vascular activity. A hematoma may be present. Hypothermia involves larger areas and appears when muscular spasms and vasoconstriction are the predominating phenomena. Ferenc believes that vasoconstriction is due to the irrigation of sensitive nerves. Hamilton has also investigated the causes of the temperature changes (56). She observed that most hypotheses for the basic cause of thermoregulation has been criticized and proposed the sinovertebral theory. This theory assumes that the nerve carries sensory and sympathetic innervation to the dura, the walls of the vessels, the periosteum, and intervertebral disks. The nerve is present at each segment and re-enters the spinal canal ventral to the dorsal root ganglion to divide into transverse ascending and descending fibers. The question is whether there is a crossover at the midline. The autonomic nervous system has components within the CNS as well. She believes that arteriolar construction is the likely cause of skin cooling and can account for the decrease in temperature levels of the dermatome if it receives increased sympathetic stimulation. Hamilton concluded that no one theory explained the basic causes of temperature change, either in chronic disease or in acute trauma. She suggested that continued research is required at both the basic science level and in clinical studies.

In an effort to find out what orthopedic surgeons who regularly treat neck and back problems think of thermography, a survey of 406 fellows of the American Academy of Orthopedic Surgeons was conducted in 1987 (57). Ninety three percent of the 316 responders to the questionnaire handled neck and back problems in their practice. Thermography was used by only 6 percent. In contrast, 100 percent used x-ray, 99 percent used CT scan, 83 percent used NMR, and 91 percent used EMG. Thermography was thought to be a valid test for neck and back pain by only 5 percent of the responders. However 52 percent had "no firm opinion" on the matter. Only 6 physicians using thermography considered it helpful.

Peripheral Nerves

Nakano stated that thermography can detect and demonstrate irritation or damage to a sensory nerve in the various entrapment neuropathies of the upper limbs (58). Liquid crystal thermography may detect those conditions in which sensory nerve fibers become compromised; for example, carpal tunnel syndrome, ulnar neuropathy of the elbow and wrist, and brachial plexus disorders. Thermography will not detect motor nerve entrapment. An advantage of thermography is thought to be its ability to provide graphic evaluation of sensory nerve fiber irritation. Roger and associates, during a period of 8 months, examined 32 cases of idiopathic carpal tunnel syndrome (59). The patients were given routine clinical examinations and diagnostic tests such as radiography and EMG as well as thermography. By comparing the clinical and functional results before and after treatment, they concluded that the use of thermography correlated well with the other examinations, provided valuable information, and did no harm to the patient. They found thermography excellent for tracking postoperative progress and consequently for determining the prognosis. Pernet and Villano used thermography and determined the reasonable thermal variations during the preoperative and postoperative periods near the time of surgery (60). Sixteen cases of traumatic nervous lesions as well as vascular osteoarticular lesions with circulation modification were studied. The authors believe that in traumatic injuries, the main clinical issue is the early identification of abnormal circulatory changes. They suggested that thermography can give, directly or indirectly, very valuable information for both diagnosis and prognosis.

In 1982, Hendler, Uematsu, and Long used thermography on 224 consecutive patients who were complaining of chronic unexplained pain to determine if they had received appropriate diagnoses (61). The diagnosis in the early stages of reflex sympathetic dystrophy (RSD) is difficult because the manifestations may be vague in the patients who complain of paresthesia, pain on exposure to cold, and exacerbation of the pain with use of the extremity. All patients received complete physical, psychiatric, radiological, neurological, orthopedic, and laboratory workups. Thermography was also used. A difference of 1°C between affected areas and a comparison site was used as a criterion for establishing the existence of an abnormality. All patients were considered to have been referred for evaluation of "psychogenic" pain. Abnormal thermograms were found in 43 (19%) of the patients. Four cases of RSD were excluded from the study because of prior surgical sympathectomy that produced an area of warmth greater than 3°C in the affected limb. Thirty-two cases were thought to have RSD. Of those, only five could be shown to have correlative electromyographic test results. But they never proved the finding was real and associated with disease. The authors noted that it is possible for cutaneous vasodilation, and therefore increased local skin temperature, to occur in the early stages of pressure on the peripheral nerves. Although dilation may persist for as long as 6 months, vasoconstriction generally ensues within several months of the injury. The authors suggested that the use of thermography often improves the results of sympathectomy since good outcomes depend heavily on accurate diagnoses. The authors caution that regardless of any testing, the problems of separating psychiatric and physical illness require astute clinical judgment.

Subsequently, Uematsu expanded on these descriptions of RSD and the difficulty in differentiating psychogenic pain or causes of malingering from RSD. He emphasized that RSD is caused by an organic or vascular disturbance (62). The precipitating insult may be infection, injury, thrombosis, or in a few cases, may occur without any apparent cause. All patients, however, have burning pain and vasomotor instability. In reviewing his records, Uematsu found that thermography was abnormal in over 50

percent (431/803) of cases in chronically ill patients. Sixty-eight percent had colder temperatures in the area of pain and 32 percent had warmer temperatures. Ninety percent had temperature differences ranging from 1–2 °C and 10 percent had differences in excess of 3 °C. He could not demonstrate a relation between the degree of temperature asymmetry and the severity of the neurological deficit.

Brelsford and Uematsu provided laboratory evidence of the physiological basis of thermography through a presentation of cutaneous sensory and vasomotor activity in the injured peripheral nerve (63). Impaired function of cutaneous segments of blocked nerves in experimental animals is clearly visualized by means of elevated temperature measurements obtained by computerized thermography. Mean temperature elevations in the segments of anesthetized primate nerves were 2.40 °C at the ulnar segment 17 minutes after a nerve block and 1.20 °C at the peroneal nerve after 20 minutes. The vasomotor activity of specific nerves recorded after local anesthesia and displayed by thermographic imaging corresponded to the distribution of sensory segments identified by other means. Thermography was thought to be a useful tool, both quantitatively and qualitatively, in mapping the cutaneous distribution of peripheral nerves and for the evaluation of peripheral nerve injuries.

Ecker carried out LCT in 36 cases of shoulder-hand syndrome (64). Most cases were posttraumatic with prominent hand symptoms. Results were positive (at least 1.0 °C increase or decrease in temperature) in 30 of 36 hands (83%). Also positive were 22 of 32 backs of shoulders (69%) and 60 percent or 12 of 20 of the fronts of shoulders in 88 tested regions. Forty-four (50%) of the tested regions were colder, 20 (23%) were warmer, and 27 percent equal in temperature to the symmetrical contralateral region. The author's conclusion was that LCT is a safe, painless, and rapid means of measuring skin temperature and therefore useful in diagnosing shoulder-hand syndrome. Pulst and Haller examined 23 patients with foci of unilateral lesions of the peripheral nervous system by thermography (65). A minor sweat test was used to determine if sympathetic outflow was disturbed. In 15 patients without a concomitant sympathetic lesion, thermosymmetry was affected. Eight patients had evidence of abnormal sweat secretion. In these patients, thermoregulation was severely disturbed. During the first 5–8 months, the effects on skin areas were hyperthermic whereas, later, only hypothermia was observed. Cold stimuli increased the temperature difference in patients with disturbed sympathetic function but not in the controls. The investigators concluded that thermography was a reliable, noninvasive technique to detect a lesion of sympathetic overflow and permits estimation of the time course of the lesion.

In 1985, Ecker studied undiagnosed cases of chronic limb pain. Twenty-six cases of RSD (21.5%) were found in a group of 121 patients, all of whom had been considered psychoneurotic (66). A typical case of RSD was described as following an injury to the upper limb and having a constant sensation of burning pain in the hand. The hand is also hypersensitive to heat or cold. Reflex sympathetic dystrophy also follows other physical insults such as myocardial infarction or hemiplegia. However, at times, no antecedent disorder can be identified. Ecker used LCT in his study. An examination was considered to be positive for RSD if there was an elevation or depression of temperature of at least 1 °C in the painful region as compared with neighboring areas and also in comparison to the symmetrical region of the contralateral limb. In his opinion, RSD has regional rather than neuroanatomical changes, unless there is also a neurological disorder. The author states that early diagnosis of RSD is associated with a better outcome. Treatments employed included analgesics, cold packs, active exercises, corticosteroids, and sympathetic blocks.

There have been two recent reviews of RSD, neither of which referred to thermography in the diagnosis (67,68). The first review maintained that the diagnosis of RSD is primarily clinical and that the best approach to confirm its presence is the use of differential neural blockade. These reviews refer to radiologic changes that are important in the recognition and diagnosis of RSD and suggest the use of scintigraphy for both diagnosis and management. In 1986, Harway presented a group of thermograms depicting various peripheral nerve problems (69). He employed thermography with stepwise gradation for color change set at 0.5°C intervals. In his experience, valuable information may be obtained if meticulous attention is paid to technique. A strict protocol and equilibration with ambient temperature is essential. He believes thermograms using standard views, will be reproducible and accurate.

In a recent study of thermography in the evaluation of pain following trauma to the spine and extremities, Pochaczevsky evaluated 70 patients (no controls were included) and found that 70 percent had thermographic abnormalities compatible with nerve fiber irritation (70).

The only blind, controlled study of thermography that evaluated patients with chronic pain was that of Sherman and associates. They reported on the analysis of 125 patients referred for studies of back, patellar, and phantom limb or body pain (70). Thermograms of the painful areas were compared with adjacent and nonpainful contralateral areas. Analysis of pattern variation and stability of thermograms was performed on 32 healthy controls. The study concluded by stating that because of the number of false-positive and false-negative findings encountered, further controlled, blind studies would have to be conducted before thermography can be accepted as a way to demonstrate that a patient has abnormalities related to pain in a particular area.

Vascular—Deep Venous Thrombosis

The clinical diagnosis of deep venous thrombosis (DVT) is difficult. Patients often do not have symptoms prior to the sudden onset of morbidity or death caused by a pulmonary embolus. Because of the life-threatening potential of pulmonary emboli caused by DVT, physicians are interested in measures likely to detect patients predisposed to DVT and in detecting the condition at an early stage of development so that treatment may be initiated.

Venography is the best method available for diagnosing DVT. However, it is invasive and requires the use of ionizing radiation. It may also cause complications related to the use of radiopaque material, and may itself cause venous thromboses. Although the 125 I-fibrinogen test and the technetium 99 (Tc 99 m) plasminogen test are less hazardous than venography, these procedures still expose patients to radioactive materials. This exposure may not be desirable, particularly during pregnancy. Doppler sound testing and plethysmography are also used by some clinicians to detect DVT.

In recent years, the use of thermography for detecting DVT has been advocated. Soulen and associates first supported the use of thermography for diagnosing this problem in 1972 (72). Subsequently, Cooke and Pilcher became intrigued with the idea that thermography could be helpful in detecting subclinical and clinical DVT. They noted that an increased temperature and delayed cooling of a limb on exposure appear to be the most constant clinical sign for detecting DVT. They designed a study to see if thermography could effectively detect DVT. In 1973 and 1974, Cooke and Pilcher reported on a series of 102 patients who were thermographically tested preoperatively and every day for 14 days after surgery (73,74). Bilateral phlebograms were done immediately following a positive thermogram. The patient population included those undergoing hip surgery; those with general medical, surgical, and obstetrical problems; and those with recurrent idiopathic DVT. Fifty-one cases of DVT were suspected, based on thermographic results. Phlebography demonstrated the presence of 53 DVTs. There were no false-positive thermographic findings. A concurrent comparison of thermography and clinical symptoms (increased limb temperature, pain, or increased limb circumference due to edema) revealed that clinical symptoms were poor indicators of DVT in this patient population. In 28 of 49 legs, no temperature change was detected by palpation. Pitting edema did not occur in 38 patients with thrombosed legs but did develop in eight non-DVT postoperative cases. Pressure on the calf caused pain in four patients with DVT and in three patients with normal deep veins. Cooke and Pilcher concluded that increased limb temperature and delayed cooling on exposure is an early symptom of DVT that can be consistently detected by thermography.

Since the publication of Cooke and Pilcher's work, other investigators have compared the diagnostic capability of thermography to phlebography in a series of 58 patients who presented clinical symptoms suggestive of DVT (75). In all but four cases, a temperature elevation recorded by thermography was consistent with a thrombus located by phlebography. The cool

temperature in legs with thrombosis was attributed to arterial spasm caused by the DVT. Minimal or no temperature elevation was recorded by thermography in cases of old thromboses. Since skin temperature elevations can be caused by many problems (including cellulitis) and do not provide specific information on the nature of a thrombus (whether it is adherent or has a floating tip), Leiviska and Perttala recommended the use of thermography only as a screening device to rule out DVT when thermographic temperatures in both limbs are symmetrical (76). They also suggested that positive thermographic studies may prove useful in evaluating DVT when the phlebograms are equivocal.

Bergqvist and associates found a high correlation between phlebograms and thermograms in their study of 118 patients suspected of having DVT (77). There was a 90 percent agreement between the two tests (two false-positive and three false-negative thermographs). Among the 77 positive results, there was full agreement by both tests on the location of the DVT. Detection of an increased limb temperature was 10 times more sensitive by thermography than by hand palpation. Only 31 of 68 patients with positive thermograms had palpable elevated skin temperatures. Although thermography is easy, rapid, noninvasive, and has a high correlation with phlebograms, its inability to provide a morphological picture of DVT and to diagnose pelvic thrombi was viewed as a drawback. Bergqvist and associates recommended that a positive thermogram should be followed by a phlebogram.

Bystrom and associates compared phlebography and thermography in 51 patients with symptoms suggestive of DVT (78). The results from thermography and phlebography agreed that a thrombosis was present in 26 cases. With one exception, there was also agreement on the extent of the thromboses. Thermography in these cases gave only three false-positive readings. Bystrom and associates did not have any false-negative thermographic results. Patients with DVT also had borderline significant fibrin-fibrinogen degradation products (FDP), serum levels of which may be elevated in the presence of DVT. However, 31 percent of patients with normal deep veins also had elevated FDP levels. The authors concluded that there does not appear to be a relationship between DVT and FDP.

Ritchie and associates compared the results of thermography and phlebography in 200 patients referred to their clinic with suspected DVT (79). Seventy-two of 211 phlebograms were positive (34%). There was diagnostic agreement between thermography and phlebography in 166 of 211 tests (79%). Nineteen of 72 thermograms (26%) resulted in false-negative findings and 26 out of 139 (19%) were false-positive findings. These results gave thermography a 67 percent positive predictive value and an 86 percent negative predictive value in this patient population. The published criteria of Cooke and Pilcher were used to evaluate the thermograms. In retrospect, the false-positive results were attributed to 18 cases with venous insufficiency, 4 with inflammation, 3 with edema related to congestive heart failure, and 1 case with lymphedema. Seven false-negative results were old thromboses. Eleven had very limited thromboses, and one had an extensive calf thrombosis. Ritchie and associates suggested that the diagnostic agreement between thermography and phlebography in their study was lower than in studies by previous researchers. They concluded that this finding was due to the lower prevalence rate in their study population (34% versus 52%, 72% and 51% by Cooke and Pilcher (72, 73), Bergqvist (76), and Bystrom (77), respectively). The authors cited the inability of thermography to recognize thrombosis limited to one or two deep veins of the calf, as the greatest limitation of the study. While venous insufficiency was the primary cause of false-positive results, their ability to differentiate insufficiency from thrombosis improved with experience.

Based upon the thermographic findings in the group of 200 patients in their study, Ritchie and associates gave detailed descriptions of heat emission from particular muscle groups associated with thrombosed veins (80). This approach assumes that the presence of anatomically based patterns of involvement provides more significant input toward diagnostic accuracy than comparing a temperature elevation in one area in relation to adjacent areas or to the contralateral leg. Temperature elevation alone is a nonspecific criterion that can be confused with inflammatory processes.

In 1981, Aronen and associates sought to determine if the use of thermography would result in a reduction in the number of conventional phlebograms (81). One hundred and forty-one ambulatory patients were evaluated. The results of thermography and phlebography agreed in 84 percent of the examinations. There were 3 false-negative, and 19 false-positive results. The former was attributed to lack of a complete thermography study in two cases, and a complex disease process in the other. The false-positive findings were attributed to posttraumatic, postoperative, and postthrombotic states, and insufficiency of the perforating veins. The authors concluded that in the absence of a history of previous disease that could modify thermographic findings, a negative thermogram rules out DVT. Thus, its use as a primary diagnostic procedure can prevent invasive and potentially hazardous phlebographic examinations in many patients suspected of harboring a DVT.

In 1981, Wojciechowski and Zacharisson published a comparison of phlebography and thermography results in 233 patients (mostly outpatients) referred to their clinic with leg symptoms (75). Thermography was done prior to phlebography and was evaluated according to the criteria outlined by Cooke and Pilcher. The incidence of thrombosis (based on phlebograms) was 47 percent. Diagnostic agreement between the tests was 70 percent. Table 5 compares the results.

TABLE 5.—COMPARISON OF THERMOGRAPHIC AND PHLEBOGRAPHIC FINDINGS

Phlebography	Thermography	
	Positive	Negative
Postive	103	8
Negative	63	59

Source: Wojciechowski J, Zacharisson, BF. Thermography as screening method in the diagnosis of deep venous thrombosis of the leg. Acta Radiol 1981; 22:581-584.

The false-negative rate was 7.2 percent and the predictive value of a negative test was 88 percent. The false-positive rate was 52 percent and the predictive value of a positive thermogram was 62 percent. When reviewed retrospectively, three of the false-negative cases were definitely positive, and all eight cases were classified as minor thromboses. The false-positive results were attributed to varicose veins, skin abnormalities, trauma, rheumatoid arthritis, or old thrombotic disease. The thermographic heat pattern was not seen as a reliable indication of the extension of the thrombus in the leg. On the basis of these results, Wojciechowski and Zacharisson concluded that thermography is worthy of use as a prephlebographic screening test. This recommendation was based upon the low false-negative rate and the high predictive value of negative tests in this study. When used as a primary screen, they noted that thermography may obviate the use of phlebography for 30 percent of symptomatic patients.

Three studies on the use of thermography for this indication were published in 1983. Pochaczevsky and associates studied the correlation of LCT and phlebography to confirm the clinical diagnosis of DVT in 30 patients (82). Criteria for interpreting results were based on reports in the literature and the experience of the authors. There was agreement between the two methods in 27 out of 30 cases (90%). These were three false-positive thermograms. These false-positive results were attributed to problems other than DVT that increase skin temperature (periostitis, superficial thrombophlebitis, skin ulcerations). For Pochaczevsky and associates, these results suggested that LCT may be suitable for screening in high-risk patients or those with clinically suspected DVT.

Jensen and associates also used ICT to evaluate the suitability of thermography as a screen for DVT (83). During a 6-month period all patients admitted with DVT symptoms were referred for simultaneous thermography and phlebography. Five were omitted from analysis due to the inferior quality of their phlebograms. The results showed a diagnostic sensitivity of 97 percent and a diagnostic specificity of 50 percent, with an overall agreement of 73 percent. In addition to the criteria for interpreting thermograms as specified by Cooke and Pilcher, localized elevation in skin temperature was considered

a positive indicator for DVT. The 16 false-positive thermographs were attributed in part to these expanded interpretive criteria. There was one false-negative test. The authors concluded that thermography, because of its high sensitivity, is useful as a screening test. However, suspicion of DVT based upon thermography requires phlebography to confirm the diagnosis and to determine the extent of the thrombotic process. Jensen and associates pointed out that in this study, where thermography was used as a screening test, the number of phlebograms could have been reduced by 25 percent.

Wallin and associates compared thermography, Tc 99m-plasminogen test, and clinical diagnosis with phlebography in a prospective trail (84). All patients referred to the clinic with suspected DVT were placed in a special protocol that included all of the tests mentioned above. A clinical examination was performed by the clinic physician as well as by a physician on the thrombosis team. Each clinical examination was assigned a score of from 0 to 4, with the following interpretation: 0=no DVT, 1=probably no DVT, 2=inconclusive exam, 3 = probable DVT, and 4 = certain DVT. Thermograms were interpreted independently by two physicians skilled in thermographic interpretations and assigned a score of from 0 to 4 as follows: 0 = normal, 1 = patchy/localized heating not indicative of DVT, 2=doubtful DVT, 3=probable DVT, and 4=definite DVT. Thirty-nine of 112 patients (35%) had recent-onset DVTs diagnosed by phlebography. Sixty-six patients were normal and 13 had changes indicative of other problems. The results of the other tests given concurrently with phlebography are presented in table 6.

Wallin and associates also looked at the predictive value of the various procedures. They found that the predictive value of a positive test was highest for thermography (55%). The predictive value of a negative test was highest for thermography with clinical diagnosis by the thrombosis team (96%), followed by plasmin test (94%), clinical diagnosis by physician on duty (85%), clinical diagnosis by thrombosis team (84%), and thermogram alone (84%). Wallin and associates noted that the low sensitivity of thermography in this study compared with previous published studies may be related to the low prevalence of the disease in the population tested. Other studies have included populations of postoperative patients with DVT prevalence rates up to 72 percent. Also, in this study, thermographic images were interpreted entirely without other diagnostic aids. Based on the findings in this study, the authors could not recommend thermography as a reliable screening tool for diagnosing DVT. They noted that more acceptable results occurred when thermographic findings were combined with clinical findings, but further studies should be considered before definitive conclusions can be drawn.

TABLE 6.—COMPARISON OF PHLEBOGRAPHIC FINDINGS WITH OTHER DIAGNOSTIC STUDIES

Test	Sensitivity (%)	Specificity (%)
Thermography	77	66
Plasmin test	95	44
Clinical exam (physician) on duty	92	25
Clinical exam (thrombosis team physician	80	58
Thermograph and clinical exam (thrombosis team physician)	97	41

Source: Wallin L. et al. Thermography in the diagnosis of deep venous thrombosis, Med Scand 1983;214-15-20.

In 1985 Sandler and Martin reported on LCT as a screening test for DVT (85). They noted the poor correlation between clinically suspected and objectively proven deep thrombosis. Although the venogram is considered the most reliable test, the associated morbidity makes it unsuitable as a screening test in all patients suspected of having DVT. Liquid crystal thermography is rapid, easy to use, and inexpensive. It may therefore be suited for screening. In reviewing their experience, Sandler and Martin found that in patients with confirmed DVT there was a sensitivity of 97 percent for positive thermograms. The predictive value of a negative thermogram was 96.5 percent. The authors point out that even though it is generally accepted that thromboses in the leg increase skin temperatures, the mechanism by which this is caused is not fully understood.

Later in 1985, these same authors reported on an expanded clinical experience examining 90 patients with suspected DVT who underwent LCT prior to venography and x-rays (86). Thermography was positive in 39 of 40 patients with a positive venogram (sensitivity 97.5%). The venogram was normal in 29 of 30 patients with negative thermogram (negative predictive value of 96.6%). The high predictive value was pointed out as having value only in patients with positive thermograms that require further investigation. If this method was used routinely in all clinically suspected DVT cases, the number of venograms performed would be markedly reduced. The authors point out that LCT was not introduced for the routine diagnosis of DVT until 1982. They report that its degree of sensitivity and negative predictive values make it a useful screening test, reducing the possible need for anticoagulation therapy. They recommend that patients with clinical suspicion of DVT should have an LCT performed. Those with negative thermograms may be returned to expectant management. A positive result still holds a one in three chance of being a false-positive test result. In such instances, patients must have another diagnostic test, probably a venogram.

In a recent study by Jonker and associates, thermography was evaluated and compared with impedence plethysmography (IPG) in 52 patients with suspected DVT (87). The sensitivity, specificity, and accuracy of thermography was 83 percent, 41 percent, and 61 percent respectively compared with 83 percent, 96 percent, and 90 percent using IPG. It was concluded that the addition of thermography to IPG was of no clinical value.

Vascular—Arterial Disease of Extremities

Evans and associates used thermography to confirm the observation that the temperature differences between corresponding areas on the skin of opposing hands are normally minimal (88). They also demonstrated that the skin temperature distal to an occluded radial artery was lower than that of the contralateral hand. Temperature differences between the two hands decreases with time and had disappeared by the time that recannulization of the occluded artery, measured by the modified "Allen test," had occurred. Thermography is according to Evans' group, a simple, noninvasive technique for indicating the incidence and the progress of peripheral arterial occlusion.

With regard to lower limb arterial disease, other investigators describe skin temperature distributions that correspond to levels of arterial obstruction in the lower limbs (89). These temperature distributions may be conveniently observed through the use of thermography. During the work exercise test, thermography may be used to measure the change in skin temperature of the limb. The skin temperature changes can be correlated with the impairment of blood flow to the lower limb.

In an attempt to evaluate thermography as a noninvasive modality in the diagnosis of vasculogenic impotence, 50 men with this documented diagnosis were compared with 20 controls. Results of the study indicated no correlation between impotence and thermogram temperatures. It was concluded that thermography was not a satisfactory aid in the diagnosis of vasculogenic impotence (90). In an earlier study, Buvat and associates reported that penile thermography could not differentiate patients with normal results from those with severe arterial damage (91).

There seems to be relatively little investigative work being done on the use of thermography in arterial problems of the extremities. History and physical examination give the necessary information on pain, parasthesia, paralysis, and any possible pallor. The presence or absence of pulses indicate the point of occlusion. In cases of chronic disease with possible claudication, pulse level location may be aided by oscillometry. Thermography, although helpful, apparently is not considered essential in most cases (92,93).

Vascular—Head and Neck

Winsor and Winsor studied the results of thermography of the carotid complex in patients who had angiograms (1). Forty-eight patients were tested. Angiograms were considered positive for the disease when obstructions were greater than 60 percent. The authors pointed out that the thermogram effectively shows the course of the external carotid artery and the superficial temporal arteries, which is of some importance because this artery could be used for extra-intracranial shunting. A typical finding is of significant carotid artery stenosis in complete

obstruction, with coolness of region of the nasal arteries, including the epicanthus, a cool orbit, and coolness in the region of the face and supraorbital artery. When carotid obstruction is longstanding, increased heat along the facial artery and along the superficial artery are landmarks of an increasing collateral circulation. The thermographic findings in a series of patients with significant stenosis of the cerebral portions of the internal carotid artery had a sensitivity of 63–70 percent. Specificity was 76 percent. The predictor positive value was 84 percent and the predictive value of the negative test was 56 percent. The authors stated that with the development of higher resolution thermography, small structures may be more clearly visualized to give better definition and improved diagnoses.

In 1984, Abernathy and coinvestigators reviewed the various methods of patient examinations for determining arteriosclerotic occlusion of the extracranial carotid complex (22). They pointed out that this problem is responsible for nearly half of all strokes and that the extracranial carotid artery is a surgically accessible vessel. By early identification of a patient at high risk for a stroke, the physician can initiate treatment that may prevent that event. They considered contrast angiography as the absolute standard against which other procedures may be measured. Several noninvasive diagnostic tests have obtained a high degree of accuracy and the physician can use these outpatient tests to identify patients for angiography and appropriate treatment. Several types are reviewed and described. Skin temperature is influenced primarily by subcutaneous blood flow; therefore, the blood flow in the carotid complex is a most important factor in the evaluation of a facial thermogram. Internal carotid stenosis with subsequent reduction in blood flow typically causes a significant ipsilateral decrease in periorbital tissue temperatures.

Thermography detects this temperature decrease and generates a picture of abnormal heat patterns. After successful endarterectomy there is resumption of blood flow through the internal carotid artery and the thermogram shows temperature symmetry in medial suborbital regions. As internal carotid stenosis develops, the potential anatomic channels may become functional and the ophthalmic artery may receive blood from one or more collateral channels. In such a case, the pictorial representation of elevated orbital temperatures on the thermogram may signal the developing carotid stenosis long before the clinical symptoms appear. The authors state that thermography is emerging as the most sensitive indicator for developing stenosis in the carotid system.

In 1985, Abernathy and associates again addressed thermography's place in the diagnostic profile (94). They stated that the value of carotid endarterectomy has been clearly demonstrated to be successful if the patient is treated before a fixed neurologic deficit has occurred. The various tests that may be employed are described as being invasive or noninvasive. The invasive tests consist of angiography, arteriography, and digital subtraction angiography. The noninvasive tests are occular pneumoplethysmography, periorbital Doppler sonography, thermography, carotid phonoangiography, and ultrasonic Doppler arteriography. The five noninvasive tests were used as a battery in 170 carotid artery studies in 86 patients. In 53 (62%) there was hemodynamically significant stenosis defined as a diameter reduction of 60 percent or greater. Each of the five profile tests was interpreted independently and then a final impression was drawn on the basis of an analysis of all the tests. The sensitivity of the five-test profile was 98 percent, specificity was 96 percent, and accuracy was 96 percent. The sensitivity of thermography was 98 percent. In addition to having the highest true-positive result of all tests, thermography had the highest accuracy.

Drummond and Lance studied the thermographic changes in headaches (20). An initial four of five patients studied thermographically showed an increase in forehead temperature on the painful side in the latter part of a cluster headache attack. However, it was preceded by a decrease in temperature above the affected eye in two patients suggesting initial diminished blood flow through the terminal branches of the ophthalmic artery. Fifty-five men and six women who met the criteria for cluster headaches were studied during spontaneous attacks, and 22 during induced attacks. Forty-five of the 61 patients were examined while headache free and 10 were followed at least 1 month after the bout had ended. The ages of patients ranged from 20–70 years. Headaches were induced by the application of nitroglycerin and ameliorated by the breathing of oxygen. For spontaneous tests care was taken to compare heat loss from each region in the affected with the unaffected side. In spontaneous attacks, during the height of the attack in the affected orbital region, the thermogram showed 0.25–1.25 °C warmer readings than the contralateral orbital region. Asymmetry of heat loss disappeared from all areas in the induced attacks after oxygen inhalation, which reduced the headache or relieved it completely. Overall, the cluster attack was characterized by an increase of heat loss from the affected orbital region in the cheek. In some patients this asymmetry spreads above and below the eye, down the nose, to the affected temple. These findings support the view that cluster headache is usually associated with a unilateral increase in blood flow in the facial areas where the pain is experienced. Since cluster attacks were often established before any thermographic asymmetry was detected, the pain of cluster headaches presumably arose from a disturbance within the trigeminal nerve, and vascular changes were a secondary, reflected phenomenon. The asymmetry also disappeared when the headache subsided spontaneously or after oxygen inhalation. Therefore, the nature and time course of extracranial changes during cluster headache may differ markedly from that of migraine where increased heat loss from the affected frontal temporal region is most apparent. In a subgroup of approximately one-third of the patients with a headache of extracranial vascular origin, the evidence presented indicates that changes in blood flow are not the primary source of pain in a cluster headache but may reflect a response to a primary neural discharge.

Rapoport and associates reviewed the thermographic findings of 100 patients with headache and compared them with controls (21). They noted that the cluster headache was always on the same side, accompanied by ipsilateral tearing, stuffiness, meiosis, and ptosis. Migraine, on the other hand, occurs more frequently, is moderately to totally incapacitating, is throbbing, usually unilateral, and often associated with nausea and vomiting. It may occur in the same side or alternate from side to side. A cold nose, which appeared black on the thermogram, was significantly more common in the migraine group. This is consistent with the idea that patients with migraine have greater vascular instability. The findings were unrelated to the patient's sex. Thermograms of cluster headache patients are asymmetric significantly more often than those of migraine headache patients. All comparisons were made against normal patients. The typical migraine picture is that of asymmetric supraorbital temperatures, a cold nose and cheeks, and wide variations of temperatures across the face. Eight-six percent of migrainc patients had more flow in the temporal arteries on the side of the headache. Cluster headache patients showed an increased blood flow along the distribution of the external carotid artery.

Swerdlow and Dieter used thermography to study 275 headache patients and 45 headache-free subjects to determine if thermograms could serve as a reliable marker for vascular headaches (95). Their statistical analysis suggested that the presence of "cold patches" (regions of the face more than 0.5 °C cooler than surrounding areas) may be a valid discriminator between vascular, cluster, and muscle contraction headaches. However, an accompanying editorial emphasized that the diagnoses were based on the subjective assessments of one clinician, the numbers in some diagnostic categories were small, and there was a need for these results to be confirmed in other laboratories with more patients before thermography is considered a useful marker for vascular headaches.

In a study investigating the thermodynamics of the posterior cervical thoracic region in a group of 30 randomly selected headache patients and 30 headache or injury-free volunteers, these same investigators noted that the thermographic patterns fluctuated over time and did not correlate with chronic headaches (95).

Inflammatory—Trauma, New Growth, Other

Michel and associates reported using infrared thermography in 264 patients who were clinically suspected of having primary melanoma of the skin (96). In 84 of the patients with histologically confirmed malignancy, thermographic patterns were found of the tumor itself and of the area surrounding the tumor. They were hyperthermic in character. The degree of thermographic reaction increased with the size of the tumor and was increased in nodular melanoma types. There was

evidence in this series that malignant melanomas exhibiting marked local hyperthermia have a particularly poor prognosis. Gautherie and associates subsequently reported thermographic studies on 314 patients with skin tumors including 167 malignant melanomas, 52 carcinomas, and 55 benign tumors (97). Both telethermography and LCT were used. The study showed a clear heat correlation between that of the higher level malignant melanomas and the degree of tumor invasiveness. Low-level melanomas and basal cell carcinomas are relatively cold tumors. In contrast, highly malignant melanomas as well as spindle cell sarcomas generate more heat, appearing as distorted vascular hyperthermia. Benign pigmented tumors are isothermic except in the presence of associated inflammation or hypervascularity. The authors believe thermography is a valuable agent for the examination of skin tumors and should be used as a routine procedure in the dermatologist's office.

Zenovko reported on the use of thermography in examining 115 patients having different thyroid abnormalities (26). The data were compared with a control group of 20 healthy patients who had no demonstrable thyroid pathology. The clinical picture of each patient was reviewed as well as the radioisotopic, histologic, and pathologic findings. The authors concluded that thermography makes it possible to identify the disorders in 97 percent of thyroid patients. Nodular goiter was characterized by hypothermia. Diffused toxic forms demonstrated hyperthermia in the thyroid projection. Struma maligna was characterized by the presence of a focus of hyperthermia. In the disseminated process, diffuse hyperthermia was detectable in the region of neoplastic metastases. Filatov, on the other hand, compared thermography with ultrasound and radionuclide examinations in 18 patients with toxic thyroid adenoma (98). In his opinion, thermography showed a thermal difference, exactly over the node, not exceeding 1 °C. This was equally true of the comparison between temperatures over the node and the hottest and coldest region. On the other hand, ultrasound, though it was of aid in determining size, shape, and location of the node gives no opportunity to judge its functional character.

Thermography is being used by individuals interested in sports medicine for the diagnosis of stress fractures in athletes. Deveraux reported on a series of 18 patients with skin pain that was clinically considered to be caused by stress fractures of the tibia or fibula (99). Thermographic examination was compared with x-ray and ultrasound imaging. Eighteen patients underwent radiological, thermographic, scintigraphic, and ultrasound examinations. Fifteen had stress fractures confirmed by scintigraphy. Of these, 12 had abnormal thermograms, 8 had positive test results for ultrasound, and 7 had abnormal radiographs. In the opinion of the authors, thermography, used alone, seemed to be a reasonable means of diagnosing stress fractures of the tibia or fibula. In the radiologically normal group of test fractures, four had positive test results under ultrasound, but normal thermograms. A combination of ultrasound and thermogram is therefore proposed as providing an early method of determining stress fractures of the tibia and fibula thereby avoiding any radiation exposure to these patients who are usually of a younger age group.

Stress fracture diagnosis by computer-assisted thermography was discussed in 1985 by Goodman and associates (100). The protocol was designed to compare infrared thermography with radionuclide bone scanning and with routine x-ray in diagnosis formulation. A prospective study was conducted on 17 athletes (10 men, 7 women) who had leg pain on exertion compatable with stress fracture. Those who had hot patterns were unable to resume exertion activity while those with cold patterns were able to carry on their usual activities. In addition, specific soft tissue syndromes were identified. The data indicated that thermography may be regarded as an accurate, noninvasive way to distinguish stress fracture from other causes of shin splint syndrome in runners. Applied repeatedly, this technique may be used to follow the course of bone healing thereby permitting the earliest safe return to activity.

In 1986, Deveraux and colleagues reported a study done on thermographic diagnoses in athletes with patellofemoral arthralgia (101). This pain, which occurs in front of the knee, is common in athletes. It is difficult to prove that the pain arises in the joint. Thermograms were taken of 30 athletes considered to have patellofemoral arthralgia and compared those with thermograms of a similar number of unaffected athletes matched for age and sex. A comparison was also made with thermograms of two older groups of patients with knee involvement of either rheumatoid arthritis or osteoarthritis. Twenty-eight of the athletes with patellofemoral arthralgia had a diagnostic pattern on thermography. The interior knee view showed the rise in temperature on the medial side of the patella and the temperature rise radiated into the patella insertion of the vastus medialis. Because of this radiation and insertion into the muscle, the possible etiological role of quadriceps muscle imbalance resulting in the syndrome is considered.

Oblinger and colleagues proposed thermography as a method for diagnosing arthritis in peripheral joints, since measurement of absolute temperature of the surface of the human body can be used in diagnosing and as an adjunct for monitoring rheumatoid diseases (28). Inflamed joints show distinctly higher absolute temperatures than normal ones. Skin over healthy joints cools faster and to a greater extent than skin over an inflamed joint. By using the two measurements the determination of the absolute temperature (static thermography) and the change in those temperatures in a definite time interval (dynamic thermography), it is possible to establish a diagnosis of arthritis in the region of the peripheral joints. In the author's opinion, this method has an accuracy of more than 90 percent and allows the rheumatologist to follow the course of the disease more accurately.

In 1985, Deveraux and associates proposed a disease activity index for evaluating arthritis by means of thermography (29). Using infrared thermography they described a test distribution index quantifying readings from various involved joints. The thermographic indices from elbows, knees, wrists, ankles were correlated with pain and other indices of disease activity in 20 patients with classical serum-positive rheumatoid arthritis followed over a 12-month period.

Steele looked at the potential usefulness of abdominal thermography in the diagnosis of acute appendicitis. He examined 50 patients with suspected appendicitis 40 of whom later underwent surgery with histologic examination of excised tissue (102). When compared with clinical assessment aided by white cell counts and abdominal radiographs, thermography fared significantly worse (62% vs 84%). Thermography was judged as not useful in predicting those patients requiring surgery.

Extensive work has been done on the possible uses of thermography in the subject areas discussed above. The medical literature is, however, replete with isolated reports of clinical situations in which thermography is or has been employed to determine benefits. Some examples include examination of the thermographic behavior of lateral gingiva in patients with destructive periodontal disease (103), determination of the value of contact thermography in lacrimal tract inflamation (104), a comparison of different methods for the diagnosis of varicocele (105), and determination of the value of thermography in the early diagnosis of postoperative sternal wound infections (25).

Discussion

According to Hubbard, thermography has been criticized because the published literature on the subject does not contain "blind studies" (106). He points out that double-blind studies, such as those that are used to establish cause-and-effect relationships, do not fit the diagnostic imaging technology evaluation scheme. He contends that if a published paper shows a very high degree of accuracy and correlation with the patient's symptoms, observer bias can be excluded without a double-blind study in a diagnostic imaging situation. However, interpreter blinding is necessary in order to ensure objectivity. Hubbard refers to the paper on methodologic considerations in comparing imaging methods by Gelfand and Ott (107). Gelfand and Ott suggested that when comparing imaging methods the primary emphasis should be on sensitivity and specificity. Three studies designed to be blind were published in 1985 and 1986. One additional study that contains most of the elements of blinding is also noted here.

A blind study by Chafetz and coinvestigators on the evaluation of low back pain syndrome was presented in 1985 (108). To be selected for inclusion, a patient must have had a CT scan within 2 months and no previous lumbar surgery. A volunteer in an asymptomatic control group must have had no back surgery, no current back pain, and no history of disability from back pain. Patients had thermography and CT scans. The thermographic examinations were marked only with an identification number and were

interpreted independently by two radiologists, one more experienced than the other. For the areas to be interpreted as abnormal, the temperature had to be at least 1 °C different from the corresponding contralateral region or had to be demonstrated to have at least a 25 percent difference between two ipsilateral regions. After specific interpretations were rendered in writing, the thermograms were grouped as either positive or negative with discrepancies between interpretations of the thermograms selected for review in a joint session of the two radiologists. Three discrepancies were found to exist, and agreement was reached in all three. Of the 19 patients, 15 were male with an average age of 37 years. Of the 15 asymptomatic volunteers, 6 had abnormal lumbar thermograms. The authors stated that thermography only provides information on the presence and level of the nerve fiber irritation, unlike CT, which provides an anatomical image of the spinal canal permitting an accurate depiction of the location of neural impingement. The result of the study was 100 percent sensitivity and 60 percent specificity for thermography using moderate CT abnormality as a reference standard. Of the three patients where a disagreement had been noted, all three were considered to have abnormal CT patterns. Nevertheless, these three cases were listed as having positive thermograms thereby lowering the specificity percentage. There were three additional false-positive findings. The investigators considered the result to show a high agreement rate between the two modalities. Their conclusion was that the potential role of thermography is in screening those patients who would otherwise be considered for CT or myelography.

Brown and associates published a prospective evaluation of thermography as a screening modality for nerve fiber irritation in patients with low back pain using a protocol that called for interpreter blinding (109). Thirteen patients with low back pain and eight asymptomatic controls were studied. All the patients had various combinations of CT, myelography, MRI, and surgery, and at least one had disclosed pathology within the spinal canal. The thermograms were interpreted by two coauthors blind to the study and later with clinical data by four readers. Twenty-five percent of the control subjects had minor asymmetries of their thermographic patterns that were considered abnormal but nonspecific by all observers. All 13 patients had abnormal thermograms. The final result was a sensitivity of 100 percent with a specificity of 75 percent using thermography. The control subjects were all male between 28 and 40 years of age. For the thermogram to be considered abnormal it had to show a difference of 1 °C or more affecting 25 percent or more of the dermatome compared with the contralateral area. When the results were examined by the four readers simultaneously, the physical examination result was known. The negative predictive accuracy was 100 percent. Both groups of readers correctly identified the thermograms as abnormal in all 13 patients. The blinded readers observed minor thermal asymmetries in two of the control subjects but interpreted them as nonspecific. In the opinion of the authors, thermography is for physiologic rather than anatomic abnormalities. A positive thermogram indicates further need for anatomic tests such as CT, MRI, or myelography to confirm a lesion and document its level. The negative thermogram implies that conservative medical management might be sufficient. Thus such a finding may obviate the need for more expensive or invasive diagnostic studies.

A blind study on the reading of thermography was done by Uricchio and Walbrod in 1985 (110). A total of 24 separate thermographic readings on 22 patients were reviewed (3 cervical and 21 lumbosacral). There were 10 female patients and 12 male patients ranging in age from 23–73 years. All of the patients had myelograms and 17 of them had CT scans. The thermograms were identified only by a hospital code number. No representation was included as to the age of the patient, the area of complaint, clinical findings, or results of CT scans, EMGs, or myelograms. The reader, therefore, arrived at a diagnostic conclusion unencumbered by any other information. Basically, every significant abnormality on myelogram and CT scan was detected by thermography. However, thermography was not diagnostic. In addition, unequivocal thermographic readings were associated with similarly benign CT and myelographic studies. There were no false-negative thermogram readings. Four of the thermographic readings suggested equivocal or slight findings not well substantiated by other studies. Two of the cases showed positive thermographic findings but with benign myelograms. The authors considered thermography results to be closely predictive of myelographic findings and concluded they did not miss any significant pathology noted either on myelogram or CT scan. In their opinion, if the patient has unilateral pain complaints in an extremity with a negative thermogram, the chances are that there will be no abnormalities noted on CT scan and myelogram. Once again, these authors point out the fact that the location or duration of pathology needs further correlation since the anatomic sites are not outlined by the thermogram. They felt that thermography, when combined with CT scan findings or when used alone can be highly predictive of myelographic findings and provides a helpful addition to the diagnostic armamentarium.

Although not specifically listed as a blinded test, the work on DVT by Wallin and associates has many of the elements of a blinded study (84). All patients entering the clinic were placed in a special protocol. They were examined separately by a clinic physician and a physician from the thrombosis team; each physician provided an independent score. The paper does not say that their reviews were independent of each other, nor was this said to have been required in the protocol. The diagnostic tests were done independently and then correlated with the clinical examination of the thrombosis team physician. All of this data was compared with thermography as seen in table 6, and the authors concluded that thermography was not useful in the diagnosis of DVT.

During 1985 and 1986 several major studies unfavorable to thermography were published by experienced investigators. Some could not be interpreted as disproving aspects of the basic tenets of thermography. All were highly critical, in a negative sense, of thermography as a diagnostic procedure. Two of them stimulated formal rebuttals in the form of published scientific papers.

Mahoney and coauthors studied the usefulness of thermography as a diagnostic aid in sciatica (111). They noted that thermography of the lumbar area and the lower extremities had been reported to be of value in the diagnosis of sciatica from intervertebral disk disease. The study cohort consisted of patients in whom a diagnosis of intervertebral disk disease had been firmly established. There were 25 controls with no present or previous back complaints or history of treatment for back disorder. Twenty-three were women and two were men. The patients selected for the study had to meet the criteria of:

1. Dominant sciatic discomfort rather than back pain
2. Presence of neurological symptoms or signs
3. Reduction of straight leg raising
4. Completion of myelography and CT scan

It was of interest that in normal patients, back thermography had only three instances of symmetrical temperature findings while there were 8 cases of asymmetrical temperatures of less than 1 °C, and 13 cases of asymmetrical temperature differences greater than 1 °C. In the same patients an examination of their leg thermograms showed 6 patients to be symmetrical, 13 to be asymmetrical at less than 1 °C, and 16 to be asymmetrical at greater than 1 °C. In other words, only three of the controls had normal thermograms. Of the 23 patients with proven unilateral herniated intervertebral disks, back thermograms were symmetrically normal in 8, asymmetrically abnormal with a temperature change of greater than 1 °C in 8, and asymmetrically abnormal on the side opposite the lesion in 7. Leg thermograms were symmetrically normal in 8, asymmetrically abnormal on the side of the lesions in 11, and asymmetrically abnormal on the side opposite the lesion in 4. The recommended use of thermography, according to the authors, as a diagnostic tool in lumbar disk disease is based on the assumption that in normal individuals there should be no significant temperature differences between the extremities or between the two sides of the lumbar area lateral to the midline. It is also assumed that lesions affecting the lumbar musculature usually manifest themselves by increased vascular heat emission, and in herniated intravertebral disk disease of some months' duration, the sympathetic overactivity leads to decreased vascular heat emission along the course of the nerve root. The investigators found no evidence to confirm any of these assumptions. It was the conclusion of the investigators that many "normal" individuals with no back complaints do not have symmetrical back and leg thermograms. Asymmetry in such thermograms cannot be assumed to be evidence of herniated intervertebral disk disease. Consequently, in

patients with confirmed herniated disk disease, the predictive value of both lumbar and leg thermography in identifying the site of involvement is so low that the investigators considered thermography to be of no diagnostic value in this disease.

In response to the article by Mahoney and associates, a rebuttal was written by six thermographers all of whom signed the statement (112). The criticisms of the methodology and interpretation of Mahoney and associates were very detailed. They stated that the thermograms done by Mahoney's group showed incorrect positioning and framing. They also questioned whether the film used provided adequate resolution. According to these reviewers, the projections of the lower extremities show uniformly unacceptable focus and contrast. Uematsu's group prefers that thighs and legs be imaged separately rather than enblock as had been done. They note that there was a routine failure to image the lower half of the buttocks. They stated that Mahoney and associates confused the accepted interpretation criteria for the lumbar spine and the lower extremities. They also noted the high percentage of varicose veins without any attempt to reduce the effect that might have distorted the findings. With regard to experimental methodology design, they suggested that the highest methodologic standards include study design, quality image production, randomization, and prespecific criteria. Monitoring should have been used, particularly with regard to the subgroups with or without varicose veins. The paper is criticized as not referring to any effort to randomize reference and target groups prior to the study. Their interpretation was that the Mahoney study was unsuccessful because the thermograms were of technically unsatisfactory quality and because the statistical methodology was flawed and had "distorted" subgroups. The investigators' interpretations were thought to be invalidated by failure to apply accepted diagnostic criteria. The conclusions of Mahoney and associates were rejected by the response group.

Mahoney, with one additional coinvestigator, also published a review of the relationship of thermography to back pain (113). In this study 71 patients with mechanical back pain of at least 2 years' duration were given intervertebral facet injections of a local anesthetic. Thermograms were performed immediately before and after injection. Postinjection relief of pain and change in thermographic patterns were documented and analyzed. There was, however, no significant correlation between pain relief and change in lumbar thermographic pattern. The patients all had long standing mechanical backache. They did not have any evidence of significant nerve root tension, irritation, or compression manifested by a large amount of leg pain, reduced straight leg raising, or neurological symptoms or signs. The patients had back pain with little or no leg signs or symptoms. If the patient had unilateral pain only, the intervertebral facet joint local anesthetic injection was performed on that side only. Three levels were tested and injected for most patients. The usual levels were L–3, L–4, and L–5. Thermograms were done immediately before and within 1 hour subsequent to the facet joint block. Of the 71 patients, 45 were male. All complained of the pain prior to injection. Sixty-one (86%) had an abnormal lumbar thermographic pattern before injection. Only one thermogram reverted to a normal pattern following injection. Forty-seven patients had relief of pain following the injection. Twenty-seven patients demonstrated a significant change in body temperature with an increase or decrease of 1 °C. There was no significant correlation between pain relief and change in thermographic pattern or between pain relief and change in body temperature. There was no difference between male and female patients. The conclusion of the authors was that thermographic patterns of the lumbosacral area are not significantly affected by the relief of pain.

Once again, this paper stimulated a rebuttal (114). The same group of six thermographers responded. They felt that the Mahoney paper led readers to believe that there was an attempt to replicate the methodology of other investigators even though this was not the case. The critics contended that the amount of time that lapsed from the time of local anesthetic injection to the taking of the second thermogram varied. Again, there were questions as to whether the patients had pain of 1 or 2 years' duration. The commentators were extremely critical that Mahoney and associates did not describe the methodology or site used in obtaining body temperatures emphasizing that if the temperatures from the skin thermoscale were used at the top of that scale, the most precise temperature information may not have been used. Uematsu's group concluded that the paper lacked acknowledgment of significant limiting factors, that there was poor technical quality of the data on which the conclusions were based, and that the thermographic images were of unacceptable quality because of problems with contrast, focus, etc. They contend that the findings based on this type of experimental data are uninterpretable and, therefore, the conclusions reached by Mahoney and associates are invalid.

In 1986, Ash and coauthors published a detailed study of thermography and the sensory dermatome (113). After a review of the history and physiological findings, and also the more recent clinical work, patients were tested by a thermocouple thermometer. The conclusions reached were at odds with much of the accepted concepts of thermography. The claim of various authors of the correlation of thermograms with myelogram, CT scan, and EMGs in documenting herniated disks in surgically proven cases that have no nerve irritation are reviewed. Questionable statements of proponents of thermography are highlighted and questioned by Ash and associates. On the assumption that the concept of thermal imaging of the sensory dermatome appeared to be neuroanatomically impossible, a basic review of the literature pertaining to sympathetic and sensory innervation of the limbs was undertaken. In addition, independent examinations of 31 normal individuals and 87 patients with definite neurological deficits were performed. Telethermography was used as well as a thermocouple digital thermometer. Patients with occlusive or vascular disease were excluded. The authors found only a slight asymmetry of temperature in the back. They noted that as one progresses distally, the asymmetry may increase to more than 1 °C in the toes and fingers. Using temperature range as a guide, absolutely no correlation could be made in any case with proven neurological deficit. General asymmetry of the limbs was noted on occasion, but this asymmetry was similar to the variations found in normal controls without neurological deficits. Since no cases showed temperature changes in a dermatome distribution, statistical analysis was not performed. The temperature control mechanisms from the hypothalamus throughout the neurologic complex were traced. Ash and associates stated that despite a few reports to the contrary, efforts to map specific somatic sympathetic dermatomes have been unsuccessful. The effect of lumbar sympathectomy under various conditions is noted. When correlating the sensory and sympathetic innervation of the limbs it becomes obvious, according to the authors, that sympathetic blood flow is not ordinarily represented in the roots of the spinal nerves that supply the brachial, lumbar, and lumbosacral plexus. In other words, irritation of spinal nerve roots C–5, C–6, C–7, C–8, L–4, L–5, and S–1 by herniated disk, spinal stenosis, arachnoiditis, etc., cannot produce decreased temperature changes in the limb dermatomes since these roots contain no sympathetic fibers. As a matter of fact, single nerve root lesions probably produce no measurable sympathetic changes at any level. There is no conceivable mechanism, according to Ash and associates, by which sensory nerve stimulation can produce sympathetic nerve response in a dermatome distribution since some type of sinovertebral (recurrent meningeal) stimulation is not plausible. In addition, errors in measurement of both LCT and electronic thermography are difficult to prevent, particularly in situations where there is pressure from the myelar sheath in LCT. The conclusions of the authors are:

- Thermographic imaging of the sensory dermatome has not been plausible.
- A research thermocouple thermometer provides an excellent method to check the validity of thermographic diagnoses.
- Further diagnostic study is required before thermography is used clinically to document painful conditions of the neck, back, and limbs.
- There are no predictable sympathetic dermatomes.

Also in 1986, Getty published the results of his study of the use of LCT in sciatica (116). He compared it with EMG, myelography, and CT scan. He pointed out that sciatica is the pain of nerve root origin usually due to bony entrapment in older patients and to prolapsed disk in patients up to age 40. One hundred and seven patients were included in this study. Of these, 19 were offered surgery, but the surgeon was not told the result of thermography until after he determined the surgical findings. With the nonsurgical cases,

the results were withheld until a course of treatment was decided upon. In the operative cases, thermography was accurate in 10, and inaccurate in 9. Temperature asymmetries were found in 54 of the patients. Getty concluded that the thermogram was unreliable in accurately predicting the overall final clinical assessment or the surgical findings. Percentage agreement between individual assessments and the ultimate result was thermography, 48 percent; electromyography, 70 percent; computer thermography, 71 percent; myelography, 76 percent; and clinical assessment, 76 percent. Getty stated that the result of the controlled, quantitative, prospective study demonstrated that thermography is not helpful in sciatica and, therefore, is no longer utilized as part of the diagnostic armamentarium of his clinic for that application.

Issues related to the use of thermography for diagnosing DVT as well as spinal root and other lesions are its safety, sensitivity and specificity, and its predictive value. Other issues are whether the information is medically necessary in clinical decisionmaking, and whether the information identifies subsets of patients who require different levels of evaluation and treatment.

Safety does not appear to be an issue in the use of thermography. The principal advantages of thermography over other diagnostic procedures used to detect spinal root, DVT, and other lesions are that it is noninvasive and it does not require the use of isotopes or ionizing radiation. As such, it has considerable appeal to both physicians and patients.

In his analysis of criticisms of the use of thermography in pain evaluation, Hubbard suggested that peer acceptance is evidenced at both the grass roots level, where he has observed more thermograms being done, and at what he calls the organizational level, with several groups including two newly formed national academies interested in thermography (106). He also noted that critics question the usefulness of thermography in clinical practice because it may be considered superfluous in patient care and is not usually used for case management. There are also questions whether a negative thermogram will provide sufficient grounds for a physician not to pursue the case further or, conversely, whether a positive thermogram provides sufficient basis for a change in patient management particularly in the case of surgery.

In 1986, Green and associates reported the results of a study of the incidence of abnormal findings in normal human control subjects when subjected to thermography (117). Three experienced thermographers were given 120 thermograms and told only that they were completely normal. Ten abnormal thermograms from patients with known radiculopathy were all correctly identified by the readers. Five "abnormal thermograms" were found for the remaining normal human control subjects and were interpreted by the readers as such. The investigators suggested that this is indictive of a 5 percent abnormality rate for thermograms of normal human subjects.

In a few of the reports reviewed, the greatest correlation between thermography and other examinations emphasized the importance of a good medical history, a physical (including neurological) examination, patient topographic drawing, and myography. It is nevertheless true that these essential elements are not mentioned in a large number of the publications reviewed. These publications highlight the discrepancy between the physiologic tests and the anatomical tests of CT scan or myelography. They also suggest an inability of thermography to anatomically locate the site of nerve root pressure. An example of these simple measures is in vascular problems of the legs where arterial embolic phenomena and acute venous occlusion are demonstrable quickly and simultaneously by history and physical examination as well as by thermography. Chronic arterial and venous disease of the legs are demonstrable by the same methods when supplemented with additional diagnostic tests.

Most of the articles reviewed stated that thermography would be a useful screening test. This lends credence to the claim that thermography is essentially a confirmatory adjunctive test and not essential to a diagnosis. Patient management seldom seems to be completely dependent on thermographic outcomes. In the materials reviewed, no clinical investigative work was uncovered that alternated cases with and without thermographic examination, where thermography determined the management of the patient, or where the eventual patient health outcome status was measured in terms of the use of thermography.

In 1985, Goldie addressed the problem of the appropriate role of thermography among the diagnostic tests available (118). He specifically raised the question of whether thermography is more than an adjunct in orthopedic diagnostics. After reviewing his experience in thermography over 15 years, Goldie determined that in his practice, physical examination is more helpful than thermography in sciatica, and history and physical examination are superior in tracking arthritis, including the effects of steroids. Overall, Goldie believes that in orthopedics, a thermographic reading usually confirms the clinical impression and the physical investigation and thus is only a time-consuming procedure and economically not justifiable. He states that in orthopedics, thermography adds to the number of diagnostic aids but that the pictorial registration of emitted temperature variations in biologic tissues does not yield information that improves on already existing methods.

Rosenblum investigated whether patients with motives of secondary gain based on upcoming legal actions could bias the results of thermography (119). Fifty-six percent of 318 selected thermograms were abnormal. When they were analyzed, patients involved in litigations had the same percentage of abnormal findings as those not involved. The conclusion was reached that pending litigation was not a factor that changes thermographic findings.

Wexler underscores the importance of having thermographic knowledge that is not controlled by patient attitude (31). He says it will also demonstrate any other graphically documentable soft injury or other explainable cause for postraumatic pain. The end result, he believes, is to shorten hospital stay by hastening valid diagnoses and avoiding more expensive, risky, and invasive procedures. He also advocates preemployment back thermograms as a baseline in case of future litigation.

A review of the literature indicates that thermography has been accepted at some diagnostic and pain treatment centers. In view of the fact that the technology has been generally available for many years, its slow diffusion to a small part of the profession suggests its value is not widely accepted by the general medical community. Reports in the published literature compare the results of thermographic studies to other diagnostic tests (EMG, CT, myelogram) and to findings at surgery. Based on the results of these studies, some clinicians feel that the thermogram has an important role in the diagnosis and treatment of back pain. While the data gathered from these studies are encouraging, they unfortunately do not withstand the rigorous scrutiny required for a technology whose efficacy is considered controversial in the broader medical community. Questions still remain regarding the sensitivity, specificity, and predictive value of thermography.

In a 1986 review of the diagnostic information that could be obtained from neuromusculoskeletal thermography, Meeker and Gahlinger indicated that both with regard to specificity and predictive accuracy, published studies varied widely in their findings. These variations suggest differences in thermographic interpretation due to the absence of criteria for interpretive reliability between studies. In addition, the generally vague description of the patient populations posed another problem in evaluating the utility of thermography (120).

After their review of the literature, Frymoyer and Hough concluded that despite some current enthusiasm for thermography, "in the absence of carefully controlled experiments, the accuracy of thermography in the diagnosis of low back disease must still remain speculative" (121).

In a 1988 review of back pain and sciatica, Frymoyer states that the results of thermography in evaluations of acute and chronic sciatica have not been uniform and that the basis for the use of this test in the assessment of low back disability remains unproven (122).

In 1983, The American Medical Association (AMA) reviewed the effectiveness of electronic thermography and LCT as diagnostic aids in determining the etiology of low back pain. The question was submitted to the AMA's diagnostic and therapeutic technology assessment (DATTA) panel. Members of the panel were not, however, greatly familiar with the techniques of thermography and had no opinion on its value in making diagnoses. An expert advisory council was then convened under the aegis of the Council on Scientific Affairs, AMA, to study thermography and prepare a report. The 1987 report, "Thermography in Neurological and Musculoskeletal Conditions," stated that thermography "may be useful" in documenting peripheral nerve

and soft tissue injuries and is "helpful" in the diagnosis of reflex sympathetic dystrophy and "can be used" to follow the course of patients after spinal surgery. The report also concluded that "thermography does not stand alone as a primary diagnostic tool" and is a test that "may aid in the interpretation of the significance of information obtained by other tests." The report concluded that "further, well-controlled, blinded studies are necessary to evaluate the full extent of the usefulness of thermography."

The Academy of NeuroMuscular Thermography provided Office of Health Technology Assessment (OHTA) information regarding the use of neuromuscular thermography. The academy determined that the indications for thermographic examinations are: 1) any pain, especially radicular that is going to require EMG or x-ray workup as opposed to simple conservative management, and 2) local trauma, such as sport injuries, as necessary to rule out early reflex sympathetic dystrophy, compartment syndromes, and stress fractures. Also to be considered, the academy noted, is the use of thermography for determination of postlaminectomy baseline for future comparison and preemployment screening.

OHTA sought and obtained opinions on the safety and effectiveness of thermography from the National Institutes of Health (NIH). NIH advised OHTA that there is no compelling evidence to suggest that thermography adds accuracy to the diagnosis of peripheral vascular or cerebrovascular disease or to the diagnosis of spinal root compression. Most of the papers on the many suggested uses of thermography have deficiencies, such as relatively small numbers of patients and controls, inadequate definition of criteria for establishing presence or absence of thermal gradients, and lack of blinding of interpreters to clinical diagnosis. With respect to instrumentation, it appears that LCT is supplanting older thermographic methods for some uses because of its greater ease of use and reproducible results. Published reports to date do not suggest that thermography is a valuable addition to other diagnostic modalities. NIH has advised OHTA that thermography may only confirm the presence of a temperature difference, that other procedures are needed to reach a specific diagnosis, and thermography may add very little to what the physician already knows based on his history, physical examination, and other laboratory studies. This procedure may prove confirmatory but not diagnostic. OHTA was advised by NIH that more experimental research is needed to resolve the existing controversy over the diagnostic efficacy of thermography. While there is no disagreement as to its safety, thermography is considered by some to be lacking in specificity and inadequate in signal resolution. Others consider it to be somewhat useful as an adjunct diagnostic tool but in need of further definitive testing before efficacy can be unequivocally validated. It was concluded that thermography cannot currently be considered an essential diagnostic tool since it does not, by itself or as a diagnostic adjunct, add significantly to the accuracy of diagnosing disease.

FDA believes that thermography can only be used as an adjunct to other clinical diagnostic procedures. Thermography does not detect nor provide diagnoses of any conditions; rather, it is a method to detect skin surface temperature changes. This information is to be used along with other clinically-accepted methods. Therefore, FDA believes that, at this time, thermography should be limited to the role of an adjunctive procedure and should not be used alone as a diagnostic screening procedure.

FDA has accepted thermography labeling that specifies use in an adjunctive clinical setting for evaluation of the following medical conditions, as reported in the medical literature:

- Abnormalities of the female breast.
- Peripheral vascular disease.
- Musculoskeletal disorders.
- Extracranial cerebral vascular disease.
- Abnormalities of the thyroid gland.
- Various neoplastic and inflammatory conditions.

Summary

Clinical thermography is used to measure temperature variation at the surface of the body to obtain diagnostic images. This 1987 assessment covers all other indications proposed for its use other than breast cancer detection, which has been reviewed elsewhere. Issues related to the clinical use of thermography are its safety, sensitivity, specificity, and its predictive value. In addition, whether the information derived from its use is necessary in clinical decisionmaking.

Thermography as a diagnostic imaging device is safe, it is neither invasive nor manipulative, and it does not subject the patient to radiation or any extraneous medication. The available information on its current use is reviewed. Thermography for conditions with nervous system involvement has commanded much attention, particularly nerve root pressure causing back and cervical pain and peripheral nerve involvement in radicular pain. Also, interest has focused on its use in evaluation of deep venous thrombosis of the legs and cerebro-vascular patency. Finally, attention continues to be paid to the use of thermography for certain non-nervous, nonvascular lesions such as thyroid disease or arthritis.

The conclusions reached in these widely disparate clinical situations show that most investigators recommend thermography only as a screening tool, as an adjunctive diagnostic device, and not as a primary diagnostic guide. Unfortunately, evidence of the technology's clinical effectiveness has not been tested rigorously in prospective, controlled clinical trials. While comparative series and case reports have been reported, most have been retrospective and not blinded. Although thermography is a well known technology, it does not appear to have achieved universal clinical acceptability as a clinically effective diagnostic procedure. Its effectiveness as a diagnostic test in clinical situations remains controversial, and the evidence for its clinical application has not been "convincing to the clinical community" (123).

NIH has advised OHTA that further studies are required to validate the efficacy of thermography; that thermography may prove confirmatory as an adjunctive but not as an isolated diagnostic tool; and that there is a need for well-designed studies to validate its usefulness. FDA published proposed classifications for telethermographic systems and LCT systems (**Federal Register**, Vol 47, No. 20, pp. 4419–4420, January 29, 1982). In that public notice the FDA recommended that nonpowered LCT systems be classified into class I (General Controls) and AC powered LCT and telethermographic systems be classified into class II (Performance Standards). FDA also recommended that any thermographic system intended for sole diagnostic screening be classified into class III (Premarket Approval). To date, no thermographic device has been thus classified.

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Addendum B

Date: August 19, 1991.

From: Director, Office of Health Technology Assessment, AHCPR.

Subject: Thermography.

To: Director, Office of Coverage and Eligibility Policy, HCFA.

The Office of Health Technology Assessment (OHTA) has received seventy-six separate pieces of printed matter concerning thermography. While no cover memorandum was included, we have determined by telephone contact that these were forwarded by the Health Care Financing Administration (HCFA), and represent selected portions of the material received in response to the **Federal Register** notice of proposed withdrawal of coverage for thermography. We have also been informed that our review of these materials for scientific and medical content was desired.

We believe it is in the public interest that this matter be concluded without additional delay. Accordingly, I have examined, in detail, these documents which apparently have been alleged to contain evidence contradicting the findings of the January, 1989 Public Health Service Assessment.

1. References numbered (1) through (42) contain no primary clinical data. The material consists of review articles, chapters in various texts, commentary, letters, a bibliography and "standards" from the Academy of Neuro-Muscular Thermography, and documents submitted by a law firm to HCFA. None of these documents provide original objective observations regarding the clinical effectiveness of thermography.

2. References 43 through 76 include articles which report various clinical studies of thermography.

Bosiger (43) described a microprocessor-assisted device and included only sparse information from 301 *breast* thermograms, and a single case of a thermogram of "the middle finger of the right hand of a volunteer". The papers of Green (44) (sent in duplicate), Uematsu (45), and Goodman (46) consist of studies in normal subjects.

Dotson's data (47) were limited to two case reports. Chamberlain (48) utilized thermography in an attempt to measure skin temperatures in twenty patients undergoing spinal anesthesia; the clinical relevance of this study to the issues in question is unclear.

Hubbard (49 50) reported 495 and later 805 retrospectively reviewed thermograms (TG). It appears that the patients were multiply reported, and the original 495 were included in the later reported 805 cases. (The same 805 patients were also reported in a separate article (51). In reference (50), patient selection criteria were not specified; comparisons were made with 52 TG of 26 "asymptomatic" volunteers. It is of interest that asymmetry was noted in 16% of lower extremities and 8% of the cervical and upper extremities of the volunteers. The author correlated TG and EMG findings, TG and CT findings, as well as TG and myelogram findings. However, only 32% of the patients had EMG performed, 4% had myelograms, and 9% had CT scans. In light of the small proportion of the sample subjected to those tests, and the absence of specified criteria for performing EMG, CT, or myelogram, the clinical significance of the correlation analyses remains indeterminate. Hubbard also calculated a correlation coefficient between TG and location of patient symptoms as reported by pain mapping diagrams. The paper concluded that TG should be used selectively for certain indications including: screening for patient selection for CT scanning or myelography; evaluation of pain of undetermined etiology; postoperatively, for continued pain complaints; evaluation of sensory nerve pathology. None of these suggested uses for TG is supported by objective data contained in the report. The serious methodologic problems of this retrospective review were also seen in other studies (*vide infra*).

Cafetz (52) reported a comparison of TG of the lumbar spine with CT in 19 patients who had known abnormal CT scans. TG were performed an average of 46 days post CT, with a range of 0 to 94 days. Fifteen asymptomatic volunteers also had lumbar thermograms. The patients in question were referred by a clinician or clinicians not further specified. The authors noted that 6/15 normal subjects and all 19 patients had abnormal TG, concluding that the specificity of TG was therefore 60% and sensitivity 100%. This is an inappropriate comparison, since the patients were all selected on the basis of an abnormal CT. In effect, the actual question addressed was therefore, what is the probability of an abnormal TG given the fact that the patient is known to have an abnormal CT? (i.e., a conditional probability). This bears no relationship to the authors' conclusion that TG is useful for detecting those "patients who will demonstrate lumbar spinal CT abnormalities", since this reverse relationship was never evaluated. Other methodologic problems of this study include vague patient selection criteria, small sample size, and the length of time between CT and TG.

Green (53) retrospectively reviewed the records of eighty patients who had both TG and myelography (cervical or lumbar) and calculated a "reliability coefficient" for positive and negative TG in comparison to myelography. No patient selection criteria were detailed. The conclusion that TG may be used to "predict" abnormal myelography is not substantiated by the data in this paper.

Grennan (54) evaluated TG in the assessment of sacro-iliac inflammation. Thirty patients with ankylosing spondylitis (AS), 13 with "other causes" of low back pain, and 27 normal volunteers were subjected to sacro-iliac TG. Patient selection criteria were not detailed. The 27 volunteers were utilized to establish normal TG parameters. Only 13 of 30 (43%) ankylosing spondylitis patients had abnormal TG, and none of the other 13 patients with low back pain had abnormal TG. The authors concluded that thermography was unlikely to be of help in the diagnosis of early AS, although they believed there was a "trend" (not statistically analyzed) for TG to be related to the clinical activity of AS. This paper provided no support for the clinical utility of TG in sacro-iliac inflammation.

Thomas (55) studied 65 patients with chronic low back pain with or without radicular symptoms. Specific selection criteria for inclusion in the study were not detailed. Comparisons were made between findings of TG, MRI, CT scan, myelography, and discography. However, while all patients had TG and MRI, only 61/65 had CT, 41/65 had myelography, and 12/65 discography. The study reported correlations between the various diagnostic tests, although the non-uniform application of CT, myelography, and discography was never addressed. The authors did not reach conclusions regarding the clinical utility of TG, such as whether TG provided clinically useful data over and above MRI, or could be used in lieu of MRI in terms of treatment decisions.

Wexler (56) reported 86 consecutive patients referred by a single orthopedist. No patient selection criteria were provided. 54 of the 86 also had EMG studies performed. The "standard" to which the TG and EMG were compared was "the objective physical exam findings". The authors correlated TG and EMG results in the 54/86 having both examinations, and correlated TG and EMG findings with the physical examination. They noted that positive TG in the absence of any history of symptoms are rare, but speculated that "there may be a level of nerve root irritation that has not yet approached the pain threshold. . . ." This paper provides no useful data permitting a conclusion as to the clinical utility of TG.

Pochaczevsky (57) evaluated spinal root compression syndromes using TG. In the abstract of the paper, the authors claimed to have successfully used TG in the diagnosis of breast cancer, a use that has been universally discredited. The criteria for selection of the 88 patients for inclusion in the study were not specified. Of significance is the fact that only 57/88 had myelograms, and 37/88 were subjected to surgery. The authors then compared the "diagnostic accuracy" of TG and myelograms in the 37 operated patients. However, since only 65% had myelography, and only 42% of the patients were operated, and considering that the selection criteria for myelography or surgery were not reported, the significance of the relationships between TG, myelography, and operative findings is unclear. There was no information provided regarding the results of TG or myelography in the 51 unoperated patients, nor is information provided as to the basis for the decision to operate in the remaining 37. For example, six patients with negative myelograms were operated, and found to have abnormal surgical findings. The surgeons' decision to operate in the face of a normal myelogram clearly implies that clinical judgment (correct in this instance in 6/7 cases) overrode diagnostic test results, even for a widely accepted (in 1982) diagnostic modality. Therefore, the authors' contention that TG "may" effectively screen patients for myelography is not substantiated by this study nor have they shown that the choice of therapy is likely to be influenced by TG.

Uematsu (58) described thermal asymmetry on TG in 144 patients, 26 of whom had not been operated on and 118 who were subjected to two or more spine operations but continued to experience pain. Specific criteria for inclusion into this study were not provided. TG were compared with CT myelography studies. 104 patients had abnormal CT-myelograms, 89 of whom also had abnormal TG. Of the 40 patients with normal CT, 35 also had normal TG. The authors calculated sensitivity and specificity of TG, and positive and negative predictive values. Given the lack of detail regarding patient selection criteria the utility of such calculations is indeterminate. However, the 15% false-negative rate (15/104) and 12% false-positive rate of TG would seem to indicate the use of TG as a screening test to be a questionable strategy. The authors qualify their screening recommendation by suggesting TG might be useful in a population with a "low prevalence of organic cause" but provided no data regarding the use of TG in such a population.

Cooke (59) reported temperature studies in 20 patients with a diagnosis of reflex sympathetic dystrophy (RSD) and 10 with chronic upper limb pain (CULP). The selection criteria for these patients were not specified. All patients were referred from a single clinic, but reasons for referral were not provided (i.e., it is not clear whether referral was selective). An additional 20 "healthy subjects" were also studied. TG were performed in conjunction with immersion of the symptomatic hand in cold water. Measurements consisted of: the mean baseline temperature; difference between mean baseline temperature of the hands; mean temperature following cold stress; fall in temperature following cold stress; and area under the temperature recovery curve. Three of 20 normals had one abnormal, and one had two abnormal measurements. In the RSD patients, 11 had three or more abnormal measurements, 7 had one abnormal measurement, and one had none. In CULP patients, 7 had four or more abnormal measurements, one had two, and one had a single abnormal measurement. The authors noted that with persistence of symptoms, the thermal stress test was consistently abnormal, and with pain resolution the test resolved to normal. The problems attendant to extrapolation of these findings beyond the study group include the lack of patient

selection criteria, the fact that the diagnoses were made on clinical grounds (i.e., there was no evidence that TG contributed to diagnosis), and the observation that TG abnormalities were coexistent with pain symptoms. In short, insufficient information was provided about the patients reported, there was no evidence that TG aided in making diagnoses, and if TG merely correlated with the presence of pain it remained unproven that it adds significantly to the history and physical examination.

Coughlan (60) utilized TG in the evaluation of 33 patients with chronic knee pain due to algodystrophy. All patients with lower limb pain localized to the knee were eligible if there were no lesions that could explain the pain and if there was clinical or historical evidence of vasomotor disturbance. All patients had plain radiographs and TG performed, 18 had bone scans and 24 had arthroscopies. All patients had clinically detectable coolness over the affected leg and exhibited local bone tenderness. Temperature differences between corresponding areas of the lower limbs were greater than normal in these patients. Ten patients experienced improvement in pain, and showed a reversion to normal in their thermal symmetry. It is unclear what this data permit one to conclude regarding the value of TG in the evaluation of algodystrophy. Findings of thermal asymmetry are hardly surprising given the selection criteria which included physical or historical evidence of vasomotor disturbance, and the observation that all patients exhibited findings of coolness (and bone tenderness) on physical examination. It would appear that the TG merely confirmed the selection criteria and physical examination. The data make no case for the clinical utility of TG.

Lightman (61) reported TG studies on only six patients with reflex sympathetic dystrophy (RSD). Patient selection criteria were not specified. TG were abnormal in all six, and the authors concluded that TG was instrumental in establishing the correct diagnosis. However, since the diagnosis had been established on clinical grounds prior to TG testing, that conclusion was not warranted.

Uematsu (62) retrospectively reviewed 803 patient records, with a "detailed" review of a subset of 288. No patient selection criteria were specified. Fifty-four percent of patients had abnormal TG. TG results were related to the presence or absence of nerve injury as determined by neurologic examination, EMG and/or myelography. The authors stated that these patients "very often" (proportion unspecified) lacked objective findings. They went on to state that TG was useful for detecting a variety of disorders, especially early sympathetic dysfunction. However, this retrospective record review did not include data which could logically support that conclusion.

Bird (63) reported the use of TG in quantifying inflammation in rheumatic conditions. TG were performed in 10 patients with "different rheumatic diseases", 5 patients with osteoarthritis, 5 with rheumatoid arthritis, and 6 patients with active rheumatoid arthritis of the hands. Patient selection criteria were not further specified. The authors concluded that "no temperature difference that might have helped diagnostically" were noted in the group of 10, or in comparisons between rheumatoid or osteoarthritis patients. Further, TG failed to correlate with conventional assessments of hand function.

Colavita (64) performed TG on 16 of 40 rheumatoid arthritis patients. Inclusion or exclusion criteria for the 16 subjected to TG or the 24 not so tested were not provided. On the basis of this limited data, the authors concluded that they thought TG were useful.

LeRoy's article (65) was primarily a review and commentary, although brief reference was made to a retrospective review of 100 records of patients with low back pain. Selection criteria were not specified. LeRoy stated only that in this group, CT scans were positive in 64% and TG in 94%.

Mohr (66) published an interesting article addressing the use of "thermal coronary angiograms" as an intraoperative evaluation during coronary bypass surgery. The paper stated that such thermal analyses had "never been applied as a routine clinical tool during cardiac operations", and this investigation was described as a "feasibility study". Of 177 thermal coronary angiograms performed, 23 were reported as "inevaluable" and 81 as "problematic". The authors concluded that "additional practical developments may be necessary"and that "it is appropriate to proceed with further evaluation to determine whether it will eventually be worthy of routine clinical use".

Knuttson (67) reported on 22 patients with signs and symptoms of herniated disc; selection criteria were not provided. TG were used as one variable to evaluate the effect of "autotraction", which was described as a technique wherein patients apply spinal traction using their own arms. Only ten of the 22 were tested by TG, and alterations in TG occurred in six of those.

Binder (68) used TG in evaluating epicondylitis. 56 lesions in 50 patients were subject to TG, and 53/56 TG were positive. The significance of the finding is unclear since the patients were diagnosed on clinical bases prior to TG, and the authors stated that "clinical diagnosis is usually simple". The paper concluded that TG offered "possibilities for prospective studies".

Uematsu (69) described the use of "prototype" TG equipment in a study of 32 "healthy" subjects and 30 patients with peripheral nerve impairment. Selection criteria were not specified, and few details were provided regarding the pathophysiology of the nerve impairment. In 23/30 patients thermal asymmetry was judged to be greater than normal, and in a "majority of cases" TG and sensory impairment on physical examination matched well. The authors alleged that TG had been used as an aid in the evaluation of disability claims, but provided no data nor references substantiating that statement. The discussion section of this paper stated that ". . . sensory examination and thermographic imaging should be evaluated in conjunction with good clinical judgment", and the summary included the statement that "The new technique requires further refinement . . ."

Ignacio (70) reported the intraoperative use of TG in a study of 12 patients with RSD. While no criteria were provided regarding patient selection, all patients were diagnosed on the basis of clinical examination. The authors believed that TG "confirmed" the diagnosis of RSD, although the magnitude of thermal discrepancy did not always "correlate" with the severity of pain, swelling, etc. They further claimed that TG "validates" sympathetic nerve block. The significance of this study is unclear in light of the small sample size, the lack of detail regarding clinical characteristics and patient selection criteria, the questionable diagnostic utility of TG over and above the clinical examination, and its restriction to intraoperative use.

Rowbotham (71) reported 12 patients with post-herpetic neuralgia; few clinical details were provided, but the 12 were selected from a larger group of 19 seen during a one year period. TG were recorded of the neuralgic areas, and average skin temperatures within those areas calculated by computer. The authors stated that "Accepted norms do not exist for this type of computer aided analysis." Abnormalities were noted in 6 of the 11 interpretable TG, and the authors further noted that "The pathophysiologic basis of skin temperature changes in different neuromuscular disorders is still controversial." No conclusions were drawn as to the clinical utility of TG.

Kristen (72) reported the use of TG in evaluating stump and phantom limb pains. The authors concluded that although temperature may be related to vascular supply of a stump, thermography "provides no scope for judging the actual degree of phantom pains". They further noted that larger numbers of cases were needed, and pointed out that while clinical examination (i.e., "The back of an experienced doctor's hand . . .") may confirm temperature difference, TG provided "satisfying and objective confirmation".

Pochaczevsky (73) studied contact TG in 17 cases of varicocele treated by surgery or spermatic vein embolization. No patient selection criteria were provided. TG results were correlated with venography, and the authors advocated TG as screening prior to venography for varicocele.

Included in the submitted material were reviews by the Joint Council of State Neurosurgical Societies of the American Association of the Neurological Surgeons and the Congress of Neurological Surgeons (74) and the American Academy of Physical Medicine and Rehabilitation (AAPM&R) (75). The former document concluded that TG was "safe and effective . . . for evaluation of vasomotor instability". TG was "considered an *adjunctive* test and not solely diagnostic except in cases of reflex sympathetic dystrophy." (emphasis added) It should be noted that the section entitled "Available Proof of Efficacy" included five references, none of which addressed the use of TG in RSD. A total of nine references were cited in the bibliography. Uematsu (*vide supra*) was listed as "Special Consultant" for this review.

The AAPM&R review stated that TG ". . . *may* aid in the interpretation of the significance of information *obtained by other tests . . . can be useful* in the diagnosis of

selected neurological and musculoskeletal conditions . . . *may* facilitate the determination of [various injuries]." (emphasis added). As regards the diagnosis of RSD, the AAPM&R review stated only that "Thermography is a useful test in the differential diagnosis [of RSD]".

It is of interest that in spite of the apparent independence of these organizations and their scientific review committees, two particular sentences with virtually identical wording appear in each of the documents, viz.,

Proposed mechanisms implicating the autonomic system involves (sic) ["include" in AAMP&R review] stimulation of the spinal parasympathetic nerves or the sympathetic vasodilatory system, thermal alterations resulting from sympathetic vasoconstriction, and segmental regulation by somato-sympathetic reflex.

and

Suffice it to say that these skin temperature changes can be measured and the lack of a biochemical or physiologic mechanism to explain the scientific basis of established medical diagnostic or therapeutic procedures is not unique.

Several of the commentaries and opinions contained in references 1–42 refer to the AMA Council Report on thermography (76) as a "favorable review". In fact, the review states only that TG "*may be useful*" in selected conditions, "*may facilitate*" the determination of spinal nerve root and distal peripheral nerve dysfunction", and "*may be useful*" in documenting various injuries (emphases added). Further, the report stated that ". . . thermography does not stand alone as a primary diagnostic tool". In the summary of the published literature concerning TG, the review concluded:

In recent years, an increasing number of correlative studies have been published. Few of these studies can be characterized as well controlled. This fact limits attempts at a definitive analysis of the overall value of thermography. More research will help to clarify the exact contribution of thermography to diagnostic problems.

Conclusion

This material forwarded to OHTA does not contain evidence sufficient to support claims for the clinical utility or clinical effectiveness of thermography, nor do the published data permit a logical, scientific, defensible conclusion which would contradict those reached in the assessment forwarded to HCFA in January, 1989. The technique of thermography has not been clearly demonstrated to be reasonable or to be necessary for the evaluation of any specific clinical condition.

Nearly all of the studies reviewed have serious methodologic flaws. It is beyond the scope of this communication to describe those deficiencies in detail, but with rare exceptions there were few, if any, details regarding how patients were chosen for inclusion in the studies. This makes it difficult or impossible to confidently extrapolate results to the population of patients in question. Moreover, without adequate description of the patients studied, replication of the investigation is impossible. Retrospective reviews and case series rarely provide definitive evidence regarding the effectiveness of a technology. Many of the reports' emphases upon correlational analyses and calculations of sensitivity and specificity provide little evidence for TG's effectiveness. It appears that in many instances the actual meaning of such calculations may not have been fully appreciated by the authors. Correlation simply allows an estimate of functional relationship; it does not demonstrate causation. Many of the submitted studies utilized correlation as a basis for recommending TG to predict which patients should be subjected to various further testing. However, the ability to reliably predict one variable from another depends upon many factors (e.g., random selection of sample under study from the population for whom clinical effectiveness has been claimed, etc.), none of which were demonstrated in the studies submitted to OHTA. Moreover, many reports calculated sensitivities and specificities of TG and related those calculations to the utility of TG as a diagnostic test; however, none of the reports addressed the significance of the pre- and posttest probabilities of disease. This concept is critical in determining the usefulness of a diagnostic test. Briefly stated, the posttest probability of the presence of a given disease is dependent not only on the sensitivity and specificity of the test, but upon the pretest probability of disease. For example, the probability of the presence of cancer in a given patient with a positive screening mammogram depends in great measure upon the probability of cancer in the age group of concern. It has been shown that the likelihood of a positive mammogram representing an actual cancer is significantly higher for a woman over 50 than under 50 years of age (Guide to Clinical Preventive Services; Report of the U.S. Preventive Services Task Force, Williams & Wilkins, Baltimore, 1989). This problem in the thermography literature is illustrated by the study of Cafetz (52) who performed TG of the lumbar spine in patients already known to have abnormal lumbar CT scans, and concluded that TG was useful for predicting "patients who will demonstrate lumbar spine CT abnormalities". Since all of the patients studied had abnormal CTs, the pretest probability of disease was 1.0, a factor clearly not representative of the usual circumstances attendant to the application of a diagnostic test in clinical practice. This lack of appreciation of the fact that one cannot properly interpret the meaning of a test result without taking into account what was known about the patient before doing the test (i.e., the applicability of Bayes' Theorem), is evident in much of this material.

In this review we noted several publications of one author which have been alleged to provide objective data in support of TG (45,58,62,69). It is significant that the use of TG is not accepted by clinicians directly involved in patient care at the same institution as the author of the cited reports. In fact, the Director of the Neurology Clinic has testified in court that the high number of false positives and false negatives make TG not only unreliable but dangerous (77). Moreover, the Director of the Pain Treatment Center at that institution testified that TG had been used as the confirming test in a majority of patients misdiagnosed as RSD and subsequently referred to his clinic. He stated that this type of misdiagnosis made TG invalid and even harmful (77).

Finally, we call to the attention of HCFA an assessment of thermography performed by the Australian Institute of Health and published in 1990 (enclosed). The conclusions of this document do not differ substantively from the 1989 Public Health Service Assessment. In addition, a recently published study supported in part by our Agency (Hoffman, R, Kent, D, and Deyo, R Diagnostic accuracy and clinical utility of thermography for lumbar radiculopathy: a meta-analysis. Spine, 1991; 16(6):623–8) concluded that thermography could not be recommended for routine clinical use in evaluating back pain. The authors further noted that almost all studies they reviewed had significant methodologic flaws.

Thomas V. Holohan.

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[FR Doc. 92–28197 Filed 11–19–92; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

These meetings will be closed in accordance with the provisions set forth in section 552b (c)(4) and (c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of grant applications in the areas of the behavioral and neurosciences. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534, will furnish summaries of the meetings and rosters of panel members. Since it is necessary to announce meetings well in advance of the actual meeting, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Dr. Joe Marwah (301) 496–7095.
Date of Meeting: November 25, 1992.
Place of Meeting: Westwood Building—room 303, 5333 Westbard Avenue, Bethesda, MD (Telephone Conference).
Time of Meeting: 1 p.m.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Dr. Anita Sostek (301) 496–8814.
Date of Meeting: December 7, 1992.
Place of Meeting: Westwood Building—room 305, 5333 Westbard Avenue, Bethesda, MD (Telephone Conference).
Time of Meeting: 11 a.m.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Ms. Carol Campbell (301) 496–7109.
Date of Meeting: December 9, 1992.
Place of Meeting: Westwood Building—room 306B, 5333 Westbard Avenue, Bethesda MD (Telephone Conference).
Time of Meeting: 1:30 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 12, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–28295 Filed 11–19–92; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public

Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on Monday, October 19, 1992.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Application for Retirement Insurance Benefits—0960–0007. The information on form SSA–1 is used by the Social Security Administration to determine an individual's entitlement to retirement insurance benefits. The respondents are claimants for those benefits.

Number of Respondents: 1,560,000.
Frequency of Response: 1.
Average Burden Per Response: 10.5 minutes.
Estimated Annual Burden: 273,000 hours.

2. Disability Update Report—0960–NEW. The information on form SSA–455 will be used by the Social Security Administration to determine if a full medical continuing disability review (CDR) should be conducted. The respondents will be individuals who receive Social Security disability insurance benefits and are scheduled for a CDR.

Number of Respondents: 140,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 35,000.

3. Request to be Selected as Payee—0960–0014. The information on form SSA–11 us used by the Social Security Administration to help determine the proper representative payee for a person who is incapable of receiving his or her Social Security benefits. The respondents are individuals or institutions which apply to receive benefits on behalf of someone else.

Number of Respondents: 605,000.
Frequency of Response: 1.
Average Burden Per Response: 10.5 minutes.
Estimated Annual Burden: 105,875 hours.

4. Statement Regarding Marriage—0960–0017. The information on form SSA–753 is used by the Social Security Administration to determine if a common-law marital relationship exists under State law. The respondents are persons having knowledge of a purported common-law relationship between a worker and his or her alleged spouse.

Number of Respondents: 40,000.
Frequency of Response: 1.
Average Burden Per Response: 9 minutes.
Estimated Annual Burden: 6,000 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: November 16, 1992.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92–28216 Filed 11–19–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–92–1013; FR–3301–D–01]

Delegation of Authority for the Review and Approval of Comprehensive Housing Affordability Strategies (CHAS)

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Community Planning and Development the Secretary's power and authority with respect to the review and approval of Comprehensive Housing Affordability Strategies (CHAS).

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These numbers are not toll-free).

SUPPLEMENTARY INFORMATION: Section 105 of the National Affordable Housing Act (NAHA), 42 U.S.C. 12705, requires that State and local governments prepare and submit to HUD five year Comprehensive Housing Affordability Strategies (CHAS), which must be updated annually, for certain HUD programs including the following: (1) The HOME Program, Title II of NAHA; (2) The HOPE I Program (Public Housing Homeownership), Section 411–419 of NAHA, amending the United States Housing Act of 1937; (3) The HOPE II Program (Homeownership of Multifamily Units), Sections 421–431 of NAHA; (4) The HOPE III Program (Homeownership of Single Family Homes), Sections 441–448 of NAHA; (5) The Low-Income Housing Preservation Program (Prepayment Avoidance Incentives), Sections 601–613 of NAHA, creating the Low-Income Preservation and Resident Homeownership Act of 1990, when administered by a State agency; (6) The Housing Opportunities Program for Persons with AIDS, Sections 851–863 of NAHA; (7) The Supportive Housing for the Elderly Program, Section 202 of the Housing Act of 1959, as amended by Section 801 of NAHA; (8) The Supportive Housing for Persons with Disabilities Program, Section 811 of NAHA; (9) The Homeless Housing Assistance Programs, Sections 411–443 and Sections 451–484 of the Stewart B. McKinney Homeless Assistance Act, as amended by Section 837 of NAHA, Emergency Shelter Grants, Transitional Housing, Permanent Housing for Handicapped Homeless Persons, Supplemental Assistance for Facilities to Assist the Homeless, Single Room Occupancy Housing and Shelter Plus Care; and (10) The Community Development Block Grant Programs-Entitlement, Small Cities, States and Insular Areas, Sections 106 and 107 of the Housing and Community Development Act of 1974, section 905 of NAHA.

Under NAHA, the Secretary of Housing and Urban Development reviews and approves the complete five year CHAS and subsequent annual plans. This notice delegates the power and authority of the Secretary to review and approve Comprehensive Housing Affordability Strategies (CHAS) and to perform all related functions, to the Assistant Secretary for Community Planning and Development. The authority may be redelegated to employees of the Department, except the authority to issue rules, regulations, notices, and other Federal Register documents, or to waive rules or notices, with respect to the CHAS.

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates the power and authority to review and approve Comprehensive Housing Affordability Strategies (CHAS), and to perform all related functions, to the Assistant Secretary for Community Planning and Development.

Section B. Authority to Redelegate

The Assistant Secretary for Community Planning and Development is authorized to redelegate to employees of the Department of Housing and Urban Development any of the power and authority delegated under section A,

except the authority to issue rules, regulations, notices, and other **Federal Register** documents, or to waive rules or notices, with respect to the CHAS.

Authority: Section 105 of the National Affordable Housing Act, 42 U.S.C. 12705; section 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d).

Dated: November 6, 1992.

Jack Kemp,

Secretary of Housing and Urban Development.

[FR Doc. 92-28200 Filed 11-19-92; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-3350-N-06]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless uses for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE-NM, room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314-1000; (202) 272-1750; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (703) 325-0474; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; Dept. of Veterans Affairs, Douglas Shinn, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave. NW., Washington, DC 20420; (202) 233-8474; Dept. of Transportation: Ronald D. Keefer, director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366-4246; HHS: Judy Breitman, Chief, Real Property Branch, Dept. of HHS, Div. of Health Facilities Planning, rm. 17A10, 5600 Fishers Lane, Rockville, MD 30857; (301) 443-2265; Dept of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512-MIB, Washington, DC 20240; (202) 208-4080; Dept of Energy: Tom Knox, Realty Specialist, AD223.1. 1000 Independence Ave. SW., Washington, DC 20585; (202) 586-1191; (These are not toll-free numbers).

Dated: November 13, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/20/92

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TU-43
Millers Ferry Lock and Dam
Route 1, Box 102
Camden Co: Wilcox AL 36726-
Landholding Agency: COE
Property Number: 319011549
Status: Unutilized
Comment: 1000 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldgs. TU-21-24
Selden Lock and Dam
Route 1

Sawyerville Co: hale AL 36776–
Landholding Agency: COE
Property Number: 319011551–319011554
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU–15
Coffeeville Lock and Dam
Star Route Box 77
Blandon Springs Co: Choctaw AL 36919–
Landholding Agency: COE
Property Number: 319011556
Status: Unutilized
Comment: 1547 sq. ft.; 1 story frame residence; most recent use—lock tender's dwelling.

Bldg. 19, VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979220006
Status: Underutilized
Comment: Portion of a 5320 sq. ft. 4-story structure.

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706–
Landholding Agency: COE
Property Number: 319011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Bldg. 20—VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 97921003
Status: Unutilized
Comment: 8758 gross sq. ft.; one story wooden, requires complete restoration meeting standards of national preservation laws and guidelines.

Bldg. 13, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: COE
Property Number: 979220001
Status: Underutilized
Comment: Portion of 66,165 sq. ft. bldg., needs major rehab, no utili., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.

Florida

Bldg. CN–3
1651 S. Franklin Lock Road
Alva Co: Lee FL 33920–
Landholding Agency: COE
Property Number: 319130006
Status: Unutilized
Comment: 1500 sq. ft.; 1 story concrete block residence; off-site use only.

Bldg. CN–43
Port Mayaca Lock and Spillway
Okeechobee Waterway
Port Mayaca Co: Martin FL 33438–
Location: Located approx. 9 mi n/o Canal Pt. at the intersection of US 441 and SR 76
Landholding Agency: COE
Property Number: 319210004
Status: Unutilized
Comment: 1700 sq. ft., 1 story concrete block/stucco structure, possible asbestos, off-site use only.

Idaho

Bldg.
Albeni Falls Dam
U.S. Highway 2, Priest River
Bonner Co: Bonner ID 83856–
Location: 3½ miles west of Priest River.
Landholding Agency: COE
Property Number: 319110028
Status: Unutilized
Comment: 2989 sq. ft.; 3 story log construction with wood frame; off-site removal only; needs rehab.

Indiana

Bldgs. 01, 02 Monroe Lake Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140002–319140003
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 319010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010110
Status: Underutilized
Comment: 7,270 sq. ft., 1 story bldg, most recent use—storage, structural deficiencies.

Bldg. 523—Tramsitter Site
Naval Air Station
East Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230002
Status: Excess
Comment: 7270 sq. ft., 1-story bldg., most recent use—storage, needs rehab on 66 acres of land.

Bldg. 524—Transmitter Site
Naval Air Station
East Brunswick Co: Cumberland ME 04011–
Property Number: 779230003
Status: Excess
Comment: 384 sq. ft., 1-story, most recent use—storage, needs rehab.

New Mexico

Bldg. 814, Kirtland AFB
Adjacent to Sandia Natl. Labs
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 419220002
Status: Unutilized
Comment: 6900 sq. ft., one story wood frame, needs rehab, presence of asbestos, off-site use only. most recent use—office, secured area w/alternate access.

Former Post Office
4th & Mitchell
Clovis Co: Curry NM 88101–
Landholding Agency: GSA
Property Number: 549230005
Status: Excess
Comment: 9225 sq. ft., 2 story concrete, brick & steel structure, good condition, pres. of asbestos, listed on Natl Register of Historic Places, most recent use—public library.
GSA Number: 7–GR–NM–478.

North Carolina

Dwellings 1–3
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120083–879120085
Status: Unutilized
Comment: One story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 319120018
Status: unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.

Oregon

126 Duplexes
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034–
Landholding Agency: GSA
Property Number: 549220014
Status: Surplus; Base closure
Number of Units: 126
Comment: 1064 to 2204 sq. ft., wood frame, 1 story, 2 & 3 bedrooms, needs rehab, sewer treatment plant unable to accommodate fully operational fac., possible asbestos, 38 acres of land.
GSA Number: 9–D–OR–434I

38 Single Family Residences
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034–
Landholding Agency: GSA
Property Number: 549220015
Status: Surplus; Base closure
Number of Units: 38
Comment: 1064 to 2204 sq. ft., wood frame, 1 story, 3 & 4 bedrooms, needs rehab, sewer treatment plant unable to accommodate fully operational fac., possible asbestos, 38 acres of land.
GSA Number: 9–D–OR–434I

10 Miscellaneous Buildings
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034–
Landholding Agency: GSA
Property Number: 549220016
Status: Surplus; Base closure
Number of Units: 10

Comment: 1 story, most recent use—fire station, storage sheds, quonset hut, well housings.
GSA Number: 9–D–OR–434I

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 319210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only.

Bldg. 25—Va Medical Center
Delafield Road
Pittsburgh Co: Allegheny PA 15215–
Landholding Agency: VA
Property Number: 979210001
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab.

South Carolina

Bldgs. 1–5
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: ½ mile east of Resoruce Managers Office.
Landholding Agency: COE.
Property Number: 319011544–319011548
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Tennessee

Bldg. 16, VAMC Mountain Home
Johnson Co: Washington TN 37604–
Landholding Agency: VA
Property Number: 979220007
Status: Unutilized
Comment: 3215 sq. ft., 3-story wood frame residence, needs repair, subject to historic preservation requirements.

Texas

Naval Air Station, Chase Field

Chase Field Naval air Station is located in Beeville, Texas 78103. All the properties will be excess to the needs of the Department of Navy on or about October 1993. Properties shown below as suitable/available will be available at that time.

The base covers approximately 1,866 acres and has over 430 housing units and government-owned buildings. The properties that HUD has determined suitable and which are available include on- and off-base housing; administration buildings; recreational facilities; dining facilities; warehouses; a hospital; industrial and other specialized structures. All properties may need routine maintenance.

Sutiable/Available Properties

Property Numbers: 779210001–779210003, 779210006
Type Facility: Housing—208 off-base capehart residencies; 2 bedrooms/1 bath; 54 off-base family residences, 1 & 2 bedrooms/1 & 2 story; 19 on-base capehart residences, 1 & 2 bedrooms; brick/wood frame; 5 bachelor quarters, 16,800 to 62,200 sq. ft., 3 story metal/brick frame.

Property Number: 779210004
Type Facility: Recreational—3; 2,100 to 13,900 sq. ft.; 1 story concrete masonry frame; includes a theatre, bowling center, and racquetball.

Property Number: 779210005
Type Facility: Dining Halls—4 buildings; 6,000 to 21,900 sq. ft.; 1 story concrete masonry frame.

Property Number: 779210007
Type Facility: Administration—9 buildings; 1,300 to 29,500 sq. ft.; 1 and 2 story; concrete masonry frame.

Property Number: 779210008
Type Facility: Hospital (clinic)—31,000 sq. ft.; 1 story brick/concrete masonry frame.

Property Numbers: 779210009, 779210012
Type Facility: Miscellaneous—7 buildings; 900 to 55,600 sq. ft.; 1 and 2 story; wood and concrete masonry frame; includes fire/security buildings.

Property Number: 779210011
Type Facility: Industrial—16 buildings; 200 to 10,900 sq. ft.; 1 story metal/concrete masonry frame.

Property Numbers: 779210013–779210014
Type Facility: Aircraft/Air Traffic Control—8 buildings; 3,200 to 89,300 sq. ft.; 1 and 2 story; concrete masonry and metal frame; some bldgs. Used for storage and aircraft maintenance.

Unsuitable Properties

Property Number: 779210015
Type Facility: Building 2137, Aircraft Hangar; within 2,000 ft. of flammable or explosive material.

Property Number: 779210016
Type Facility: Building 1032, Warehouse; structural deterioration.

Virginia

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066–
Landholding Agency: DOT
Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., one story residence.

Admin. Bldg.
Group Eastern Shores
Coast Guard Station, South Main Street
Chinoteague Co: Accomack VA 23336–1510
Landholding Agency: DOT
Property Number: 879230006
Status: Unutilized
Comment: 3795 sq. ft., 1-story wood structure, off-site use only, scheduled to be vacated 7/93.

Repair Shop
Group Eastern Shores
Coast Guard Station, South Main Street
Chinoteague Co: Accomack VA 23336–1510
Landholding Agency: DOT
Property Number: 879230007
Status: Unutilized
Comment: 3025 sq. ft., 1-story wood structure, off-site use only, scheduled to be vacated 6/93.

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comments: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comments: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comments: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized

Comments: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Wyoming

Glendale Microwave Bldg.
Section 1
Cody Co: Park WY 82414–
Landholding Agency: Energy
Property Number: 419220001
Status: Excess
Comment: 223 sq. ft., metal frame, communication equipment bldg., limited utilities, off-site removal only.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized.
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 46 acres.

California

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino CA 95482–9404
Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

New Hogan Lake
2713 Hogan Dam Road
Valley Springs Co: Calaveras CA 95252–0128
Landholding Agency: COE
Property Number: 319011017
Status: Unutilized
Comment: 3.08 acres; potential utilities; brush covered.

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GAS
Property Number: 549010044
Status: Excess
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities.
GSA Number: 9–2–CA–1308

Colorado

Portion/Curecanti Substation
Cimarron Co: Montrose CO 81220–
Location: 2 miles east of Cimarron on Highway 50
Landholding Agency: GSA
Property Number: 419030009
Status: Excess
Comment: 36.39 acres, easement restrictions.
GSA Number: 7–B–CO–624

Railroad Spur and Right-of-Way
Denver Federal Center
Lakewood Co: Jefferson CO 80215–
Landholding Agency: GSA
Property Number: 549120007
Status: Excess
Comment: 1.5 miles long (width varies 35 to 200 ft.), limited access, right-of-way restrictions.
GSA Number: 7–G–CO–441–Q

Georgia

Land—Fort Gordon
Between Windermere Dr. & Wyevale Rd.
Augusta Co: Richmond GA 30909–
Landholding Agency: GSA
Property Number: 219210382
Status: Excess
Comment: Approximately .54 acres, entire parcel under easement to State Hwy. Dept.

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay Co.: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternative access.

Kansas

Parcel 1
El Dorado Lake
Sections 13, 24, and 18 (See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Portion of VA Hospital Reserv.
2111 Southwest Randolph Street
Topeka Co: Shawnee KS 66603–
Landholding Agency: GSA
Property Number: 549220006
Status: Excess
Comment: 0.806 acre, utility easements, most recent use—recreation.
GSA Number: 7–GR–KS–419–I

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.

Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co.: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co.: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co.: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co.: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co.: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co.: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co.: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co.: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acres; wooded; subject to utility easements.

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tract 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 319140009
Status: Underutilized
Comment: 91 acres; most recent use—hunting, subject to existing easements.

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 319011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010009
Status: Unutilized
Comment: 8.27 acres, heavily wood with natural drainage ravine across property, most recent use—recreational/buffer area.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010111
Status: Underutilized
Comment: 66.13 acres, most recent use—transmitter station.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Massachusetts

Por. of Former Navy Ammo. Plt.
Fort Hill Street
Hingham Co: Plymouth MA 02043–
Location: Across from Bus Company Parking Garage
Landholding Agency: GSA
Property Number: 459030017
Status: Excess
Comment: 1.129 acres, gravel pavement, most recent use—parking lot.
GSA Number: 2–GR–MA–591B

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech lake
Benedict Co: Hubbard MN 56641–
Location: 1 mile from city of Federal Dam, MN
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Section 16, 17, 18 T24N R8E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N,R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

North Carolina

USCG Station—Land
Oregon Inlet Coast Guard Station
Rodanthe Co: Dare NC 27968–
Landholding Agency: DOT
Property Number: 879120087
Status: Unutilized
Comment: 10 acres, potential utilities

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monroe OB 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank

Oklahoma
Parcel No. 18
Fort Gibson Lake
Section 12
Wagoner Co. Co: Wagoner OK
Landholding Agency: GSA
Property Number: 219013808
Status: Excess
Comment: 8.77 acres; subject to grazing lease; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0004

Parcel 7
Fort Gibson Lake
Section 6
Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010869
Status: Excess
Comment: 16.31 acres; potential uilities; most recent use—recreational and development.
GSA Number: 7–D–OK–0442E–0001

Parcel 14
Fort Gibson Lake
Section 20
Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010870
Status: Excess
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0002

Parcel 15
Fort Gibson Lake
Section 22
Co: Cherokee OK 74434
Landholding Agency: GSS
Property Number: 319010871
Status: Excess
Comment: 7.51 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0003

Parcel 28
Fort Gibson Lake
Section 35
Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010877
Status: Excess
Comment: 36.59 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0005

Parcel 75
Fort Gibson Lake
Section 16
Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010887
Status: Excess
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0009

Parcel 88
Fort Gibson Lake
Section 7
Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010899
Status: Excess
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0010

Parcel 89
Fort Gibson Lake
Section 7
Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010900
Status: Excess
Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0011

Parcel 95
Fort Gibson Lake
Section 33
Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010906
Status: Excess
Comment: 8 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0012

Pine Creek Lake
Section 27
Co: McCurtain OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Parcel 43
Fort Gibson Lake
Section 11
Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011371
Status: Excess
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0006

Parcel 49
Fort Gibson Lake
Section 15
Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011377
Status: Excess
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0007

Parcel 61
Fort Gibson Lake
Section 13
Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011389
Status: Excess
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0008

Parcel 99
Fort Gibson Lake
Section 21
Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011400
Status: Excess
Comment: 5 acres; small creek on land; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0013

Parcel 102
Fort Gibson Lake
Section 33
Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0014

Parcel No. 54/GSA No. 6
Lake Texoma
Co: Marshall OK 73439–
Location: Section 17, 3½ miles north of Little City, OK
Landholding Agency: GSA
Property Number: 549210007
Status: Excess Comment: 5.05 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 63/GSA No. 8
Lake Texoma
Co: Marshall OK 73439–
Location: Section 19, 3½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210008
Status: Excess Comment: 40.32 acres, potential utilities, most recent use-low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 66/GSA No. 9
Lake Texoma
Co: Marshall OK 73439–
Location: Sections 12 and 13, 2½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210009
Status: Excess Comment: 14.05 acres, potential utilities, most recent use—low density recreation/natural gas well and pipelines.
GSA Number: 7–D–OK–0507–H

Parcel No. 78/GSA No. 11
Lake Texoma
Co: Marshall OK 73439–
Location: Section 24, 1 mile east of McBride, OK
Landholding Agency: GSA
Property Number: 549210010
Status: Excess Comment: 30.28 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 86/GSA No. 12
Lake Texoma
Co: Marshall OK 73439–
Location: Section 1824, 3½ miles south of Kingston, OK
Landholding Agency: GSA
Property Number: 549210011
Status: Excess Comment: 13 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 125/GSA No. 14
Lake Texoma
Co: Marshall OK 73439–
Location: Section 17
Landholding Agency: GSA
Property Number: 549210012
Status: Excess Comment: 11.24 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 150/GSA No. 15
Lake Texoma
Co: Marshall OK 73439–
Loction: Section 6
Landholding Agency: GSA
Property Number: 549210013
Status: Excess Comment: 12.64 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 164/GSA No. 16
Lake Texoma
Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210014
Status: Excess Comment: 40.20 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 165/GSA No. 17
Lake Texoma
Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210015
Status: Excess
Comment: 32.62 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 166/GSA No. 18
Lake Texoma
Co: Love OK 73441–
Location: Section 10
Landholding Agency: GSA
Property Number: 549210016
Status: Excess
Comment: 62.61 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–

Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement

Tracts L24, L26
Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 7.89 acres; potential for utilities.

South Dakota

Por. of Pactola Dist. Ad. Site
803 Soo San Drive
Rapid City Co: Pennington SD 57702–
Landholding Agency: GSA
Property Number: 159130003
Status: Excess
Comment: 3.36 acres, potential utilities
GSA Number: 7–A–SD–511

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.46 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tracts 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tracts 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to ex.sting easements.

Tracts 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tracts 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tracts 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation

Tracts A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140006
Status: Underutilized
Comment: 351 acres most recent use—hunting, subject to existing easements.

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551-
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tracts A–20, A–21

Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551-
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements

Tracts D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570-
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Texas

Parcel #222
Lake Texoma
(See County) Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation

Parts of Tracts
B–143, B–144, B–146, B–148, B–179
Downstream of Lewisville Dam embankment
Lewisville Co: Denton TX 75067–
Location: Along State Hwy 121
Landholding Agency: COE
Property Number: 319140015
Status: Underutilized
Comment: approx. 92.81 acres in 3 parcels, most recent use—wildlife and low density recreation

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7–N–TX–402–V

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

VA. Medical Center
4800 Memorial Drive
Waco Co: McLennan TX 76711–
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized
Comment: 2.3 acres, leased to Owens-Illinois Glass Plant, expiration date 10/31/92, most recent use—parking lot.

Washington

Land
Goodnoe Hills Substation & Wind Study Site
Co: Klickitat WA 98620–
Location: 15 mi SE of Goldendale on S side of St. Hwy. 122
Landholding Agency: GSA
Property Number: 549210005
Status: Excess
Comment: 123 acres w/ a 20' x 20' visitors center and a 6' x 6' substation bldg. which has secured areas.
GSA Number: 9–B–WA–1017

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Wyoming

Wind Site A
Medicine Bow Co: Carbon WY 82329–
Location: 3 miles south and 2 miles west of Medicine Bow
Landholding Agency: GSA
Property Number: 419030010
Status: Excess
Comment: 46.75 acres, limitation-easement restrictions

Suitable/Unavailable Properties

Buildings (by State)

California

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979110009
Status: Underutilized
Comment: 60,309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port of bldg. used intermitly., needs rehab, poss. asbestos in pipes/floor tiles, site access lim.

Bldg. 263
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles, CA 90073–
Landholding Agency: VA
Property Number: 979110010
Status: Unutilized
Comment: 1,600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Bldg. 205, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979220002
Status: Underutilized
Comment: portion of 50,546 sq. ft. concrete bldg., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.

Bldg. 256, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979220003
Status: Underutilized
Comment: portion of 48,861 sq. ft. concrete bldg., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.

Bldg. 300, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979220004
Status: Underutilized
Comment: portion of 66,214 sq. ft. concrete bldg., needs rehab, presence of asbestos, in historic district.

Florida

Bldgs. CN7–CN8
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010012–319010013
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN–19
Moore Haven Lock
Okeechobee Waterway
Moore Haven Co: Glades FL 33471–
Location: 1 mile east of highway 27
Landholding Agency: COE
Property Number: 319011688
Status: Unutilized
Comment: 1281 sq. ft.; 1 story frame residence; secured area with alternate access.

Georgia

Lot 3
Lake Forrest Subdivision
Woodframe House
Hartwell Co: Hartwell GA
Landholding Agency: COE
Property Number: 319110026
Status: Excess
Comment: 896 sq. ft.; 2 story wood frame residence; off-site removal only.

Guam

Bldg. 99, Loran Station—C
Barrigada GU 96913–
Landholding Agency: DOT
Property Number: 879220002
Status: Excess
Comment: 3960 sq. ft. concrete block transmitting station with tower.

Illinois

Bldgs. 1–7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010001–319010007
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Indiana

Cagles Mill Lake
Cagles Mill Lake Dam
Poland Co: Putnam IN 47868–
Location: Midway between Indianapolis and Terre Haute, 5 miles west of Poland on SR 42.
Landholding Agency: COE
Property Number: 319011046

Status: Unutilized
Comment: 1066 sq. ft.; wood frame residence; minor rehab.

Dwelling #2
Cagles Mill Lake
Poland Co: Putnam IN 47868–
Location: 5 miles west of Poland on SR 42
Landholding Agency: COE
Property Number: 319011686
Status: Unutilized
Comment: 872 sq. ft.; 1 story wood frame residence; fair condition.

Kentucky

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY to highway 561, right on 561 approximately 3 miles to site
Landholding Agency: COE
Property Number: 319010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–
Location: SR 421 north from Frankfort, KY to highway 561, right on 561 approximately 3 miles to site
Landholding Agency: COE
Property Number: 319010061
Status: Unutilized
Comment: 1060 sq. ft.; 2 story wood frame; need rehab.

Bldgs. 1–2
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR 227 to Highway 320, then left for about 1.5 miles to site
Landholding Agency: COE
Property Number: 319011628–319011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Maryland

Chesapeake Bay Hydraulic Model
Matapeake Co: Queen Annes MD 21666–
Landholding Agency: GSA
Property Number: 549040007
Status: Excess
Comment: 617280 sq. ft.; 1 story metal bldg., ceiling height over 40 ft., lease restriction, Corps will maintain an antenna on property.
GSA Number: 4–D–MD–578

Minnesota

Bldg. 43
VA Medical Center
Minneapolis Co: Hennepin MN 55441–7
Location: 54th Street and 48th Avenue S.
Landholding Agency: VA
Property Number: 979010032
Status: Underutilized
Comment: 26000 sq. ft., 8 story brick/steel frame, asbestos present on pipe insulation, most recent use—office/storage.

Bldg. 227
Va Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010033
Status: Unutilized
Comment: 850 sq. ft., 2 story wood frame and brick residence, utilities disconnected.

Missouri

Bldg. 208–C
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120047
Status: Excess
Comment: 2210 sq. ft., most recent use—general storage, permitted to Dept of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 208–D
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120048
Status: Excess
Comment: 750 sq. ft., most recent use—general storage, permitted to Dept of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 222
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120049
Status: Excess
Comment: 16150 sq. ft., most recent use—medical/dental, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 223–A
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120050
Status: Excess
Comment: 77340 sq. ft., most recent use—dormitory, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 223–B
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120051
Status: Excess
Comment: 21380 sq. ft., most recent use—education bldg., permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 230
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120052
Status: Excess
Comment: 1840 sq. ft., most recent use—facility maintenance, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 230–A
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120053
Status: Excess
Comment: 1890 sq. ft., most recent use—facility maintenance, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 232–A–H
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120054
Status: Excess
Comment: 29280 sq. ft., most recent use—vocational training shop, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 234
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120055
Status: Excess
Comment: 44620 sq. ft., most recent use—admin/food service, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 237
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120056
Status: Excess
Comment: 300 sq. ft., most recent use—storage, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 244
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120057
Status: Excess
Comment: 7480 sq. ft., most recent use—weld/automotive shop, permitted to Dept. of Labor.
GSA Number: 7–D–MO–46–F

Bldg. 223C
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120058
Status: Excess
Comment: 123 sq. ft., permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 224B
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120059
Status: Excess
Comment: 100 sq. ft., permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 233A
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120060
Status: Excess

Comment: 837 sq. ft., permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 233F
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis MO 63120–
Landholding Agency: GSA
Property Number: 549120061
Status: Excess
Comment: 837 sq. ft., permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

New Mexico

Indian School of Prac. Nursing
1015 Indian School Road, NW
Albuquerque NM 87104–
Landholding Agency: GSA
Property Number: 549140004
Status: Excess
Comment: 21635 sq. ft., 2 story plus basement, brick & masonry frame on 1.68 acres of improved land.
GSA Number: 7–F–MN–509B

Bldg. 1 and 4
U.S. Navy Reserve Center
512 N 12th Street
Carlsbad Co: Eddy NM 88220–3046
Landholding Agency: GSA
Property Number: 779040001
Status: Excess
Comment: 2460 sq. ft., one story, frame/concrete block bldg., most recent use—office, presence of asbestos, and 152 sq. ft. metal storage shed on 1.03 acres.
GSA Number: 7–N–MN–0555

New York

Bldg. 1
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120008
Status: Excess
Comment: 31519 sq. ft., 7 story brick frame, presence of asbestos on pipe insulation, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–MY–797

Bldg. 2
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120009
Status: Excess
Comment: 35537 sq. ft., 3 story bay brick frame, presence of asbestos on pipe insulation, most recent use—office, storage, auto shop, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 3
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120010
Status: Excess
Comment: 2700 sq. ft., 2 story brick frame, most recent use—office, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 5
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120012
Status: Excess
Comment: 3330 sq. ft., 2 story brick frame, most recent use—office, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 10
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120015
Status: Excess
Comment: 3100 sq. ft., 1 story, concrete & fiberglass frame, no utilities, most recent use—storage, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 306
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120016
Status: Excess
Comment: 8364 sq. ft., 1 story brick frame, presence of asbestos on pipe insulation, most recent use—storage, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 311
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120017
Status: Excess
Comment: 9720 sq. ft., 2 story brick frame, needs heating system repairs, needs rehab, presence of asbestos on pipe insulat., most recent use—ofc/storage, sched. to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 316
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120019
Status: Excess
Comment: 3952 sq. ft., 1 story brick frame, needs heating system repairs, potential utils., pres. of asbestos on pipe insula., most recent use—storage, sched. to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 353
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120020
Status: Excess
Comment: 670 sq. ft., 1 story brick frame, limited utilities, needs rehab, most recent use—storage, needs heating system repairs, scheduled to be be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 670
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120021
Status: Excess
Comment: Concrete block gasoline station, no sanitary or heating facilities, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 672
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120023
Status: Excess
Comment: 400 sq. ft., 1 story wood frame, most recent use—pool house, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R1
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120025
Status: Excess
Comment: 5274 sq. ft., 2 story single family housing, brick veneer/wood frame, presence of asbestos on pipe insulation, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R2
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120026
Status: Excess
Comment: 2400 sq. ft., 2 story single family hsg., cement asbestos/wood frame, needs heating system repairs, presence of asbestos on pipe insulation, sched. to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R3
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120027
Status: Excess
Comment: 2400 sq. ft., 2 story single family housing, cement asbestos/wood frame, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R4
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120028
Status: Excess
Comment: 2517 sq. ft., 3 story four family housing, brick asbestos/tile frame, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldgs. R5, R6, R7
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120029–549120031
Status: Excess

Comment: 2140 sq. ft., 1 story single family residence, brick frame, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R103
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120032
Status: Excess
Comment: 1650 sq. ft., 2 story brick frame, needs heating system repairs, limited utils., most recent use—storage, presence of asbestos on pipe ins., scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R103A
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120033
Status: Excess
Comment: 2620 sq. ft., 1 story concrete block frame, limited utils., most recent use—garage, presence of asbestos on pipe insulation, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R104
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120034
Status: Excess
Comment: 712 sq. ft., 2 story brick frame, most recent use—bachelor officers quarters, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R109
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120035
Status: Excess
Comment: 2 story brick frame, limited utilities, needs heating syst. repairs, most recent use—storage & garage, presence of asbestos on pipe insul., scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R426
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120036
Status: Excess
Comment: 2409 sq. ft., 1 story brick frame, needs heating system repairs, most recent use—storage, presence of asbestos on pipe ins., limited utils., scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R448
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120037
Status: Excess
Comment: 969 sq. ft., 1 story concrete & glass frame, limited utilities, needs major rehab, most recent use—greenhouse, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R475
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120039
Status: Excess
Comment: 1789 sq. ft., 1 story concrete block frame, most recent use—auto hobby shop, presence of asbestos on pipe insulation, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R476
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120040
Status: Excess
Comment: 36 sq. ft., 1 story metal frame, most recent use—security gate house, needs heating system repairs, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. RG
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120041
Status: Excess
Comment: 15490 sq. ft., 3 story brick & stucco frame, needs heating system repairs, needs major rehab, presence of asbestos on pipe ins., scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R8R9
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120042
Status: Excess
Comment: 2800 sq. ft., 2 story brick frame, most recent use—residential duplex, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R95
Naval Station
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 779010256
Status: Excess
Comment: 41800 sq. ft., 2 story stone frame, needs heating system repairs, pres. of asbestos on pipe ins., needs major rehab, NYS Historical Landmark, sched. to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. RD
Naval Station
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 779010257
Status: Excess
Comment: 14128 sq. ft., 2 story brick and stone frame, needs heating system repairs, pres. of asbestos on pipe ins., needs major rehab, sched. to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 305
Naval Station
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 779010258
Status: Excess
Comment: 18920 sq. ft., 2 story brick frame, limited util., needs major rehab, presence of asbestos on pipe insulation, needs heating systme repairs, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 5
V.A. Medical Center
Redfield Parkway
Bativia Co: Genesee NY 14020–
Landholding Agency: VA
Property Number: 979030001
Status: Underutilized
Comment: Portion of 16800 sq. ft., 3 story, brick and masonry bldgs., needs minor repairs.

Bldgs. 144, 143 VAECC
Linden Blvd. and 179st St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210004–979210005
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities.

Bldgs. 142/146, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210006
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence with 380 sq. ft. attached garage, needs rehab, potential utilities.

Ohio

Parcel 2
Lock and Dam #16
Washington Co: Washington OH
Location: On the Ohio River; 4 miles dowstream for New MataMoras, Grandview Township.
Landholding Agency: GSA
Property Number: 549110010
Status: Excess
Comment: Two story brick frame, subject to periodic flooding, possible asbestos on pipes, most recent use—office space.
GSA Number: 2–GR(1)–OH–730

Parcel 1
Lock and Dam #16
Washington Co: Washington OH
Location: On the Ohio River, 4 miles downstream from New MataMorus, Grandview Township.
Landholding Agency: GSA
Property Number: 549110011
Status: Excess
Comment: 2.5 story brick frame, subject to periodic flooding, possible asbestos on pipes, most recent use—storage.
GSA Number: 2–GR(1)–OH–730

Oregon

Former Resource Area Hdqts.
6615 Offices Row
Tillamook Co: Tillamook OR 97141–
Landholding Agency: GSA

Property Number: 549220001
Status: Surplus
Comment: 4400 sq. ft., 3-story wood bldg., needs repair, on 5.51 acres.
GSA Number: 9–I–Or–515F

Pennsylvania

Conemaugh River Lake
Road #1, Box 702
Saltsburg Co: Indiana PA 15681–
Landholding Agency: COE
Property Number: 319010019
Status: Unutilized
Comment: 2642 sq. ft.; one unit of brick/frame duplex; most recent use—residence.

Bldg. 3—VA Medical Center
University Drive C
Pittsburgh Co: Allegheny PA 15240–
Landholding Agency: VA
Property Number: 979210002
Status: Unutilized
Comment: Approx. 2765 sq. ft., two story brick residence, needs rehab.

Tennessee

Transient Quarters
Dale Hollow Lake and Dam Project
Dale Hollow Resource Mgr Office, Rt 1, Box 64
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140005
Status: Unutilized
Comment: 1400 sq. ft., concrete block, possible security restrictions, subject to existing easements.

Federal Building
216 North Jackson Street
Athens Co: McMinn TN 37303–
Landholding Agency: GSA
Property Number: 549210003
Status: Excess
Comment: 2069 sq. ft., 3 story brick and concrete frame, presence of asbestos on pipes and air ducts in mechanical areas, most recent use—offices.
GSA Number: 4–G–TN–632

Texas

Bldg. 6–B
Brazos River Floodgates
Freeport Co: Brazoria TX 77541–
Location: 5 miles south of Freeport.
Landholding Agency: COE
Property Number: 319110030
Status: Unutilized
Comment: 1100 sq. ft.; 2 story wood frame; needs major rehab; possible asbestos; off-site use only.

Bldg. 6–C
Colorado River Locks
109 Colorado River Locks
Matagorda Co: Matagorda TX 77547–
Landholding Agency: COE
Property Number: 319110031
Status: Unutilized
Comment: 1100 sq. ft.; 1 story wood frame; needs rehab; off-site use only.

66 Bldgs.
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010161–779010227
Status: Underutilized
Comment: 1 story residences.

Brownsville Urban System
(Grantee)
700 South Iowa Avenue
Brownsville Co: Cameron TX 78520–
Landholding Agency: DOT
Property Number: 879010003
Status: Unutilized
Comment: 3500 sq. ft., 1 story concrete block (2nd floor of Admin. Bldg.), on 10750 sq. ft. land, contains underground diesel fuel tanks.

Virginia

Tract HH 3331–E
John H. Kerr Reservoir
Woodframe House
South Boston Co: Halifax VA
Landholding Agency: COE
Property Number: 319110027
Status: Excess
Comment: 1040 sq. ft.; 1 story wood frame residence; off-site removal only.

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23506–
Landholding Agency: Navy
Property number: 779010109
Status: Unutilized
Comment: 3665 sq. ft., 1 story, possible asbestos, most recent use—laundry.

Washington

Naval Station Puget Sound
7500 Sand Point Way, NE
Seattle Co: King WA 98115–
Landholding Agency: Navy
Property Number: 779120002
Status: Excess
Base closure—Number of Units: 1
Comment: 144 sq. ft. ammunition bunker, most recent use—storage, secured area with alternate access.

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003–
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq. ft.; 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city—expires September 1990.

Wisconsin

Former Lockmaster's Dwelling
De Pere Lock
100 James Street
De Pere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 319011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Wyoming

Bldg. 13
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110001
Status: Unutilized
Comment: 3613 sq. ft., 3 story wood frame masonry veneered, potential utilities, possible asbestos, needs rehab.

Bldg. 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110003
Status: Unutilized
Comment: 45 sq. ft., 1 story brick and tile frame, limited utilities, most recent use—reservoir house, use for storage purposes.

Land (by State)

Alaska

Portion, Dyke Range
Old Richardson Hwy.
North Pole Co: Fairbanks AK 00805–
Landholding Agency: GSA
Property Number: 549130018
Status: Excess
Comment: 0.73 acre—75% of land encroached upon by private residence
GSA Number: 9–D–AK–727

California

Receiver Site
Dixon Relay Station
7514 Radio Station Road
Dixon CA 95620–9653
Location: Approximately .16 miles southeast of Dixon, CA
Landholding Agency: GSA
Property Number: 549010042
Status: Excess
Comment: 80 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, limited utilities.
GSA Number: 9–2–CA–1162–A

Remote Transmitter
Section 35
Red Bluff Co: Tehema CA 96080–
Landholding Agency: DOT
Property Number: 879010010
Status: Unutilized
Comment: 4 acres, paved road, current use—storage.

Land
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979010077
Status: Underutilized
Comment: Approx. 30 acres of 80 acre tract, 7 acre portion contaminated, portions may be environmentally protected.

Florida

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508–
Location: Southeast corner of Corey station—next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Unutilized
Comment: 22 acres.

Parcel A & B
U.S. Coast Guard Light Station
Lots 1, 8 & 11, Section 31
Jupiter Inlet Co: Palm Beach FL 33420–
Location: Township 40 south, range 43 east.
Landholding Agency: DOT
Property Number: 879010009
Status: Unutilized

Comment: 56.61 acres, area is uncleared, vegetation growth is heavy, no utilities.

Georgia

E. O. Tract A
J. Strom Thurmond Dam and Reservoir Co: Columbia GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011516
Status: Unutilized
Comment: 17 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract B
J. Strom Thurmond Dam and Reservoir Columbia GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011517
Status: Unutilized
Comment: 88 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract F
J. Strom Thurmond Dam and Reservoir Co: Columbia GA
Location: Approximately 2 miles east of GA 104 and Keg Creek Road intersection.
Landholding Agency: COE
Property Number: 319011519
Status: Unutilized
Comment: 29 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract E
J. Strom Thurmond Dam and Reservoir Co: Columbia GA
Location: Approximately 1½ miles east of GA 104 and Keg Creek Road Intersection.
Landholding Agency: COE
Property Number: 319011520
Status: Unutilized
Comment: 12 acres; potential utilities; most recent use—forest reserve and wildlife management.

E. O. Tract G
J. Strom Thurmond Dam and Reservoir Co: Columbia GA
Location: 4 miles east of GA 104 and Ridge Road Intersection.
Landholding Agency: COE
Property Number: 319011521
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract I
J. Strom Thurmond Dam and Reservoir Co: Columbia GA
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011523
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010255
Status: Underutilized
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Hawaii

21.615 acres
Manana Housing Area
Pearl HI 96782–
Landholding Agency: GSA
Property Number: 549230001
Status: Excess
Comment: predominantly steep cliffsides, subject to easements, buffer zone, land use restrictions.
GSA Number: 9–N–HI–566.

Illinois

VA Medical Center
3001 Green Bay Road
North Chicago Co: Lake IL 60064–
Landholding Agency: VA
Property Number: 979010082
Status: Underutilized
Comment: 2.5 acres, currently being used as a construction staging area for the next 6–8 years, potential utilities.

Kansas

Dragoon Access Area
Pomona Lake
Vassar Co: Osagé KS 66543–
Location: Upper reaches of north shore of the Pomona Lake, approximately 10.5 miles north and east of Lundon.
Landholding Agency: COE
Property Number: 319011543
Status: Underutilized
Comment: 110 acres; portion in floodway/reservoir flood control area.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 979010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Minnesota

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010005
Status: Underutilized
Comment: 8.9 acres, most recent use—parking, potential utilities.

Bldg. 227–229 Land
VA Medical Center
Fort Snelling
St Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010006
Status: Underutilized
Comment: 2.0 acres, potential utilities, buildings occupied, residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Location: Land (Site of building 15, 16, 21, 48, 64, T10)
Landholding Agency: VA
Property Number: 979010024
Status: Underutilized
Comment: 12.1 acres, most recent use—parking, potential utilities.

Land—12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010031
Status: Underutilized
Comment: 12 acres, possible asbestos, leased to Department of Natural Resources as a park walking trail.

New York

Land 671
Naval Station New York
207 Flushing avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120022
Status: Excess
Comment: 50 ft. by 25 ft., most recent use—swimming pool concrete frame, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797.

Playing Field—675
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120024
Status: Excess
Comment: 67974 sq. ft., limited utilities, most recent use—baseball field, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Land R464/R474
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120043
Status: Excess
Comment: 90' X 45' each, concrete over gravel, most recent use—tennis courts, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Va Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 979010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Oklahoma

45 Acre parcel, Sardis Lake
SE¼ NE¼ Section 4, T 2 N, R 18 E
Co: Pushmataha OK 74521–
Landholding Agency: COE
Property Number: 319140004
Status: Excess
Comment: approx. 45 acres, most recent use—fish and wildlife conservation.

Oregon

Tonque Point Job Corps Center (Portion of)
Astoria Co: Clotsop OR 97103–
Location: North of highway 30; on the west by city of Astoria's sewage treatment plant.
Landholding Agency: GSA
Property Number: 549010027
Status: Excess
Comment: 18.17 acres, land slopes, some soil erosion, potential utilities, no vehicular access to property.
GSA Number: 9–L–OR–508M

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number : 319011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

6.98 acres—Army Rsv Center
Edgemont Military Reservation
Delchester—Gradyville Road
Willistown Township Co: Chester PA 19013–
Landholding Agency: GSA
Property Number: 549220004
Status: Surplus
Comment: 6.98 acres with dilapidated building.
GSA Number: 4–GR–PA–632A

5.19 acres—Army Rsv Center
Edgemont Military Reservation
Delchester—Gradyville Road
Willistown Township Co: Chester PA 19013–
Landholding Agency: GSA
Property Number: 549220005
Status: Surplus
Comment: 5.19 acres with dilapidated building.
GSA Number: 4–GR–PA–632B

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 979010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient rereation, potential utilities.

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized
Comment: 52.42 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

South Carolina

E. O. Tract J
J. Strom Thurmond Dam and Reservoir Co: McCormick SC
Location: 4 miles southwest of Plum Branch SC on road to Clarks Mill Marina.
Landholding Agency: COE
Property Number: 319011514
Status: Unutilized
Comment: 57 acres, potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract C
J. Strom Thurmond Dam and Reservoir Co: McCormick SC
Location: Approximately 1 mile north of US 221 and SC 28 intersection.
Landholding Agency: COE
Property Number: 319011515
Status: Unutilized
Comment: 70 acres, potential utilities; most recent use—forest and wildlife reserve.

Tennessee

Cates Casting Field
Mississippi River and Tributaries Project
Hwy. 22
Tiptonville Co: Lake TN 38079–
Landholding Agency: GSA
Property Number: 319210010
Status: Excess
Comment: 57.0 acres, remote area, subject to periodic flooding GSA Number 4–D–TN–633

Loading Site
Cates Casting Field
Mississippi River and Tributaries Project
Tiptonville Co: Lake TN 38079–
Landholding Agency: GSA
Property Number: 319210011
Status: Excess
Comment: 8.3 acres, remote area, subject to periodic flooding GSA Number 4–D–TN–634

Texas

Part of Tract A–10 Co: Tarrant TX
Location: Off FM 2499 at north end of dam embankment
Landholding Agency: COE
Property Number: 319010390
Status: Excess
Comment: 0.29 acres; most recent use—parking lot.

Part of Tract 340
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010400
Status: Unutilized
Comment: 1 acre; future use—recreation

Test Tract—Formerly Jet Ind.
Burleson Road
Austin Co: Travis TX 78741–
Location: Approx. 7 mi NW of U.S. Hwy 183 and approx. 3.5 mi SE of Ben White Blvd.
Landholding Agency: GSA
Property Number: 549140008
Status: Excess
Comment: 75.81 acres, most recent use—one-mile asphalt test track for electric cars, approx. 15 acres in floodplain
GSA Number: 7–B–TX–970

Virginia

St. Helena Annex
(former portion)
Treadwell and South Main Streets
Norfolk Co: Norfolk VA 23523–
Landholding Agency: GSA
Property Number: 549120005
Status: Excess
Comment: 7.69 acres, most recent use—paved parking lot
GSA Number: 4–GR(2)–VA525AA

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office space

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—office.

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—dinning hall

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized
Comment: 100 sq. ft.; 1 story permanent bldg; secured facilities with alternate access; most recent use—storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—filling station.

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–

Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access; most recent use—bowling alley.

Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access; most recent use—recreation building.

Michigan

Former C. G. Lightkeeper Sta.
Little Rapids Channel Project
St. Marys River
Sault Ste. Marie Co: Chippewa MI 49783–
Location: 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: COE
Property Number: 319011573
Status: Excess
Comment: 1411 sq. ft.; 2 story wood frame on .62 acres; needs rehab; secured area with alternate access.

New Mexico

Bldg. 234, LPN Service Bldg.
1015 Indian School Road
Albuquerque Co: Bernalillo NM 87102–
Landholding Agency: HHS
Property Number: 579220001
Status: Unutilized
Comment: 3500 sq. ft.; 1 story, limited utilities, most recent use—maintenance shop; and .114 acre parking lot (unpaved), secured area with alternate access.

New York

Former Damtender's House
East Sidney Lake
Franklin Co: Delaware NY 13775–
Location: Located on the corner of Triverfold Rd. and County Rd. 44
Landholding Agency: COE
Property Number: 319210007
Status: Excess
Comment: 1605 sq. ft., 2 story wood frame residence with 1 acre of land, asbestos shingle siding.

South Carolina

Bldg. #1 U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120096
Status: Unutilized
Comment: 2340 sq. ft., 1 story concrete block, most recent use—communications station.

Bldg. #1 U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120097
Status: Unutilized
Comment: 2050 sq. ft., 1 story concrete block, most recent use—communications station.

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048–
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Indiana

Cecil M. Harden Lake Project
Rockville Co: Parke IN 47872–
Location: Route 57 at intersection w/county road 910E.
Landholding Agency: COE
Property Number: 319011689
Status: Excess
Comment: 2.68 acres; narrow triangular shaped area of land.

Tracts 903, 905, 905–C
Patoka Lake Project
Taswell Co: Crawford IN 47527–
Location: From French Lick, IN, take SR 145S for 10 miles to intersection with SR 164, property lies east and adjacent to highway 145
Landholding Agency: COE
Property Number: 319030003
Status: Excess
Comment: 22.35 acres; limited utilities.

Tracts 142–A, 143
Patoka Lake Project
Dubois Co: Dubois IN 47527–9661
Location: From French Lick, IN take SR 145 S. for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for ¼ mile to property.
Landholding Agency: COE
Property Number: 319030004
Status: Excess
Comment: 21.30 acres; limited utilities; subject to periodic flooding.

Tract 142–B
Patoka Lake Project
Dubois Co: Dubois IN 47527–9661
Location: From French Lick, IN take SR 145 S for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for ¼ mile to property.
Landholding Agency: COE
Property Number: 319030005
Status: Excess
Comment: 4.74 acres; limited utilities; subject to periodic flooding.

Tract 601
Patoka Lake Project
French Lick Co: Orange IN 47527–
Location: IN. State Highway 145 south to Jordan Branch Road, property abuts east right-of-way for Jordan Road
Landholding Agency: COE
Property Number: 319030006
Status: Excess
Comment: 0.41 acre; limited utilities.

Kansas

Parcel #1
Fall River Lake
Section 26
(See County) Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 155 acres; most recent use—recreation and leased cottage sites.

Parcel #2
Fall River Lake
Sections 25 and 26
(See County) Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010066
Status: Excess
Comment: 38.62 acres; most recent use—recreation.

Parcel #3
Fall River Lake
Section 26
(See County) Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010067
Status: Excess
Comment: 22.44 acres; most recent use—recreation.

Parcel No. 2, El Dorado Lake
Approx. 1 mi. east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 319210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area.

Kentucky

Tract B—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130002
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130003
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

Tract C—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130005
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 1.45 acres.

Conant Brook Dam
Flood Control Dam
Wales road
Monson Co: Hampden MA 01057–
Location: Portion of Tract 211
Landholding Agency: COE
Property Number: 319010017
Status: Excess

Comment: 5.27 acres.

Hodges Village
Dam Flood Control Project
Old Howarth Road
Oxford Co: Worcester MA 01540–0500
Location: Portion of Tract A–108, see Project Manager at Hodges Village Dam, Oxford, MA (508) 987–2600.
Landholding Agency: COE
Property Number: 319011006
Status: Excess
Comment: 6.02 acres; 3 acres paved road, subject to utility easement.

Michigan

U.S. Coast Guard—Air Station
Traverse City Co: Grand Traverse MI 49694–
Landholding Agency: DOT
Property Number: 879120099
Status: Underutilized
Comment: 21.7 acres, most recent use—helo landings.

Minnesota

Land around Bldg. 240–249, 253
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010007
Status: Unutilized
Comment: 3.76 acres, potential utilities.

Montana

0.01 acre, Fort Peck Lake Proj Co: Valley MT
Location: Twp. 27 north, RGN 41 east, section 33, E/2SE/4NW/4NE/4
Landholding Agency: COE
Property Number: 319220002
Status: Excess
Comment: 0.01 acre, small triangular parcel, rough/steep terrain.

0.05 acre, Fort Peck Lake Proj Co: Valley MT
Location: Twp 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding Agency: COE
Property Number: 319220003
Status: Excess
Comment: 0.05 acre, narrow strip next to highway, steep/rough terrain.

122.60 acres
Fort Peck Lake Project Co: McCone MT
Location: Twp 26 north, RNG 42 east, Section 4, Lot 3, SW/4NE/4SE/4NW/4
Landholding Agency: COE
Property Number: 319220004
Status: Excess
Comment: 122.60 acres, rough & rugged terrain, grazing allotment administered by Bureau of Land Management.

120 acres, Fort Peck Lake Proj Co: McCone MT
Location: Twp 21 north, RNG 43 east, Section 34, N/2NE/4, Section 35, NW/4NW/4
Landholding Agency: COE
Property Number: 319220005
Status: Unutilized
Comment: 120.00 acres, rough & rugged terrain.

Ohio

Middleport Public Access Site
Gallipolis Locks & Dam
Middleport Co: Meigs OH 45760–
Landholding Agency: COE
Property Number: 319230001
Status: Underutilized
Comment: Approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities.

Oklahoma

Parcel No. 100
Lake Texoma
Section 25, T7S, R5E
Enos Co: Marshall OK–
Location: 1 mile northeast of Enos
Landholding Agency: COE
Property Number: 319010440
Status: Unutilized
Comment: 11.77 acres; most recent use—recreation.

Parcel No. 7
Kaw Lake
Section 27 Co: Kay OK
Landholding Agency: COE
Property Number: 319010842
Status: Excess
Comment: 21 acres; potential utilities; most recent use—recreation.

Parcel No. 3
Sardis Lake
Section 21 Co: Latimer OK
Landholding Agency: COE
Property Number: 319010843
Status: Excess
Comment: 2.5 acres; potential utilities; most recent use—wildlife management.

Parcel No. 4
Sardis Lake
Section 21 Co: Latimer OK
Landholding Agency: COE
Property Number: 319010844
Status: Excess
Comment: 4.5 acres; potential utilities; most recent use—wildlife management.

Pennsylvania

Dashields Locks and Dam
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 319210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field.

South Carolina

Land—U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120098
Status: Unutilized
Comment: 55 acres (88 acres submerged) tidal marshland, potential utilities.

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Tract J–957
Whitney Lake
Bosque Co: Bosque TX
Location: Via Avenue B within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110029
Status: Unutilized
Comment: 0.18 acres; potential utilities; encroachments on large portion of property.

Tract J–936
Whitney Lake
Bosque Co: Bosque TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110032
Status: Unutilized
Comment: 5.4 acres; potential utilities.

Tract F–516 O.C. Fisher Lake
Parallel with Grape Creek Road
San Angelo Co: Tom Green TX 76902–3085
Landholding Agency: COE
Property Number: 319120002
Status: Unutilized
Comment: 2.13 acres, potential limited utilities.

Part of Tract 102 Segment 1
Bardwell Dam Road
Ennis Co: Ellis Tx 75119–
Landholding Agency: COE
Property Number: 319140014
Status: Unutilized
Comment: approx. 4.5 acres

Unsuitable Properties

Buildings (by State)

Alabama

5 Bldgs.
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120001–879120005
Status: Excess
Reason: Floodway.

Alaska

Sand Shed, Map Grid 45024
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area.

LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area.

Bldg. 28
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210126
Status: Excess
Reason: Within airport runway clear zone Secured Area.

Bldg. 24
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210127
Status: Excess

Reason: Within airport runway clear zone, Secured Area, Within 2000 ft. of flammable or explosive material.

Bldg. 19
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210128
Status: Excess
Reason: Within airport runway clear zone, Secured Area, Other
Comment: Extensive deterioration.

Bldgs. 94, 85
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210129–879210130
Status: Excess
Reason: Secured Area, Other
Comment: Extensive deterioration.

Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210132
Status: Excess
Reason: Secured Area, Within airport runway clear zone
GSA Number: U–ALAS–655A.

Bldg. A512
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210133
Status: Excess
Reason: Secured Area, Within airport runway clear zone, Within 2000 ft. of flammable or explosive material.

California

5 bungalows
125 South Grand Avenue
Pasadena Co: Los Angeles CA 91105–
Landholding Agency: GSA
Property Number: 549230012
Status: Excess
Reason: Other
Comment: Extensive deterioration.

Bldgs. 105, 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010159–779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: Other
Comment: sewer treatment facility.

Bldg. 10, USCG Support Center
Coast Guard Island
Alameda Co: Alameda CA 94501–5100
Landholding Agency: DOT
Property Number: 879210134
Status: Excess
Reason: Secured Area.

Colorado

Former Spickerman House
Bear Creek Lake
Lakewood Co: Jefferson CO
Landholding Agency: COE
Property Number: 319240013
Status: Unutilized
Reason: Floodway, Other
Comment: Extensive deterioration.

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 879010014
Status: Unutilized
Reason: Other environmental
Comment: Contamination.

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone.

Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 879210008
Status: Unutilized
Reason: Secured Area, Floodway.

Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 879230001
Status: Unutilized
Reason: Floodway, Secure Area.

LORAN "A" Station
Radio Beacon Hobe Sound
Jupiter Island Co: Martin FL
Landholding Agency: DOT
Property Number: 879230003
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Fuel Facility, Coast Guard
Miami Air Station, OPA Locka Airport
OPA Locka Co: Dade FL 33054–2397
Landholding Agency: DOT
Property Number: 879240004
Status: Unutilized
Reason: Secured Area.

Georgia

Naval Submarine Base-Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured Area.

Guam

Gldg. 96
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540–1400
Landholding Agency: Navy
Property Number: 779240018
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230012
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Other
Comment: Extensive Deterioration.

Bldgs. Q75, 7 Naval Magazine
Lualalei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230013–779230014
Status: Unutilized
Reason: Secured Area, Other
Comment: Extensive Deterioration.

Illinois

Bldgs. 928, 28, 25
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010120, 779010123, 779010126
Status: Underutilized
Reason: Secured Area.

South Wing—Building No. 62
Great Lakes Co: Lake IL 60088–5000
Landholding Agency: Navy
Property Number: 779110001
Status: Underutilized
Reason: Secured Area.

Indiana

Bldgs. 21, 22, 62 VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230001–979230003
Status: Underutilized
Reason: Other
Comment: Extensive Deterioration.

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 219040416
Status: Unutilized
Reason: Other
Comment: Spring House.

2 Bldgs.
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Frankfort KY 40601–9999
Landholding Agency: COE
Property Number: 219040417–219040418
Status: Unutilized
Reason: Other
Comment: Coal Storage.

Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 219040419
Status: Underutilized
Reason: Other
Comment: 110 year old barn with crumbled foundation.

Tract 111—Building
Martins Fork Lake
Smith Co: Harlan KY 40867–

Location: 13 miles southeast of Harlan on Highway 987.
Landholding Agency: COE
Property Number: 319010062
Status: Unutilized
Reason: Floodway.

Latrine
Kentucky River Lock and Dam Number 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other
Comment: Detached Latrine.

6–Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120010
Status: Unutilized
Reason: Floodway.

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120011
Status: Unutilized
Reason: Floodway.

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120012
Status: Unutilized
Reason: Floodway.

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 319120013
Status: Unutilized
Reason: Floodway.

Maine

Bldgs. 7, 10 Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230004–779230005
Status: Excess
Reason: Within airport runway clear zone, Secured Area.

Bldgs. 93, 614, 101–107, 186, 192, 202–208, 293 Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230006–779230011, 779240015
Status: Excess
Reason: Secured Area.

4 Bldgs., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240005–879240008
Status: Unutilized
Reason: Floodway.

Michigan

Bldg. 402, U.S. Air Station
Traverse City Co: Grand Traverse MI 49684–3586
Landholding Agency: DOT
Property Number: 879220001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

2 Bldgs., Sardet Holland
Coast Guard
2388 Ottawa Beach Rd. SW
Holland Co: Ottawa MI 49424–
Landholding Agency: DOT
Property Number: 879240002–879240003
Status: Unutilized
Reason: Secured Area.

Missouri

Building—Stockton Lake Project
Old Mill Area Co: Cedar MO 65785–
Landholding Agency: COE
Property Number: 219040414
Status: Unutilized
Reason: Floodway.

Bldg. 67, Storage Bunker
2000 East 95th Street
Kansas City Co: Jackson MO 64131–
Landholding Agency: Energy
Property Number: 419220004
Status: Unutilized
Reason: Floodway.

Nebraska

2 Bldgs., Papio Dam Site 18
Papio Creek and Tributaries
Omaha Co: Douglas NE 68130–
Landholding Agency: COE
Property Number: 319240009–319240010
Status: Unutilized
Reason: Floodway, Other
Comment: Extensive deterioration.

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 879240009
Status: Unutilized
Reason: Other, Secured Area
Comment: Extensive deterioration.

New York

Bldgs. 8, 7, R450
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120013–549120014, 549120038
Status: Excess
Reason: Other
Comment: Electrical substation
GSA Number: 2–N–NY–797.

Hospital Area Steam Tunnel
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings KY 11251–
Landholding Agency: GSA
Property Number: 549120045
Status: Excess
Reason: Other
Comment: Structurally unsound
GSA Number: 2–N–NY–797

North Street Steam Tunnel
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings KY 11251–
Landholding Agency: GSA
Property Number: 549120046
Status: Excess
Reason: Other
Comment: Structurally unsound
GSA Number: 2–N–NY–797

Bldgs. 204, 255, T–370
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island Co: Suffolk NY 06390–
Landholding Agency: Navy
Property Number: 779010270–779010272
Status: Excess
Reason: Secured Area

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 879230005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldgs. 605–607 USCG Station
Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240010–879240012
Status: Excess
Reason: Secured Area

North Carolina

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co; Buncombe NC 28805–
Landholding Agency: VA
Property Number: 979010008
Status: Underutilized
Reason: Other
Comment: Friable asbestos.

Ohio

William H. Harsha Lake Bldg.
3782 Williamsburg-Bantam Road
Batavia Co: Clermont OH 45106–
Landholding Agency: COE
Property Number: 319240011
Status: Unutilized
Reason: Other
Comment: Structural damage

Pennsylvania

Bldg. 62
Philadelopha Naval Shipyard
Philadelphia Co: Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 779010112
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material Secured Area

Rhode Island

91 Bldgs.
Naval Construction Battalion Center
Davisville Co: Washington RI 02854–
Landholding Agency: Navy
Property Number: 779010001–779010023, 779010025, 779010027–779010040, 779010042–779010061, 779010063–779010065, 779010067, 779010069–779010072, 779010074, 779010076, 779010078–779010079, 779010232–779010240, 779010242–779010253
Status: Excess

Reason: Within 2,000 ft. of flammable or explosive material Secured Area

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area

Bldg. A–63
Naval Construction Battalion Center
Davisville Co: Washington RI 02854–
Landholding Agency: Navy
Property Number: 779010277
Status: Excess
Reason: Secured Area

South Dakota

Gooster Station
Tract #1, Mapleton Township Co: Minnehaha SD 57101–
Landholding Agency: GSA
Property Number: 549230006
Status: Excess
Reason: Other
Comment: Extensive deterioration
GSA Number: 7–I–SD–480–A

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason: Floodway

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140011
Status: Excess
Reason: Other
Comment: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140012
Status: Excess
Reason: Other
Comment: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140013
Status: Excess
Reason: Other
Comment: water treatment plant

Bldg. 60, VAMC Mountain Home
Johnson Co: Washington TN 37604–
Landholding Agency: VA
Property Number: 979220005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Texas

5 Bldgs.
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston TX 77550–
Landholding Agency: COE
Property Number: 319110033–319110037
Status: Unutilized
Reason: Secured Area

20 Bldgs.
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010279–779010298
Status: Underutilized
Reason: Floodway

Bldg. 2137, Aircraft Hangar
Naval Air Station, Chase Field
Beeville, Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210015
Status: Excess
Base closure Number of Units: 1
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 1032, Warehouse
Naval Air Station, Chase Field
Beeville, Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210016
Status: Excess
Base closure
Number of Units: 1
Reason: Other
Comment: Structural deterioration

Bldgs. 24–26
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010050–979010052
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Vermont

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 879220003
Status: Excess
Reason: Floodway

Virginia

Bldg.—Group Eastern Shores
South Main Street
Chincoteague Co: Accomack VA 2336–1510
Landholding Agency: DOT
Property Number: 879230002
Status: Unutilized
Reason: Secured Area

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 879230004
Status: Excess
Reason: Secured Area

Damage Control Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240013
Status: Unutilized
Reason: Secured Area

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240014
Status: Unutilized
Reason: Secured Area

Storage Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240015
Status: Unutilized
Reason: Secured Area

Washington

Norin Residence
Point of Arches, Olympic National Park
Co: Clallam WA
Landholding Agency: Interior
Property Number: 619240003
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. 57
Naval Supply Center Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010091
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area

Bldg. 47 (Report 1)
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010230
Status: Unutilized
Reason: Secured Area

West Virginia

Mary Conrad Roadside Park Bldg.
Brownsville Road
Weston Co: Lewis WV 26452–9677
Landholding Agency: COE
Property Number: 319240012
Status: Underutilized
Reason: Floodway

Wyoming

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110004
Status: Unutilized
Reason: Other
Comment: Sewage digester for disposal plant.

Bldg. 96
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110005
Status: Unutilized
Reason: Other

Comment: Pump house for sewage disposal plant.

Structure 99
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110006
Status: Unutilized
Reason: Other
Comment: Mechanical screen for sewage disposal plant.

Structure 100
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110007
Status: Unutilized
Reason: Other
Comment: Dosing tank for sewage disposal plant.

Structure 101
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110008
Status: Unutilized
Reason: Other
Comment: Chlorination chamber for sewage disposal plant.

Land (by State)

Alaska

Nike Site, Tract 104
Jig Battery "D"
Eielson Defense Area
Fairbanks Co: Fairbanks AK 99701–
Landholding Agency: GSA
Property Number: 549120001
Status: Excess
Reason: Other
Comment: Property is landlocked
GSA Number: 9–D–AK–506–AD

Portion—Gibson Cove
1211 Gibson Cove Road
Kodiak Co: Kodiak Island AK 99615–
Landholding Agency: GSA
Property Number: 549220011
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–C–AK–573

Arizona

11.217 Acre Site
Davis-Monthan AFB
Tucson Co: Pima AZ 85707–5000
Landholding Agency: GSA
Property Number: 549210020
Status: Excess
Reason: Floodway
GSA Number: 9–GR1–AZ–437HHH, 9–GR2–AZ–437Y

Portion, Gila River
Buckeye Co: Maricopa AZ 85337–
Landholding Agency: GSA
Property Number: 549240005
Status: Excess
Reason: Floodway
GSA Number: 9–GR–AZ–533

California

Portion, Travis AFB
6 miles southeast of Vacaville
Travis AFB Co: Solano CA 94535–
Landholding Agency: GSA
Property Number: 549220012
Status: Surplus
Reason: Floodway GSA Number: 9–D–CA–499L

.4075 acres
Ocotillo Wells
Borrego CA
Landholding Agency: GSA
Property Number: 549230002
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–F–CA–1327

Central Valley Project
San Luis Drain
Tracy Co: San Joaquin CA 95376–
Landholding Agency: GSA
Property Number: 549230003
Status: Excess
Reason: Other
Comment: Landlocked
GSA Number: 9–I–CA–1325

Salton Sea Test Range
ElCentro Co: Imperial CA 93555–
Landholding Agency: Navy
Property Number: 779010068
Status: Excess
Reason: Secured Area

DVA Medical Center
4951 Arroyo Road
Livermore Co: Alameda CA 94550–
Landholding Agency: VA
Property Number: 979010023
Status: Unutilized
Reason: Other
Comment: 750,000 gallon water reservoir.

Colorado

Sunset Canyon Field Station
Boulder Co: Boulder CO 80302–
Location: 5 miles west of Wall Street on County Road 118
Landholding Agency: GSA
Property Number: 549030019
Status: Excess
Reason: Floodway
GSA Number: 7–C–CO–602

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 779010097
Status: Unutilized
Reason: Floodway

East Martello Battery #2
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230004
Status: Underutilized
Reason: Other
Comment: Inaccessible

Georgia

(P) Dobbins AFB/(P) NAS Atlanta
N.E. Quadrant of Interseciton between Fairground & South Cobb Drive
Marietta Co: Cobb GA 30060–
Landholding Agency: GSA
Property Number: 549140001
Status: Surplus
Reason: Within 2000 ft. of Flammable or explosive material
GSA Number: 4–GR–GA–557 & 4–GR–GA–587A

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 319010030
Status: Underutilized
Reason: Floodway

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason: Floodway

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
US HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US HWY. 62 to state highway 93.
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 319011684
Status: Underutilized
Reason: Floodway

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 319120008
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120009

Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 319120014
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Hwy 185
Landholding Agency: COE
Property Number: 319120015
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Hwy 259
Landholding Agency: COE
Property Number: 319120016
Status: Underutilized
Reason: Floodway

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 319120017
Status: Unutilized
Reason: Floodway

Tract 6404, Cave Run Lake
U.S. Hwy 460,
Index Co: Morgan KY
Landholding Agency: COE
Property Number: 319240005
Status: Underutilized
Reason: Floodway

Tract 6803, Cave Run Lake
State Road 1161
Pomp Co: Morgan KY
Landholding Agency: COE
Property Number: 319240006
Status: Underutilized
Reason: Floodway

E. C. Clements Job Corps Cntr.
1 Mile East of Morganfield, KY
Morganfield Co: Union KY 42437–
Landholding Agency: GSA
Property Number: 549120002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone
GSA Number: 4–L–KY–432–E

Louisiana

Land
Louisiana Army Ammunition Plant
Doyline Co: Webster LA
Landholding Agency: GSA
Property Number: 219013923
Status: Excess
Reason: Other
Comment: Barrow pit, predominately under water
GSA Number: 7–D–LA–0435D

Land—3.4 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Maryland

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 319240007
Status: Underutilized
Reason: Floodway.

5,635 sq. ft. of Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Other
Comment: Drainage Ditch.

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 879120006
Status: Unutilized
Reason: Within airport runway clear zone.

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake between highway 6 and 371
Landholding Agency: COE
Property Number: 319011037
Status: Excess
Reason: Other
Comment: Highway right of way.

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud Co: Sterns MN 56303–
Landholding Agency: VA
Property Number: 979010049
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011018
Status: Underutilized
Reason: Within airport runway clear zone.

Missouri

Stockton Public Use Area
Stockton Lake
Stockton Co: Cedar MO 65785–0632
Location: Adjacent to and east of Stockton, MO
Landholding Agency: COE
Property Number: 319011471
Status: Underutilized
Reason: Floodway.

Smith's Fort Park
Smithville Lake
Smithville Co: Clay MO 64089–
Location: Within Smithville Lake water resource project downstream from dam, adjoins Smithville
Landholding Agency: COE
Property Number: 319011473
Status: Underutilized
Reason: Floodway.

Old Mill Area
Stockton Lake
Stockton Co: Cedar MO 67585–0632
Location: Below Stockton Lake Dam on right bank of Outlet Channel/SAC River. Approximately 2 miles from Stockton
Landholding Agency: COE
Property Number: 319011477
Status: Underutilized
Reason: Floodway.

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number 319130001
Status: Unutilized
Reason: Floodway.

Union Lake
Sec 7, Twshp 42 north, Ranger West
Beaufort Co: Franklin MO
Landholding Agency: COE
Property Number: 319240008
Status: Unutilized
Reason: Floodway.

New York

Tracts 1–4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 979010011–979010014
Status: Unutilized
Reason: Secured Area.

North Carolina

Land
Atlantic Intracoastal Waterway
(See County) Co: Corrituck NC
Location: Near old Coinjack Bridge
Landholding Agency: COE
Property Number: 319011537
Status: Unutilized
Reason: Floodway.

Ohio

Ohio River
New Cumberland Lock and Dam
Glasgow Co: Beaver OH
Landholding Agency: COE
Property Number: 319011560
Status: Unutilized
Reason: Floodway.

Ohio River
Pike Island Lock and Dam
Rd #1, Box 33
Tiltonsville Co: Jefferson OH
Landholding Agency: COE
Property Number: 319011561
Status: Underutilized
Reason: Floodway.

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner Co: Morrow OR 77836–
Location: Located up hill from the left abutment of the dam structure
Landholding Agency: GSA
Property Number: 319011687
Status: Excess
Reason: Other

Comment: Inaccessible
GSA Number 9–D–OR–708.

Pennsylvania

Land
Raystown Lake
Huntingdon Co: Huntingdon PA
Location: Downstream of Raystown Lake
Landholding Agency: COE
Property Number: 219040420
Status: Excess
Reason: Other
Comment: Property Landlocked.

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project
Landholding Agency: COE
Property Number: 319011564
Status: Unutilized
Reason: Floodway.

Lock and Dam #3
Monongahela River
Elizabeth Co: Allegheny PA 15037–0455
Landholding Agency: COE
Property Number: 319240014
Status: Unutilized
Comment: Floodway.

Puerto Rico

Destino Tract
Eastern Maneuver Area
Vieques PR 00765–
Landholding Agency: Navy
Property Number: 779240016
Status: Excess
Reason: Other
Comment: Inaccessible.

Punta Figueras—Naval Station
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 779240017
Status: Excess
Reason: Floodway.

Tennessee

McClure Bend
Cordell Hull Dam and Reservoir
Carthage Co: Smith TN 37030–
Location: Highway 85 to McClure Bend Road
Landholding Agency: COE
Property Number: 219040412
Status: Underutilized
Reason: Floodway.

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 219040413
Status: Underutilized
Reason: Floodway.

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 219040415
Status: Underutilized
Reason: Floodway.

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 319011478
Status: Underutilized
Reason: Floodway.

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason: Floodway.

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Underutilized
Reason: Floodway.

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason: Floodway.

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway.

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway.

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway.

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway.

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway.

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway.

Tracts 2200 and 2201
Gainsboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488
Status: Underutilized
Reason: Within airport runway clear zone; Floodway.

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway.

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway.

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway.

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway.

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway.

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence road near Enon Springs Road
Landholding Agency: COE

Property Number: 318011494
Status: Underutilized
Reason: Floodway.

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway.

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway.

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davision TN 37214–
Location: 2.2 miles south of Interstate 40 near Sunders Ferry Pike.
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway.

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway.

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway.

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Gainville—Alvin Yourk Road
Gainville Co: Jackson TN 38564–
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway.

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway.

Tract 104 et al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway.

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 319120007
Status: Underutilized
Reason: Floodway.

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138–
Landholding Agency: COE
Property Number: 319130008
Status: Underutilized
Reason: Floodway.

Texas

Tracts 104, 105–1, 105–2, 118, 201–3, 323
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010397–319010399
Status: Underutilized
Reason: Floodway.

Tracts 702–3, 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010401–319010402
Status: Unutilized
Reason: Floodway.

Virginia

0.07 Acre, Dismal Swamp Canal
West of U.S. Rt. 17
Chesapeake VA
Landholding Agency: COE
Property Number: 319210012
Status: Unutilized
Reason: Other
Comment: Inaccessible.

Washington

Land (Report 2), 235 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area.

West Virginia

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg Co: Brooke WV
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway.

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway.

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia.
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other
Comment: .03 acres; very narrow strip of land located too close to busy highway.

[FR Doc. 92–28018 Filed 11–19–92; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. D–92–1014; FR–3302–D–01]

Redelegation of Authority for the Review and Approval of Comprehensive Housing Affordability Strategies (CHAS)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates to the Regional Administrators, Managers of HUD Field Offices and their Deputies all the power and authority of the HUD Assistant Secretary for Community Planning and Development to review and approve Comprehensive Housing Affordability Strategies (CHAS), except the authority to issue rules, regulations, notices, and other **Federal Register** documents, or to waive rules or notices, with respect to the program.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Office of Affordable Housing Programs, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These numbers are not toll-free).

SUPPLEMENTARY INFORMATION: Section 105 of the National Affordable Housing Act (NAHA), 42 U.S.C. 12705, requires that State and local governments prepare and submit to HUD five year Comprehensive Housing Affordability Strategies (CHAS), which must be updated annually, for certain HUD programs including the following: (1) The HOME Program, Title II of NAHA; (2) The HOPE I Program (Public Housing Homeownership), Sec. 411–419 of NAHA, amending the United States Housing Act of 1937; (3) The HOPE II Program (Homeownership of Multifamily Units), Secs. 421–431 of NAHA; (4) The HOPE III Program (Homeownership of Single Family Homes), Secs. 441–448 of NAHA; (5) The Low-Income Housing Preservation Program (Prepayment Avoidance Incentives), Secs. 601–613 of NAHA, creating the Low-Income Preservation and Resident Homeownership Act of 1990, when administered by a State agency; (6) The Housing Opportunities Program for Persons with AIDS, Secs. 851–863 of NAHA; (7) The Supportive

Housing for the Elderly Program, Sec. 202 of the Housing Act of 1959, as amended by Sec. 801 of NAHA; (8) The Supportive Housing for Persons with Disabilities Program, Sec. 811 of NAHA; (9) The Homeless Housing Assistance Programs, Secs. 411–443 and Secs. 451–484 of the Stewart B. McKinney Homeless Assistance Act, as amended by Sec. 837 of NAHA, Emergency Shelter Grants, Transitional Housing, Permanent Housing for Handicapped Homeless Persons, Supplemental Assistance for Facilities to Assist the Homeless, Single Room Occupancy Housing and Shelter Plus Care; and (10) The Community Development Block Grant Programs—Entitlement, Small Cities, States and Insular Areas, Secs. 106 and 107 of the Housing and Community Development Act of 1974, Section 905 of NAHA.

The statute provides for the Secretary to review and approve the complete five-year CHAS and subsequent annual plans. In a notice published elsewhere in today's **Federal Register**, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Community Planning and Development all power and authority to review and approve CHAS. This notice redelegates that authority to the Regional Administrators, Managers of HUD Field Offices and their Deputies. All of the Assistant Secretary for Community Planning and Development's power and authority is delegated, except the authority to issue rules, regulations, notices, and other **Federal Register** documents, or to waive rules or notices, with respect to the program.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

The Assistant Secretary for Community Planning and Development redelegates to the Regional Administrators, Managers of HUD Field Offices and their Deputies the power and authority to review and approve Comprehensive Housing Affordability Strategies (CHAS) and to perform all related functions, except the authority to issue rules, regulations, notices, and other **Federal Register** documents, or to waive rules or notices, with respect to the CHAS.

Authority: Section 105 of the National Affordable Housing Act (42 U.S.C. 12705); section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: November 6, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92–28203 Filed 11–19–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Guidelines for Transactions Between Nonprofit Organizations and the Department of the Interior

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed departmental policy.

SUMMARY: The Secretary of the Interior is proposing a series of directives regarding the use of nonprofit organizations to assist the Department of the Interior in certain land acquisition transactions. These proposed directives would affirm the benefits of using nonprofit organizations to assist the Department of the Interior in land acquisition, immediately discontinue certain payments of interest to nonprofit organizations, prevent profit-taking on the part of nonprofit organizations as a result of their assistance, and establish regular reports and audits regarding land acquisition involving nonprofit organizations.

As used throughout this notice, land acquisition refers to the Federal assumption of title to lands or interest in lands, whether through purchase, exchange or donation.

These proposed directives would apply to the National Park Service, Fish and Wildlife Service, and Bureau of Land Management.

DATES: Comments are due by December 21, 1992.

ADDRESSES: Director, Office of Program Analysis, Department of the Interior, MS 4412, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Director, Office of Program Analysis, 202–208–5978.

SUPPLEMENTARY INFORMATION: The issue of Departmental policy with regard to involvement of nonprofit organizations in land acquisition transactions was raised in the early 1980's. At that time, a set of guidelines was established (**Federal Register**, August 10, 1983, Vol. 48, No. 155, pages 36342–36344), setting forth the basic principles that: Nonprofit conservation organizations are not agents of the Federal government and that the objectives of the Federal agencies must be paramount to those of the nonprofit conservation organizations; lands or interests in lands proposed for acquisition through nonprofit organizations should be in accord with agency priorities, within the boundaries of authorized areas, consistent with existing acquisition authorities, and limited to tracts that the agency has determined need to be acquired; the nonprofit organizations shall receive on request a letter of intent from the Federal agency containing certain specified information; and, nonprofit organizations must disclose information on option price, sale price to the Federal government, and appraisal data, in certain cases.

The Office of Inspector General in its 1992 report found that the close relationship between Departmental bureaus and nonprofit organizations has been effective in acquiring and protecting land and other real property through acquisitions, exchanges, and donation, and that the assistance of nonprofit organizations improves an agency's ability to acquire property it needs and often results in savings to the agency.

Nevertheless, the Office of Inspector General noted that weaknesses in the acquisition process still exist and that they should be corrected to ensure that the opportunities for improprieties are minimized. The Office of Inspector General recommended that the Department:

1. Obtain a Solicitor's opinion concerning the legality of the allowances for interest costs and overhead in compensating nonprofit organizations.

2. Limit the price which it pays to a nonprofit organization to the lesser of the approved appraisal value or the nonprofit organization's purchase price plus allowable expenses.

3. Require full documentation of the financial arrangements and involvement of nonprofit organizations in acquisition transactions, including documentation substantiating that all expenses claimed by the nonprofit organizations were incurred.

4. Obtain required approvals from Congressional appropriations committees or the Migratory Bird Conservation Commission when property cannot be obtained for its approved appraised value.

5. Establish criteria to identify significant acquisitions, in terms of dollar value or public interest, that require more than one appraisal.

6. Obtain timely and independent appraisals of property owned or controlled by nonprofit organizations, including two appraisals for significant acquisitions, a third appraisal where the first two differ significantly, and reevaluation of appraisals older than 180 days.

7. Establish controls to meet uniform appraisal standards and ensure proper approval of adjustments.

Proposed Secretarial Actions

The Secretary of the Interior proposes several actions to correct weaknesses in current practice and also to ensure that the positive aspects of Federal agencies' relationships with nonprofit organizations are encouraged.

1. The Secretary proposes to affirm the useful role that nonprofit organizations have played in assisting the Department of the Interior to obtain high priority properties. This affirmation would recognize that the private status of nonprofit organizations and lack of bureaucratic constraints gives them a flexibility that is highly desirable in a fast-moving and complex activity such as land acquisition. As noted by the Office of the Inspector General, the assistance of nonprofit organizations improves a bureau's ability to purchase property it needs and often results in savings to the bureau.

2. The Secretary proposes to direct the Department of the Interior bureaus to immediately discontinue the practice of paying interest for income foregone by nonprofit organizations as a result of their participation in land acquisition and to modify their bureau manuals, as necessary, to contain such a prohibition. Furthermore, the Secretary proposes to direct the Assistant Secretary for Policy, Management and Budget to modify the Departmental Manual to prohibit such a practice.

The Secretary had asked the Departmental Solicitor to prepare an opinion reviewing certain practices which the Office of Inspector General believed may not be consistent with provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646). The Solicitor found that no authority exists for bureaus to pay interest for income foregone as a result of the acquisition by nonprofit organizations.

3. The Secretary proposes to establish as Department of the Interior policy that the Department will limit the payment for land acquired from nonprofit organizations to the lesser of the nonprofit organization's purchase price in a particular transaction plus allowable expenses, or to the approved independent appraisal value plus normal closing costs. This would avoid the appearance of profit-taking by nonprofit organizations.

This limit of payment would apply only in those instances in which there is a special relationship for a land acquisition transaction between a nonprofit organization and a Department of the Interior bureau, as provided in the **Federal Register** notice of August 10, 1983. A letter of intent would still be required in each case where a nonprofit organization or other entity seeks prior assurance from an agency or an agency requests the assistance of a nonprofit organization. Thus, the payment policy would apply when a nonprofit organization intends to acquire land or interest in land with the express purpose of transferring it to a Department of the Interior bureau or in which a Department of the Interior bureau seeks from a nonprofit organization assistance for the specific purpose of acquiring land or interest in land. The limit of payment would not apply in other situations in which a nonprofit organization, which happens to own land of interest to a Federal agency, sells the land to the government. Nor would the payment limitation apply to land exchanges conducted under authority of the Federal Land Policy Management Act of 1976, as amended by the Federal Land Exchange Facilitation Act.

4. The Secretary proposes to direct the Assistant Secretary for Policy, Management and Budget to establish an evaluation team at the Department level, establish procedures under which the evaluation team would evaluate land acquisitions involving nonprofit organizations, and identify the essential elements of such land acquisitions that would be reported annually by the bureaus. The Secretary also proposes to direct the applicable Department of the Interior bureaus to report annually to the evaluation team on all land acquisitions involving nonprofit organizations, according to the instructions developed pursuant to this proposed directive by the Assistant Secretary for Policy, Management and Budget.

This proposed reporting and evaluation requirement is not intended to become overly burdensome or to unnecessarily discourage the use of nonprofit organizations in land acquisition. Rather, it is intended to provide a mechanism by which to make periodic improvements in the guidelines, procedures and policies for use of nonprofit organizations in land acquisition.

5. The Secretary proposes to direct that each Department of the Interior land acquisition transaction involving nonprofit organizations be subject to an annual audit. The scope and depth of such audits would be established by the Assistant Secretary for Policy, Management and Budget. The results of such audits would be reviewed at the Department level to ensure that allowable expenses paid to nonprofit organizations have been reasonable. Recognizing that the advantage of regular audits may come at significant cost in terms of time and resources, audit procedures developed should require only that information necessary to assure the reasonableness of payments to nonprofit organizations, and should not be so severe as to limit or discourage the use of nonprofit organizations in land acquisition.

These proposed directives, identified above, are not intended to bring about uniformity in all of the variety of policies and procedures for the reimbursement of costs to nonprofit organizations, and for paying more than appraised value, that have been developed by the various bureaus within the Department to meet their particular needs. They are intended to establish uniform guidance for the handling of those aspects of land acquisition in which nonprofit organization involvement has led to the appearance of impropriety.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the policy making process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed policy to the location identified in the Addresses section of the preamble. Comments must be received on or before 30 days following publication in the **Federal Register.**

Dated: November 12, 1992.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 92–27860 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[ID–040–03–4320–01–ADVB]

Salmon District Grazing Advisory Board: Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATES: The meeting will be held Wednesday, December 16, 1992, starting at 10 a.m.

ADDRESSES: The meeting will be at the Salmon District Office, Salmon, Idaho.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92–463. The meeting is open to the public; public comments will be accepted from 1 to 1:30 p.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho, 83467 by December 13, 1992. The agenda items include an update on the Challis Resource Management Plan (RMP) and Wild and Scenic River study, the status of Lemhi grazing agreements, the status of Salmon recovery efforts, minimum streamflows, fiscal year 1993 range improvements, and any other issues dealing with grazing management in the Salmon District.

Summary minutes of the meeting will be kept in the Salmon District Office and will be available for public inspection and reproduction during regular business hours (7:45 a.m. to 4:15 p.m.) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy Jackson, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho, 83467, telephone (208) 756–5400.

Dated: October 23, 1992.

Roy S. Jackson,

District Manager.

[FR Doc. 92–28217 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–GG–M

[ID–030–03–4210–05; IDI–29468]

Resource Management Plans, etc., Medicine Lodge Resource Area, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Medicine Lodge Resource Management Plan (RMP).

SUMMARY: The following described public land in Jefferson County, Idaho, will be examined for possible disposal by direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719.

Boise Meridian, Idaho

T. 6 N., R. 33 E.,
Sec. 12, S½SE¼.

The land described above contains 80 acres, more or less.

An environmental assessment will be completed for this action. If the land is found suitable for disposal, the United States would offer it for direct sale to Jefferson County at fair market value. This action would provide Jefferson County with land for a sanitary landfill. The public is invited to provide scoping comments on the issues that should be addressed in the planning amendment and environmental assessment. Planning criteria which will be used to prepare this planning amendment is available for review at the Bureau of Land Management, Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho.

For a period of 30 days from the date of publication of this notice, interested parties may submit comments to District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 524–7500.

Dated: November 9, 1992.

Gary Bliss,

Acting District Manager.

[FR Doc. 92–27800 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Concession Contract Award; Apostle Islands National Lakeshore, WI

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued boat taxi, boat excursion, and general merchandise facilities and services for the public at Apostle Islands National Lakeshore, WI, for a period of ten (10) years from August 17, 1992, through August 16, 2002.

EFFECTIVE DATE: Sixty (60) days after date of publication in the Federal Register.

ADDRESSES: Interested parties should contact the Superintendent, Apostle Islands National Lakeshore, Route 1, Box 4, Bayfield, WI 54814, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on August 16, 1992, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: November 10, 1992.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 92–28241 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan, Draft Environmental Impact Statement, Fort Laramie National Historic Site, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft environmental impact statement and general management plan for Fort Laramie National Historic Site.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Fort Laramie National Historic Site, Wyoming.

DATES: The DEIS/GMP will remain available for public review through February 1, 1993. If any public meetings are held concerning the DESIS/GMP, they will be announced at a later date.

ADDRESSES: Comments on the DEIS/GMP should be sent to the Superintendent, Fort Laramie National Historic Site, P.O. Box 86, Fort Laramie,

Wyoming 82212. Public reading copies of the DEIS/GMP will be available for review at the following locations: Office of the Superintendent, Fort Laramie National Historic Site, Fort Laramie, Wyoming 82212. Telephone: 307 837–2221.

Division of Planning and Compliance, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225, Telephone: (303) 969–2828.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes three alternatives that provide for the preservation of historic resources, while providing for visitor use. Under the no-action alternative, existing management activities would continue. Under alternative A, the fort's interpretive theme of the role Fort Laramie National Historic Site played as a military fort would be maintained. The proposal would expand the interpretive theme to include the fort's complete and complex role over decades in American history.

The DEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on impacts to soil and vegetation associated with uncontrolled pedestrian trailing near visitor-use areas, floodplains and wetlands, wildlife, threatened and endangered species, historic resources, surrounding land uses, and socioeconomic resources.

FOR FURTHER INFORMATION: Contact Superintendent, Fort Laramie National Historic Site, at the above address and telephone number.

Dated: October 29, 1992.

Homer L. Rouse,

Acting Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 92–28268 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–70–M

Gateway National Recreation Area Staten Island, NY; Environmental Assessment for Development at Great Kills Park Availability and Public Comment Period

In accordance with the National Environmental Policy Act (Pub. L. 91–190) the National Park Service, U.S. Department of the Interior, announces that an Environmental Assessment for Development at Great Kills Park, Staten Island, New York is available for public review and comment.

During the public review period of November 23, 1992 through December 24, 1992, interested persons may review the document and make written comments to the Superintendent, Gateway National Recreation Area, Floyd Bennett Field, Building #69, Brooklyn, New York, 11234.

Limited copies of the document are available to the public upon request by writing to the above address or calling Edward Rizzotto, Site Manager, Staten Island Unit at (718) 351–6970.

Dated: November 16, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92–28210 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–70–M

Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. Ap. 1, section 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, December 14, 1992.

The Commission was established pursuant to Public Law 99–420, section 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at Acadia National Park Headquarters, McFarland Hill, Rt. 233, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held June 8, 1992.
2. Report of the Conservation Easement Subcommittee: A. Proposed Hulbert Easement.
3. Report of the Acquisition Subcommittee.
4. Report of the General Management Planning Subcommittee.
5. Superintendent's report.
6. Public comments.
7. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609, telephone: (207) 288–3338.

Dated: November 9, 1992.

Marie Rust,

Regional Director.

[FR Doc. 92–28240 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: December 4, 1992 at 1:30 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Public Safety Building, 10 E. Church Street, Room P-205, Bethlehem, PA.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, Room P–208, Bethlehem, PA 18018 (215) 861–9345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Anthony M. Corbisiero,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–28236 Filed 11–19–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-337]

Potential Impact on the U.S. Economy and Selected Industries of the North American Free Trade Agreement

AGENCY: United States International Trade Commission.

ACTION: Amendment to scope of investigation.

SUMMARY: The Commission instituted the above referenced investigation on October 23, 1992, following receipt of a request therefor under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) from the House Committee on Ways and Means and the Senate Committee on Finance. Among other things, the request asked that the Commission provide an analysis of the short- and long-term impact of the NAFTA on important agricultural, industrial, and service sectors of the economy. The request identified 36 key sectors that should be included for individual analysis. In the course of conducting the investigation, the Commission has identified three additional sectors for individual analysis, chemicals, major household appliances, and industrial machinery (including farm, packaging, construction, mining, oil and gas field, textile, paper industries, printing trades, food products, and refrigeration and heating machinery), and will include analyses of these sectors in its report as well.

Notice of the Commission's institution of the investigation and of the scheduling of a public hearing (for November 17, 1992) was published in the **Federal Register** of October 30, 1992 (57 FR 49192).

EFFECTIVE DATE: November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Robert W. Wallace, Office of Industries on (202) 205–3458. Hearing impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary on (202) 205–2000.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the sectors added to the scope of investigation. Written statements should be submitted to the Commission no later than noon December 11, 1992. The Commission is especially interested in receiving information regarding the impact of the NAFTA on individual sector investment, on investment patterns among NAFTA nations, and on the global competitiveness of individual U.S. sectors. The Commission is also interested in obtaining sector related information on major developments in Mexico's infrastructure, productivity, product quality, and education.

Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

By order of the Commission.
Issued: November 16, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–28223 Filed 11–19–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Nestlé Holdings, Inc., c/o Nestlé USA, Inc., 800 N. Brand Blvd., Glendale, CA 91203.

2. Wholly-owned subsidiaries (and their respective divisions, if any) which will participate in the compensated intercorporate hauling operations:

(a) Nestlé Food Company, (a Delaware corporation). Nestlé Food Company includes certain divisions which operate under the names of Nestlé Beich, Nestlé Chocolate & Confection Company, Nestlé Distribution Company, Trenton Foods, and Contadina Foods.

(b) C.F. Services, Inc., (a Delaware corporation).

(c) Fidco, Inc., (a New York corporation).

(d) Friskies PetCare Company, (a Delaware corporation).

(e) Nestlé Brands Foodservice Company, (a Delaware corporation).

(f) Nestlé Refrigerated Food Company, (a Delaware corporation).

(g) Nestlé Transportation Company, (a Delaware corporation).

(h) Superior Brands, Inc., (a Massachusetts corporation).

(i) Nestlé Beverage Company, (a Delaware corporation).

(j) Wine World Estates Company, (a Delaware corporation).

(k) Cain's Coffee Co., (a Delaware corporation).

(l) Sunmark, Inc., (a Missouri corporation).

(m) Favorite Foods, Inc., (a California corporation).

(n) Nestlé Dairy Systems, Inc., (a Delaware corporation). Nestlé Dairy Systems, Inc. includes a division which operates under the name Nestlé Dairies.

(o) Nestlé Frozen Food Company, (a Delaware corporation).

(p) Stouffer Foods Corporation, (a Pennsylvania corporation).

(q) The L.J. Minor Corporation, (an Ohio corporation).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–28237 Filed 11–19–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32176]

Arkansas Shortline Railroad, Inc.—Continuance in Control Exemption—La Belle Point Railroad Company

Arkansas Shortline Railroad, Inc. (Arkansas), a noncarrier, has filed a notice of exemption to continue to control La Belle Point Railroad Company (La Belle) upon La Belle's becoming a carrier. A notice of exemption in Finance Docket No. 32155, *La Belle Point Railroad Company—Lease and Operation Exemption—Missouri Pacific Railroad Company*, was served on October 9, 1992, authorizing La Belle to lease and operate Missouri Pacific Railroad Company's 49.34-mile rail line between Paris and Fort Smith, AR. That exemption became effective on September 17, 1992.

Arkansas controls two class III railroads, the Dardanelle and Russellville Railroad, and the Ouachita Railroad, Inc. It indicates that: (1) The properties operated by the named railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions in *New York Dock Ry.*—

Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[1] The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Jay Moody, 2200 Worthen Bank Building, 200 West Capital Ave., Little Rock, AR 72201–3699.

Decided: November 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–28238 Filed 11–19–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Anaquest Caribe, Inc.; Phillips Petroleum Company; American Home Products, Inc.; and Chevron Chemical Company*, Civil Action No. 92–2486, was lodged on October 30, 1992, with the United States District Court for the District of Puerto Rico. The proposed consent decree requires the Defendants to implement remedial measures for the Fibers Public Supply Wells Superfund Site, located in Guayama, Puerto Rico, set forth in the September 30, 1991, Record of Decision, and to reimburse the United States $437,000 for its past response costs and future costs for its oversight of the work performed under the Consent Decree. The remedy consists of treatment of the groundwater contaminated with PCE and halothers and the excavation of and removal of asbestos contamination in the soil.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Anaquest Caribe, Inc., et al*, DOJ Ref. #90–11–2–768.

The proposed consent decree may be examined at the Office of the United States Attorney, room 101, Federal Building, Hato Rey, PR 00918; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10288; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, (202) 347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $20.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Roger Clegg,

Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–28189 Filed 11–19–92; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America* v. *JMB/Urban Development Co. and Land at Sawmill Place Limited Partnership*, No. C2–92–976 (S.D. Ohio), was lodged with the United States District Court for the Southern District of Ohio on October 23, 1992. The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of fill material onto portions of property located in Perry Township, Franklin County, Ohio, which are alleged to constitute "waters of the United States." The Consent Decree requires JMB/Urban Development Co. and Land at Sawmill Place Limited Partnership to pay a civil penalty of $200,000.00 to the United States Treasury. The consent decree also requires JMB/Urban Development Co. and Land At Sawmill Place Limited Partnership to apply to the United States Army Corps of Engineers for a section 404 after-the-fact permit, and if such permit is granted, to perform an off-site mitigation project of approximately 80 acres in accordance with the permit. If the permit is not granted, JMB/Urban Development Co. and Land at Sawmill Place Limited Partnership agree to perform restoration of the Franklin County Site.

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: Seth M. Barsky, 10th & Pennsylvania Avenue, NW., room 7103—Main Building, Washington, DC 20530 and should refer to *United States* v. *JMB/Urban Development Co. and Land At Sawmill Place Limited Partnership*, DJ Reference No. 90–5–1–1–4097.

The proposed consent decree may 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 decree and accompanying exhibits may be obtained in person or by mail from the Document Center. In requesting copies of the decree, please enclose a check for $5.75 (decree alone) or $35.50 (with exhibits) payable to the Consent Decree Library.

The proposed consent decree and accompanying exhibits may also be examined at the Clerk's Office, United States District Court for the Southern District of Ohio, 260 U.S.Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–28190 Filed 11–19–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Richard F. Spavins, D.O., Revocation of Registration

On March 11, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard F. Spavins, D.O. at Plainfield Pike, Foster, Rhode Island proposing to revoke his DEA Certificate of Registration, AS6439877, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Spavin's lack of authorization to handle controlled substances in the State of Rhode Island.

The Order to Show Cause was sent to Dr. Spavins by registered mail, return receipt requested. The return receipt shows that the Order to Show Cause was received on March 18, 1992, by Dr. Spavins. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no

[1] Pioneer Railcorp and Fort Smith Railroad Company have jointly filed petitions to reject or revoke this exemption notice and the exemption notice filed in Finance Docket No. 32155. The Commission will address the issues raised in these petitions in a separate decision.

response thereto. Therefore, the Administrator concludes that Dr. Spavins has waived his opportunity for a hearing on the issue raised in the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the information contained in the DEA investigative file. 21 CFR 1301.57.

The Administrator finds that Dr. Spavins failed to renew his Rhode Island Controlled Substances Registration. Consequently, Dr. Spavins is without authority to handle controlled substances in the State of Rhode Island.

The Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Bobby Watts, M.D.*, 53 FR 11919 (1988); *Wingfield Drugs, Inc.*, 52 FR 27070 (1987); *Robert F. Witek, D.D.S.*, 52 FR 47770 (1987); and cases cited therein.

Having considered the facts and circumstances in this matter, the Administrator concludes that Dr. Spavin's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Rhode Island. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AS6439877, previously issued to Richard F. Spavins, D.O., be, and it hereby is, revoked. The Administrator further orders that all pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective December 21, 1992.

Dated: November 16, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-28192 Filed 11-19-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Texas:

TX91-49 (Nov. 20, 1992)..... p.All.

This is to advise all interested parties that the Department of Labor is adding, from the date of this notice, General Wage Determination No. KY910035 for building construction in Scott County, Kentucky. Scott County is withdrawn from KY910029.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, Franklin County, Kentucky from General Wage Determination No. KY910006 and Scott County, Kentucky from General Wage Determination No. KY910029. Franklin County has been added to General Wage Determination No. KY910029 and Scott County has been added to General Wage Determination No. 35.

Agencies with construction pending projects, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF-308. (See Regulations, 29 CFR part 1, § 1.5.) Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is within ten (10) days of this notice, the

contract specifications need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT91-3 (Feb. 22, 1991)..... p.All.
CT91-4 (Feb. 22, 1991)..... p.All.
Kentucky:
KY91-1 (Feb. 22, 1991)..... p.All.
KY91-2 (Feb. 22, 1991)..... p.All.
KY91-3 (Feb. 22, 1991)..... p.All.
KY91-4 (Feb. 22, 1991)..... p.All.
KY91-6 (Feb. 22, 1991)..... p.All.
KY91-7 (Feb. 22, 1991)..... p.All.
KY91-29 (Feb. 22, 1991)..... p.All.
KY91-32 (Feb. 22, 1991)..... p.All.
New York:
NY91-8 (Feb. 22, 1991)..... p.857, pp.858-859, pp.862-865, pp.868-868b.
Pennsylvania:
PA91-15 (Feb. 22, 1991)..... p.All.
PA91-25 (Feb. 22, 1991)..... p.All.
PA91-27 (Feb. 22, 1991)..... p.All.
Rhode Island:
RI91-1 (Feb. 22, 1991)..... p.All.
Virginia:
VA91-39 (Feb. 22, 1991)..... p.All.

Volume II

Michigan:
MI91-1 (Feb. 22, 1991)..... p.All.
MI91-17 (Feb. 22, 1991)..... p.All.
Missouri:
MO91-4 (Feb. 22, 1991)..... p.All.
MO91-12 (Feb. 22, 1991)..... p.All.
Nebraska:
NE91-3 (Feb. 22, 1991)..... p.All.
NE91-10 (Feb. 22, 1991)..... p.All.
NE91-11 (Feb. 22, 1991)..... p.All.
Ohio:
OH91-2 (Feb. 22, 1991)..... p.All.
OH91-34 (Feb. 22, 1991)..... p.All.
Texas:
TX91-17 (Feb. 22, 1991)..... p.All.
TX91-63 (Feb. 22, 1991)..... p.All.

Volume III

Alaska:
AK91-1 (Feb. 22, 1991)..... p.All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 13th day of November 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-27948 Filed 11-19-92; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Folk Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel (Organizations and State Arts Apprenticeships Programs Sections) to the National Council on the Arts will meet on December 8-10, 1992, from 9 a.m.—6 p.m. and December 11 from 9 a.m.—5 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: November 16, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-28213 Filed 11-19-92; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber Music/Jazz Ensembles/Composer in Residence Section) to the National Council on the Arts will be held on December 7-10, 1992 from 9 a.m.-5:30 p.m. and December 11 from 9 a.m.-4:30 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 11 from 3:30 p.m.-4:30 p.m. for guidelines review and policy discussion.

The remaining portions of this meeting on December 7-10 from 9 a.m.-5:30 p.m. and December 11 from 9 a.m.-3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman on November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: November 16, 1992

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–28212 Filed 11–19–92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication

AGENCY: United States Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a Generic Letter. A generic letter is an NRC document that: (1) Transmits information to and requests that analyses or descriptions of proposed corrective actions or both be submitted by the addressees regarding matters of safety, safeguards, or environmental significance; (2) informs addressees of changes in NRC policy and requirements approved by the Committee to Review Generic Requirements (CRGR), the issuance of a topical report evaluation or a NUREG type document of interest to them, or changes in NRC administrative procedures; or (3) requests the addressees to submit revised technical specifications or other technical or administrative information which does not involve any physical changes to the facility, but which NRC needs to properly perform its function.

The draft generic letter recommends actions to be taken by operating plants with Mark I and Mark II steel containments to implement certain inservice inspection procedures that would prevent inadvertent loss of containment integrity and maintain continued conformity with their licensing bases.

The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

DATES: Comment period expires December 21, 1992. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ronald Eaton, (301) 504–3041.

SUPPLEMENTARY INFORMATION: The proposed generic letter text is given below:

AUGMENTED INSERVICE INSPECTION REQUIREMENTS FOR MARK I AND MARK II STEEL CONTAINMENTS, REFUELING CAVITIES,[1] AND ASSOCIATED DRAINAGE SYSTEMS

Purpose

The staff of the U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to request that licensees of operating plants with Mark I and Mark II steel containments adopt certain inservice inspection procedures that would prevent inadvertent loss of containment integrity and maintain continued conformity with their licensing bases.

The staff, with industry assistance, has devised an inspection program which should produce the necessary information. This inspection program consists of the inservice inspection (ISI) of all Mark I and Mark II steel containments, refueling cavities, pools, and associated drainage systems. Each licensee should indicate whether it will adopt the staff's inspection program or an alternate equally effective inspection program. Each licensee should inform the staff in detail regarding the inspection program that it will adopt as part of the plant's inservice inspection program to address the corrosion considerations discussed in this letter. If a licensee adopts an alternate inspection program, which it asserts is equally effective but which deviates from the staff's recommended program, the licensee should identify all deviations and provide the bases for such deviations so that the staff can make a determination of the equal effectiveness of the alternate inspection program.

[1] Includes the refueling cavity as well as the adjacent equipment pool and the spent fuel pool.

Background

Corrosion was first discovered in the sand cushion region on the outside face of the steel drywell of the Mark I containment of the Oyster Creek Generating Station, and later on the outside face of the upper regions of the drywell. The Mark II steel containment has a different physical arrangement but with construction details which could lead to corrosion as in the Mark I drywell. Corrosion and coating degradation have been discovered on the inside face of Mark I suppression pool tori and may occur on the inside face of the suppression pool portion of the Mark II containment. Because of these discoveries, the inservice inspections recommended for Mark I drywell and torus also apply to Mark II containment.

Drywell

On March 12, 1987, after completing its review and evaluation of the licensee's detailed investigation of the steel drywell shell corrosion event at the Oyster Creek Nuclear Power Plant, the NRC staff issued Generic Letter (GL) 87–05 to all licensees of operating reactors with Mark I containments. In the generic letter, the NRC requested licensees to provide information on the following items:

(1) Drainage of the sand cushion.

(2) Preventive maintenance and inspection activities to minimize any possible leakage from the refueling pool.

(3) Plans for ultrasonic thickness measurements for those drywell shells with open sand cushions.

(4) Confirmation of information as listed in Table 1 of GL 87–05.

Having performed its review and evaluated the response provided by the licensee, the NRC staff concluded that the extensive corrosion at Oyster Creek may have been caused by the water leaking through the flexible seal in the refueling pool, and that similar containment degradation may exist at other plants.

Torus (Suppression Pool)

On October 14, 1988, the NRC staff issued Information Notice 88–82, "Torus Shells with Degraded Coatings in BWR Containments," alerting licensees of BWR plants to the discovery of corrosion of the torus at Nine Mile Point 1 and of degraded coatings of the tori of some BWR plants in Region I. The torus at Nine Mile Point 1 was designed and constructed without a coating. Corrosion of the torus shell and degradation of the torus coating that could lead to corrosion of the shell base metal may jeopardize the integrity of the torus

suppression pool, which is critical to the BWR containment as a whole. The suppression pool boundary in the Mark II containment may also become corroded.

Discussion

Drywell

The information collected about the drywell shell corrosion at Oyster Creek indicates that the corrosion resulted from water that had leaked into the sand cushion from the refueling pool. However, the design of the refueling pool and the provision of various drain lines should prevent the water from entering the sand cushion if the seal and the drainage system have been properly constructed and frequently inspected and maintained. Consequently, the NRC issue GL 87–05 to all licensees with Mark I or Mark II steel containments.

While reviewing the licensees' responses, the NRC staff has made the following observations:

(1) Functionality Check of the Drains

Because most of the drains from the sand cushion are filled with sand and fitted with traps or screens at the ends, it is difficult to determine whether or not such drains are functional. As a result, some of the licensees have visually inspected the drain ends, while others have not performed any inspection. Water that is observed coming from these drains can provide an indication that the drains are unplugged. At one plant, the source of the leakage was from the refueling cavity. Although small amounts of moisture were present at three other plants, no indications of corrosion products or contamination were observed. This led the staff to conclude that the moisture resulted from condensation rather than from leakage. However, when no water is coming from the drains, visual inspections will not indicate whether the drains are plugged or whether the sand cushion does not contain water or moisture.

(2) Leaktightness of the Refueling Cavity and Other Pools Above the Reactor

With the exception of the licensee for Oyster Creek, all licensees indicated that the connections in the reactor cavity seal drain are welded, and no nonmetallic gaskets are used. Therefore, the reactor head cavity seal should not leak. Any leakage will be directed to a drain that is equipped with leak-detection instrumentation and an alarm system to notify the operator about the leak. Licensees are allowed to set these leak-detection devices to sense different rates of leakage. For instance, in one plant the flow indication switch is set to trip the alarm at 5 gallons per minute (gpm), in another plant the switch trips at 0.1 gpm, in a third plant the switch trips at 10 gpm, and in other responses, licensees did not mention settings. However, if the leakage is continuous during refueling, even at a level below the lowest possible setting, the potential for moisture in the sand cushion to cause corrosion still exists.

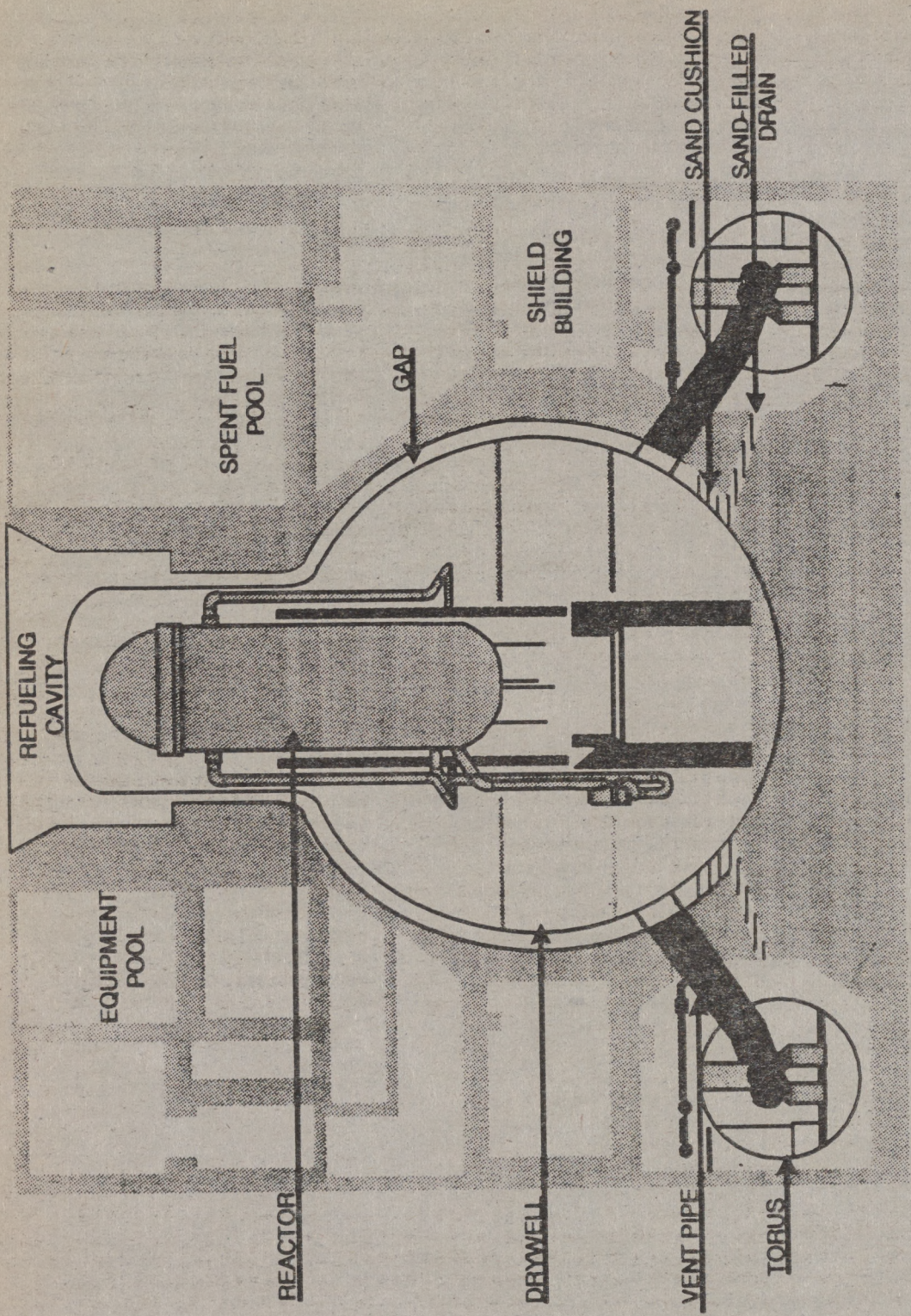
Besides finding the leakage through the connections in the reactor cavity seal drains, the GPU Nuclear Corporation, the licensee of Oyster Creek, has further found that the stainless steel liners in the refueling cavity and the equipment pool developed cracks along the perimeters of the liner plates where they were welded to embedded channels.

To ensure that no leakage occurs when the reactor cavity and the equipment pool are flooded, liner cracks are sealed with adhesive stainless steel tape and a strippable coating is applied on the liner before the flooding and is removed after this water is drained. It appears such a procedure has been effective in stopping the leakage.

(3) Ultrasonic Thickness Measurements of the Drywell Shell

In most plants, the thickness of the steel drywell shell in the area of concern cannot be measured by ultrasonic testing (UT) devices because it is sandwiched between the concrete floor on the inside and the sand cushion on the outside (see enclosed figure). In some plants, licensees conducted UT measurements from inside the drywell for areas immediately above the sand cushion and did not find either general or local corrosion. In addition to occurring in the sand cushion area, moisture may also accumulate at locations where the gap-forming material has not been removed (for example, between the drywell and the shield building). The licensees should identify such areas. Even though GL 87–05 proposed that licensees need to perform UT thickness measurements of only those drywells with open sand cushions, drywells with closed sand cushions should be remotely examined with a visual device to ensure that the cover plate sealing joint is not degraded. If the sealing joint shows evidence of degradation, water leaking through the cover plate sealing joint into the sand cushion could cause corrosion of the drywell.

BILLING CODE 7590-01-M



MARK I CONTAINMENT

BILLING CODE 7590-01-C

Torus (Suppression Pool)

The specified thickness of the Nine Mile Point 1 torus shell incorporated a 1/16-inch allowance for corrosion based on an estimated rate of corrosion. From the measured shell thickness, the actual rate of corrosion appears to be greater than the original estimate. As a result, the thickness of the shell may not meet the requirements of the American Society of Mechanical Engineers (ASME) Code for the designed life of the containment. The Nine Mile Point 1 torus internal surface was not designed to have, and does not have a protective coating.

The degradation of coatings in tori may lead to the corrosion of the steel shell. The migration of flakes of the coating material to the pump strainers may also degrade the performance of safety related post-accident fluid systems. This could also be the case for a suppression pool with a coated steel boundary as in the case of Mark II steel containments.

Recommended Actions to be Taken by Addressees

Considering the importance of the containment to the health and safety of the public, each licensee should implement a program of inspection to augment its plant inservice inspection program to ensure that it conforms to appendix A to 10 CFR part 59 general design criteria (GDC) 16, 50, 51 and 53.

Drywell [2]

The licensee should inspect the refueling cavity equipment and spent fuel pools, drain lines from pools above the drywell, the drains from the sand cushion, and the drywell as follows:

(1) Before next refueling, plant personnel should perform inspections and tests for leakage of the joints and seals of the refueling cavity equipment pool and spent fuel pool that could leak water into the air gap. Because the level switch, the flow indicators, and the flow switches cannot detect small leaks, they should not be relied on for leakage detection. Personnel should repeat the inspection when there is leakage as evidenced from the inspection of the sand cushion drains, observed flow of water through sand cushion drains or detected corrosion of the carbon steel specimens inserted therein. However, in the absence of above indications this inspection should be performed at least every 10 years.

(2) Before the next refueling, drain lines that drain the leakage from the pools should be checked to ensure that these lines do not contain restrictions that would inhibit the flow, and to ensure that the water is not directed into the drywell air gap. To perform this test, plant personnel can use compressed air, a boroscope, or other appropriate means. Further inspections of these drains should be performed during outages of opportunity when water is found in the sand cushion drains. These inspections should be performed at a frequency not to exceed 10 years. The drain lines above the closed sand cushions should be checked in the same manner.

(3) The sand-filled drains leading from the sand cushion should be checked for functionality by testing with compressed air or other means before each refueling and by collecting sand samples to test for the presence of moisture before and after each refueling. To determine the effect of the moisture on drywell corrosion, carbon steel specimens should be inserted into the sand cushion through the drains and withdrawn every six months to check for any indication of corrosion.

(4) Plant personnel should perform UT thickness measurements of the drywell shell if water is detected in the sand cushion or if the steel specimen is corroded. At facilities in which the sand cushion is sealed with a plate and has no drains, these inspections should be performed if the sealing joint of the cover plate has evidence of degradation. The measurements should include not only the sand cushion region, but also that portion of the drywell shell from which the gap-forming material was not removed. In most plants, the drywell shell area adjacent to the sand cushion is sandwiched between concrete on the inside and the sand cushion on the outside. At these plants, some modifications in the concrete floor construction may be necessary to permit periodic transducer access to selected portions of the drywell shell. The frequency of the UT thickness measurements should be established from the results of the UT thickness measurements performed during the first two refueling outages and from the extent and nature of the corrosion. However, this frequency should not be less than the frequency of containment inspections performed before the ILRT as stipulated in 10 CFR part 50, Appendix J.

Torus [3] *(Suppression Pool)*

During the next refueling outage, plant personnel should inspect the inside face of the torus (suppression pool) which is coated and forms the boundary of the containment as follows:

1. The inside face both above and below the waterline should be visually examined to identify areas of apparent degradation and deposits on the surface of the steel shell. The use of underwater examination methods and techniques may be required.

2. UT measurements should be performed on areas identified for potential corrosion due to degradation of coating and deposits on the surface.

3. The same visual examination and the associated UT measurements should be performed during subsequent refueling outages.

4. If the same areas of corrosion are identified in consecutive inspections, the frequency of inspection should be revised on the basis of the rate of corrosion determined from the consecutive UT measurements and from the sample coupons (see 5 and 6 below), and on the past experience considered by the licensee to be relevant to the degradation of the coating. The inspection of such areas should be continued until there is no further degradation to ensure that the design limit of the steel shell is not reached.

5. To correlate the extent of degradation of the coating and the rate of corrosion of the shell base metal, representative sample coupons which are of the same materials (coating and steel base metal) as those of the shell should be placed at the waterline at least one in each bay (between two successive saddle supports) or in each 20-degree sector of the pool.

6. Should the rates of corrosion obtained from items 4 and 5 above be different, the frequency of inspection should be determined on the basis of the highest rate of corrosion. The frequency of inspection thus determined should not be less than that of refueling outages.

7. Unless the identified degraded coating and/or the surface deposit is removed to perform the inspection, the UT measurement should be qualified by including the coating and surface deposit. A statistically significant number of data points should be used to establish the accuracy of the UT measurements. The scanning system whether manual or remote, should be specified.

[2] The licensee of Oyster Creek Generating Station which has a unique ongoing inspection program for the drywell is not requested to take actions recommended herein.

[3] The licensee of Nine Mile Point 1 (which has a unique ongoing inspection program for the uncoated torus) is not requested to take the actions recommended herein.

Licensees of plants within less than 6 months to the next refueling outage may request NRC approval to defer the augmented inspections for one refueling cycle.

Backfit Discussion

This generic letter expresses new staff positions which are considered to be backfits justified under the criteria of 10 CFR 50.109(a)(4)(i) (compliance exception backfit); in addition, the requirement for a response is considered to be justified under the criteria of 10 CFR 50.54(f) (information request).

In appendix A to 10 CFR part 50, GDC for nuclear power plants, GDC 16, 50, and 51 require that the containment be designed with sufficient margin* to ensure that the design conditions important to safety are not exceeded for as long as postulated accident conditions require. The extensive hidden corrosion discovered on the Mark I drywell steel shell at the Oyster Creek Nuclear Generating Station could have reduced the margin and, if not detected in time, could have breached the containment boundary. This discovery raised concerns regarding the assurance of the margin and the structural integrity of steel containment shells of similar design and construction in other boiling water reactor (BWR) plants. The staff issued GL 87–05 to obtain information on this type of containment. The staff assessed the information obtained in response to the generic letter and, is proposing recommendations that, if incorporated in the licensee's inservice inspection programs, would better ensure maintenance of sufficient margin as required by the GDC for containments and the continued structural integrity of both Mark I and Mark II containments that are essential to the protection of the public health and safety.

A documented evaluation of the type described in 10 CFR 50.109(a)(6) was prepared to state the objectives of and reasons for the modification, and the basis for invoking the compliance exception. Because the generic letter also requires submittal of written reports under 10 CFR 50.54(f), the document also contains the reasons for the information request in view of the potential safety significance of the problem. This document, which is a review package submitted to the Committee to Review Generic Requirements (CRGR) and the associated minutes of the meeting are available in the Public Document Room.

Reporting Requirements

Pursuant to Section 182a of the Atomic Energy Act and 10 CFR 50.54(f), addressees shall submit under oath and affirmation a letter within 120 days of receipt of this generic letter containing a statement indicating whether or not the actions in Recommended Actions to be Taken by Addressees, have been, or will be taken. If alternative actions are proposed, supporting justification shall be provided. Each addressee should provide a schedule as well as a plan for implementing the recommended or approved alternative actions.

If you have any questions about this matter, please contact the appropriate Project Manager in the Office of Nuclear Reactor Regulation (NRR).

This request for information is covered by the Office of Management and Budget under Clearance Number 3150–0011, which expires June 30, 1994. The estimated average number of burden hours is 100 person-hours per plant response, including assessment of the recommended action and preparation of the response. This estimate of the average number of burden hours pertains only to these response-related matters that the staff has identified and does not include the time for implementing the requested actions. Comments on the accuracy of this estimate and suggestions to reduce the burden may be directed to Ronald Minsk, Office of Information and Regulatory Affairs (3150–0011), NEOB–3019, Office of Management and Budget, Washington, DC 20503, and to the U.S. Nuclear Regulatory Commission, Information and Records Management Branch, Division of Information Support Services, Office of Information and Resources Management, Washington, DC 20555.

* * * * *

Dated at Rockville, Maryland, this 10th day of November 1992.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–28226 Filed 11–19–92; 8:45 am]

BILLING CODE 7590–01–M

* The term sufficient margin is used in the context of General Design Criterion 50, and is used here to imply that containment functionality will be acceptable as long as the existing margin, based on the strength of the weakest link in the containment functionality chain, is not less than that required by the design code approved by the staff for the licensing basis of the plant

[Docket Nos. 030–00320 and 999–90003; ASLBP NO. 93–672–02–EA

St. Joseph Radiology Associates, Inc. et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

St. Joseph Radiology Associates, Inc.

Materials License No. 24–05592–01

EA 92–172

This Board is being established pursuant to the request for a hearing filed by Dr. Joseph L. Fisher regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated October 16, 1992, entitled "Order to Transfer Byproduct Material to Authorized Recipient (Effective Immediately)" (57 FR 48404, October 23, 1992).

The "Order", among other things, requires Dr. Fisher to transfer all byproduct material (cobalt-60) in his possession to an authorized recipient within 45 days.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents, and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Thomas S. Moore, Board Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Peter S. Lam, Board Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dr. George F. Tidey, Board Member, 6431 Fannin Street, suite 3.204, Houston, TX 77030.

Dated at Bethesda, Maryland this 12th day of November, 1992.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92–28227 Filed 11–19–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-327 and 50-328]

Sequoyah Nuclear Plant, Units 1 and 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-77 and DPR-79, issued to the Tennessee Valley Authority (the licensee), for operation of the Sequoyah Nuclear Plant, Units 1 and 2 located in Soddy-Daisy, Tennessee.

The proposed amendments, submitted by the licensee's letter dated November 9, 1992, would modify the technical specifications (TS) Table 3.3-5, "Engineered Safety Feature Actuation System Instrumentation," Notation No. 2, to provide an alternative method for satisfying the response time requirement for the feedwater isolation (FWI) engineered safety feature. The alternative method would consist of indicating that the response time requirement for a specific feedwater air-operated valve can also be satisfied when the air-operated valve is either closed with the supply(s) isolated, isolated by a closed manual valve, or isolated by a closed feedwater isolation valve with power removed. When using one of these provisions for satisfying the air-operated valve response time, the closed or isolated condition would be verified at least once per 7 days. This would place the feedwater supply line into the same isolated condition addressed by the response time requirement required by the TS and serves to resolve a conflict resulting from a literal interpretation of the TS.

The licensee has indicated that the amendment is needed on an emergency basis to prevent unnecessary challenges to plant safety systems resulting from a plant shutdown, or the need for a temporary waiver of compliance, in the event that maintenance and/or testing of a feedwater valve is necessary.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change fully maintains the feedwater isolation (FWI) functions assumed in the accident analysis. In addition, no component functions will be affected by utilizing the alternate methods to ensure completion of the FWI function for accident mitigation. Since maintaining the conditions to provide FWI is not postulated to create an accident, there is no increase in the probability of an accident. By maintaining isolation of the feedwater flow path when the response time for automatic actuation of the air-operated FWI valve is considered inoperable, all safety functions assumed in the accident analysis for FWI are met to mitigate accident conditions. Therefore, there is no increase in the consequences of an accident because the safety functions for accident mitigation are maintained by the alternate isolation methods that are more conservative than the normal time delayed valve actuation.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The isolation of feedwater flow is not considered the source of an accident although inadvertent isolation may initiate automatic unit shutdown that is an analyzed event. This change will not alter any plant design or operating parameters such that conditions could be created that would create new accident potentials. The isolation methods are the same as or equivalent to the closing of the air-operated valves and will not create any additional safety concern or plant operating impact. Therefore, the use of these methods to maintain the FWI function will not create a new or different kind of accident.

3. Involve a significant reduction in a margin of safety.

This change provides alternate FWI methods are more conservative than the delayed isolation assumed in the accident analysis. By placing the flow path in an isolation condition, the safety function is already achieved without the need for the valve actuation and the associated response time. Therefore, the use of these alternate FWI methods to satisfy TS response time requirements will actually result in an increase in the margin of safety when compared to normal plant operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223 Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 21, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555, by the above date.

Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Frederick J. Hebdon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Council, Tennessee Valley Authority, ET 11H, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee. Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 9, 1992, which is available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 16th day of November 1992.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-28214 Filed 11-19-92; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 951; Docket No. MC93-2]

Mail Classification Schedule, 1992 Definition of Pre-Barcoded Mail; Notice of United States Postal Service's Request for a Recommended Decision on Pre-Barcoded Letter Mail Requirements and Motion for Waiver of Certain Commission Rules of Practice; and Order Designating Officer of the Commission and Setting Dates for Intervention and Responses to Motion

November 16, 1992.

Notice is given that on November 9, 1992, the United States Postal Service, pursuant to chapter 36 of title 39 of the United States Code, filed a request with the Postal Rate Commission for a Recommended Decision on a change to the Domestic Mail Classification Schedule (DMCS) that would change the

Zip Code requirements for pre-barcoded letter mail discount rates. This filing has been designated as Docket No. MC93–2. Currently, the DMCS requires that letter mail pieces carry a Zip+4 barcode to take advantage of the Postal Service's pre-barcoded letter rates. The Postal Service proposes to change the definition of a pre-barcoded letter mail piece in the DMCS [1] to one "which bears a barcode as prescribed by the Postal Service". The Postal Service explains that it plans to take advantage of the flexibility by "requiring a delivery point barcode on all letter mail for which a pre-barcode discount is claimed" and to implement automated delivery point sequencing operations in March 1993.

The proposal was accompanied by the filing of direct testimony of three witnesses for the Postal Service and various Library References. The testimony includes a discussion of the application of the statutory criteria said to support the proposal; the expected effect of the change on postal revenues costs and volume; the impact of this change on the Service's automated processing operations; and the potential benefits of the change to mailers and Postal Service.

The Postal Service's request and motion for waiver are on file with the Commission and are available for public inspection during regular business hours.

Intervention

Persons desiring to participate as a party should file a notice of intervention with the Secretary of the Commission on or before December 14, 1992, in accordance with section 20 of the Commission's rules of practice (39 CFR 3001.20). Notices of intervention shall affirmatively state whether the person filing requests a hearing, or in lieu thereof, a conference; whether such person intends to participate actively in a hearing; and shall set forth the nature of such person's interest in the issues, to the extent such interest is known. Persons seeking limited participation, but not party status may, by the same date, file a written notice of intervention as a limited participator, pursuant to section 20a of the rules of practice (39 CFR 3001.20a). In addition, persons wishing to express their views informally, but not to become a party or limited participator, may file comments pursuant to section 20b of the rules of practice (39 CFR 3001.20b).

[1] The specific changes to the Domestic Mail Classification Schedule are set forth in legislative format in Appendix A to the Postal Service's request.

Officer of the Commission

The Officer of the Commission charged with representing the interests of the general public in this docket, in accordance with 39 U.S.C. 3624(a), is Stephen A. Gold, Director of the Commission's Office of the Consumer Advocate. During this proceeding, he will direct the activities of the Commission personnel assigned to assist him and neither he nor such personnel will participate in, nor advise, as to any Commission decision, in accordance with 39 CFR 3001.8. The Officer of the Commission shall supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this case.

In this docket the Officer of the Commission shall be separately served with three copies of all filings, in addition to and simultaneously with service on the Commission of the 25 copies required by section 10(c) of the rules of practice (39 CFR 3001.10(c)).

Postal Service Motion for Waiver of Commission's Rules of Practice: Sections 64(b)(3) and 64(c)

At the same time it filed its request with the Commission, the Postal Service filed a motion requesting a waiver of sections 64(b)(3) and 64(d) of the Commission's Rules of Practice. [39 CFR 3001.64(b)(3) and (d)]. Section 64(b)(3) requires the Postal Service to file a statement "identifying the degree of substitutability between various classes and subclasses" including a description of cross-elasticity of demand between various classes of mail. Section 64(c) requires the Postal Service to provide information concerning the effect of the change on attributable and assignable costs of mail classes, subclasses, or services; the total accrued costs of the Postal Service; and the revenues of the Postal Service and of each mail class, subclass, or service.

The Postal Service says that it should be granted a waiver because the proposed change will not change any rates nor result in different treatment of letter mail classes and subclasses. Further, the Service does not expect any change in volume or demand to result. The Postal Service asserts that while it expects the proposed change to provide the opportunity for "significant cost savings in the future" the immediate cost benefits cannot be quantified at this time. The Service states that it does not expect revenues or costs to be significantly affected in the short-term. The Postal Service submits that the information called for by sections 64(b)(3) and (c) is not necessary because such information would not be useful to the Commission's or parties' evaluation of its proposal. It adds that requiring it to comply with the requirement would "unduly burden the record in this proceeding" and would be disadvantageous to the Postal Service and the public because "opportunities for improved efficiency" arising from implementation of the automated delivery point sequencing sortation operation, would be delayed unnecessarily.

Persons who wish to address the Postal Service's motion should file their answers to the Postal Service motion for waiver on or before December 14, 1992.

Replies to the responses to the motion for waiver are due on or before December 21, 1992.

The Commission Orders

(A) Notices of intervention as full or limited participators in this docket shall be sent to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street, NW., suite 300, Washington, DC 20268-0001 on or before December 14, 1992.

(B) Responses to the Postal Service's Motion for Waiver of Sections 64(b)(3) and 64(d) of the Commission's Rules of Practice are due on or before December 14, 1992.

(C) Replies to the responses to the Postal Service's Motion for Waiver of sections 64(b)(3) and 64(d) of the Commission's Rules of Practice are due on or before December 21, 1992.

(D) Stephen A. Gold is appointed Officer of the Commission to represent the interests of the general public in this proceeding.

(E) The Secretary of the Commission will have this Notice and Order published in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 92–28205 Filed 11–19–92; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31443; File No. SR–CBOE–92–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Listing Options on the S&P Transportation Index

November 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992 the

Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the Standard & Poor's ("S&P") Transportation Index ("S&P Transportation Index" or "Index") pursuant to a license from S&P. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on an industry index, the S&P Transportation Index, as provided in Exchange Rule 24.2.

The S&P Transportation Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the transportation industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed transportation industry funds, as well as a means of hedging the risks of investing in the transportation industry. The CBOE proposes to list S&P Transportation Index options pursuant to a license from Standard & Poor's Corporation.

Index Design

The S&P Transportation Index is based on fifteen airline, railroad, trucking, and miscellaneous transportation industry stocks that are included in the S&P 500 Index. Thirteen of those stocks currently trade on the New York Stock Exchange and two currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System. The Index is capitalization-weighted, meaning that the price of each stock is multiplied by that company's shares outstanding in order to calculate the current index level. The Index will be calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $447 million to $10.5 billion as of August 31, 1992. The median capitalization as of that date was $2.5 billion. The largest stock accounted for 21.1% of the total capitalization of the Index, while the smallest accounted for 0.9%. All fifteen stocks (100% of total Index capitalization) presently have options listed on them.

Calculation

The Index will be calculated continuously by S&P or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to the broad-based S&P 500 Stock Index, the S&P Transportation Index is capitalization-weighted and reflects changes in the total capitalization of the component stocks relative to the capitalization of the Index on the base date. The Index is calculated by taking the summation of capitalizations of the component stocks (share price multiplied by the number of shares outstanding) and dividing the result by the divisor.

Maintenance

The Index will be maintained by S&P. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

If it becomes necessary for S&P to remove a stock from the S&P 500 (generally due to a takeover or merger), the stock will also be removed from the Index. However, the stock chosen as a replacement for the S&P 500 may or may not be in the transportation industry. As a result, the number of stocks in the S&P Transportation Index may increase or decrease due to changes in the composition of the S&P 500. The CBOE has no influence over the process by which replacement stocks are chosen.

Index Options Trading

The Exchange proposes to base trading in options on the S&P Transportation Index on the full value of that Index (313.21 as of August 31, 1992). The Exchange may list long-term index option series ("LEAPS"), as provided in proposed amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduced-value Index LEAPS for which the underlying Index value will be computed at one-tenth (1/10th) of the value of the S&P Transportation Index.

Exercise and Settlement

S&P Transportation Index options will have European-style exercise [2] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.9 which is being amended to refer specifically to S&P Transportation Index options.[3] The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable to Industry Index Options

Except as modified by this rule filing, the rules in Chapter XXIV of the CBOE Rules will be applicable to S&P Transportation Index options.

The CBOE is amending Rule 24.1 to make clear that a "market index," a term which includes the S&P 500, S&P 100, the FT-SE (U.K.) 100, and the FT-SE Eurotrack 200 indexes, also is a "broad-based index" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.4 which relates to position limits for broad-based index

[1] The proposal was amended on September 28, 1992, to clarify that options on the Index will be A.M.-settled options subject to the provisions of Exchange Rule 24.9(e).

[2] A European-style option can only be exercised during a specified period before the option expires.

[3] Under CBOE Rule 24.9, A.M.-settled index options are settled based on a index value derived from opening prices on the last day of trading prior to expiration.

options. The amendment to Rule 24.1 further provides that the term "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or a group of related industries. An industry index contract such as the S&P Transportation Index option will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. In addition, in the context of reduced-value Index LEAPS, ten reduced-value options will equal one full-value contract for position limit purposes.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to enhance the existing self-regulatory framework for the trading of options on industry indexes, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer SR–CBOE–22 and should be submitted by December 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–28254 Filed 11–19–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31444; File No. SR–CBOE–92–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Options on the S&P Retail Index

November 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the Standard & Poor's ("S&P") Retail Index ("S&P Retail Index" or "Index") pursuant to a license from S&P. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.[1]

[1] The proposal was amended on September 28, 1992, to clarify that options on the Index will be A.M.-settled options subject to the provisions of Exchange rule 24.9(e).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statement.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on an industry index, the S&P Retail Index, as provided in Exchange Rule 24.2.

The S&P Retail Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the retail industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed retail industry funds, as well as a means of hedging the risks of investing in the retail industry. The CBOE proposes to list S&P Retail Index options pursuant to a license from Standard & Poor's Corporation.

Index Design

The S&P Retail Index is based on thirty-three stocks in the department, drug and food store, general merchandise, specialty and specialty apparel industries that are included in the S&P 500 Index. Twenty-eight of those stocks currently trade on the New York Stock Exchange; one currently trades on the American Stock Exchange; and four currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System. The Index is capitalization-weighted, meaning that the price of each stock is multiplied by that company's shares outstanding in order to calculate the current index level. The Index will

be calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $728 million to $65.5 billion as of August 31, 1992. The median capitalization as of that date was $2.5 billion. The largest stock accounted for 32.3% of the total capitalization of the Index, while the smallest accounted for 0.4%. Thirty-one of the thirty-three stocks (99.1% of total Index capitalization) presently have options listed on them.

Calculation

The Index will be calculated continuously by S&P or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to the broad-based S&P 500 Stock Index, the S&P Retail Index is capitalization-weighted and reflects changes in the total capitalization of the component stocks relative to the capitalization of the Index on the base date. The Index is calculated by taking the summation of the capitalizations of the component stocks (share price multiplied by the number of shares outstanding) and dividing the result by the divisor.

Maintenance

The Index will be maintained by S&P. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

If it becomes necessary for S&P to remove a stock from the S&P 500 (generally due to a takeover or merger), the stock will also be removed from the Index. However, the stock chosen as a replacement for the S&P 500 may or may not be in the retail industry. As a result, the number of stocks in the S&P Retail Index may increase or decrease due to changes in the composition of the S&P 500. The CBOE has no influence over the process by which replacement stocks are chosen.

Index Options Trading

The full value of the S&P Retail Index was 589.85 as of August 31, 1992. The Exchange feels that this level is too high for successful options trading in the U.S. market. Therefore, the Exchange proposes to base trading in options on the S&P Retail Index on a fraction (one-half) of the full value of the Index as calculated by S&P or its designee (so that the Index value would be deemed to be 294.93 as of August 31, 1992).

The Exchange may list long-term index option series ("LEAPS"), as provided in proposed amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduced-value Index LEAPS, for which the underlying Index value will be computed at one-tenth (1/10th) of the value of the S&P Retail Index.

Exercise and Settlement

S&P Retail Index options will have European-style exercise [2] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.9 which is being amended to refer specifically to S&P Retail Index options.[3] The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for training in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable to Industry Index Options

Except as modified by this rule filing, the rules in Chapter XXIV of the CBOE Rules will be applicable to S&P Retail Index options.

The CBOE is amending Rule 24.1 to make clear that a "market index," a term which includes the S&P 500, S&P 100, the FT-SE (U.K.) 100, and the FT-SE Eurotrack 200 indexes, also is a "broad-based index" within the meaning of the rules in chapter XXIV, including Rule 24.4 which relates to position limits for broad-based index options. The amendment to Rule 24.1 further provides that the terms "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or a group of related industries. An industry index contract such as the S&P Retail Index option will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. In addition, in the context of reduced-value Index LEAPS, ten reduced-value options will equal one full-value contract for position limit purposes.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to enhance the existing self-regulatory framework for the trading of options on industry indexes, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR-CBOE-92-23 and should be submitted by December 11, 1992.

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[2] A European-style option can only be exercised during a specified period before the option expires.

[3] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28255 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31445; File No. SR-CBOE-92-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Options on the S&P Health Care Index

November 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the Standard & Poor's ("S&P") Health Care Index ("S&P Health Care Index" or "Index") pursuant to a license from S&P. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The proposal was amended on September 28, 1992, to clarify that options on the Index will be A.M.-settled options subject to the provisions of Exchange Rule 24.9(e).

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on an industry index, the S&P Health Care Index, as provided in Exchange Rule 24.2.

The S&P Health Care Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the health care industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed health care industry funds, as well as a means of hedging the risks of investing in the health care industry. The CBOE proposes to list S&P Health Care Index options pursuant to a license from Standard & Poor's Corporation.

Index Design

The S&P Health Care Index is based on twenty-eight hospital management, drug, medical product, diversified and miscellaneous health care industry stocks that are included in the S&P 500 Index. Twenty-five of those stocks currently trade on the New York Stock Exchange and three currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System. The Index is capitalization-weighted, meaning that the price of each stock is multiplied by that company's shares outstanding in order to calculate the current index level. The Index will be calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $439 million to $56.4 billion as of August 31, 1992. The median capitalization as of that date was $2.5 billion. The largest stock accounted for 18.3% of the total capitalization of the Index, while the smallest accounted for 0.1%. All twenty-eight stocks (100% of total Index capitalization) presently have options listed on them.

Calculation

The Index will be calculated continuously by S&P or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to the broad-based S&P 500 Stock Index, the S&P Health Care Index is capitalization-weighted and reflects changes in the total capitalization of the component stocks relative to the capitalization of the Index on the base date. The Index is calculated by taking the summation of the capitalizations of the component stocks (share price multiplied by the number of shares outstanding) and dividing the result by the divisor.

Maintenance

The Index will be maintained by S&P. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, and mergers and acquisitions.

If it becomes necessary for S&P to remove a stock from the S&P 500 (generally due to a takeover or merger), the stock will also be removed from the Index. However, the stock chosen as a replacement for the S&P 500 may or may not be in the health care industry. As a result, the number of stocks in the S&P Health Care Index may increase or decrease due to changes in the composition of the S&P 500. The CBOE has no influence over the process by which replacement stocks are chosen.

Index Options Trading

The Exchange proposes to base trading in options on the S&P Health Care Index on the full value of that Index (219.76 as of August 31, 1992). The Exchange may list long-term index option series ("LEAPS"), as provided in proposed amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduced-value Index LEAPS, for which the underlying Index value will be computed at one-tenth (1/10th) of the value of the S&P Health Care Index.

Exercise and Settlement

S&P Health Care Index options will have European-style exercise [2] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.9 which is being amended to refer specifically to S&P Health Care Index

[2] A European-style option can only be exercised during a specified period before the option expires.

options.[3] The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable to Industry Index Options

Except as modified by this rule filing, the rules in Chapter XXIV of the CBOE Rules will be applicable to S&P Health Care Index options.

The CBOE is amending Rule 24.1 to make clear that a "market index," a term which includes the S&P 500, S&P 100, the FT–SE (U.K.) 100, and the FT–SE Eurotrack 200 indexes, also is a "broad-based index" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.4 which relates to position limits for broad-based index options. The amendment to Rule 24.1 further provides that the terms "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or a group of related industries. An industry index contract such as the S&P Health Care Index option will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. In addition, in the context of reduced-value Index LEAPS, ten reduced-value options will equal one full-value contract for position limit purposes.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to enhance the existing self-regulatory framework for the trading of options on industry indexes, thereby promoting just the equitable principles of trade and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

[3] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR–CBOE–92–24 and should be submitted by December 11, 1992.

For the Commission, by Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–28256 Filed 11–19–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31446; File No. SR–CBOE–92–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing and Trading of Options on the S&P Banking Index

November 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the Standard & Poor's ("S&P") Banking Index ("S&P Banking Index" or "Index") pursuant to a license from S&P. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on an industry index, the S&P Banking Index, as provided in Exchange Rule 24.2.

The Exchange believes the Index will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the banking industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance

[1] The proposal was amended on September 28, 1992, to clarify that options on the Index will be A.M.-settled options subject to the provisions of Exchange Rule 24.9(e).

measure and evaluation guide for passively or actively managed banking industry funds, as well as a means of hedging the risks of investing in the banking industry. The CBOE proposes to list S&P Banking Index options pursuant to a license from Standard & Poor's Corporation.

Index Design

The S&P Banking Index is comprised of twenty-five money-center, major regional, and other major banking industry stocks that are included in the S&P 500 Index. Twenty-two of those stocks currently trade on the New York Stock Exchange and three currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System. The Index is capitalization-weighted, meaning that the price of each stock is multiplied by that company's shares outstanding in order to calculate the current index level. The Index will be calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $1.3 billion to $14.7 billion as of August 31, 1992. The median capitalization as of that date was $2.3 billion. The largest stock, BankAmerica Corp., accounted for 12.3% of the total capitalization of the Index, while the smallest, Shawmut National, accounted for 1.1%. All twenty-five component stocks presently have options listed on them.

Calculation

The Index will be calculated continuously by S&P or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to the broad-based S&P 500 Stock Index, the S&P Banking Index is capitalization-weighted and reflects changes in the total capitalization of the component stocks relative to the capitalization of the Index on the base date. The Index is calculated by taking the summation of the capitalizations of the component stocks (share price multiplied by the number of shares outstanding) and dividing the result by the divisor.

Maintenance

The Index will be maintained by S&P. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes includes, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

If it becomes necessary for S&P to remove a stock from the S&P 500 (generally due to a takeover or merger), the stock will also be removed from the Index. However, the stock chosen as a replacement for the S&P 500 may or may not be in the banking industry. As a result, the number of stocks in the Index may increase or decrease due to changes in the composition of the S&P 500. The CBOE has no influence over the process by which replacement stocks are chosen.

Index Options Trading

The Exchange proposes to base trading in options on the Index on the full value of that Index. The Exchange may list long-term index option series ("LEAPS"), as provided in proposed amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduced-value Index LEAPS, for which the underlying Index value will be computed at one-tenth (1/10th) of the value of the S&P Banking Index.

Exercise and Settlement

The Index options will have European-style exercise [2] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.9 which is being amended to refer specifically to S&P Banking Index options.[3] The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable to Industry Index Options

Except as modified by this rule filing, the rules in Chapter XXIV of the CBOE Rules will be applicable to the Index options.

The CBOE is amending Rule 24.1 to make clear that a "market index," a term which includes the S&P 500, S&P 100, the FT–SE (U.K.) 100, and the FT–SE Eurotrack 200 indexes, also is a "broad-based index" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.4 which relates to position limits for broad-based index options. The amendment to Rule 24.1 further provides that the terms "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or a group of related industries. An industry index contract such as the S&P Banking Index option will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. In addition, in the context of reduced-value Index LEAPS, ten reduced-value options will equal one full-value contract for position limit purposes.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to enhance the existing self-regulatory framework for the trading of options on industry indexes, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

[2] A European-style option can only be exercised during a specified period before the option expires.

[3] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28257 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31447; File No. SR-CBOE-92-26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Options on the S&P Entertainment and Leisure Index

November 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1034 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the Standard & Poor's ("S&P") Entertainment and Leisure Index ("S&P Entertainment and Leisure Index" or "Index") pursuant to a license from S&P. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.[1]

[1] The proposal was amended on September 28, 1992, to clarify that options on the Index will be A.M.—settled options subject to the provisions of Exchange Rule 24.9(e).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on an industry index, the S&P Entertainment and Leisure Index, as provided in Exchange Rule 24.2.

The S&P Entertainment and Leisure Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the entertainment and leisure industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed entertainment and leisure industry funds, as well as a means of hedging the risks of investing in the entertainment and leisure industry. The CBOE proposes to list S&P Entertainment and Leisure Index options pursuant to a license from Standard & Poor's Corporation.

Index Design

The S&P Entertainment and Leisure Index is based on fifteen entertainment, leisure, hotel and restaurant industry stocks that are included in the S&P 500 Index. Fourteen of those stocks currently trade on the New York Stock Exchange and one currently trades through the facilities of the National Association of Securities Dealers Automated Quotation System. The Index is capitalization-weighted, meaning that the price of each stock is multiplied by that company's shares outstanding in order to calculate the current index level. The Index will calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $172 million to $18.0 billions as of August 31, 1992. The median capitalization as of that date was $1.1 billion. The largest stock accounted for 36.7% of the total capitalization of the Index, while the smallest accounted for 0.4%. Thirteen of the fifteen component stocks (98.8% of total Index capitalization) presently have options listed on them.

Calculation

The Index will be calculated continuously by S&P or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index Calculation.

Similar to the broad-based S&P 500 Stock Index, the S&P Entertainment and Leisure Index is capitalization-weighted and reflects changes in the total capitalization of the component stocks relative to the capitalization of the Index on the base date. The Index is calculated by taking the summation of the capitalizations of the component stocks (share price multiplied by the number of shares outstanding) and dividing the result by the divisor.

Maintenance

The Index will be maintained by S&P. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

If it becomes necessary for S&P to remove a stock from the S&P 500 (generally due to a takeover or merger), the stock will also be removed from the Index. However, the stock chosen as a replacement for the S&P 500 may or may not be in the entertainment and leisure industry. As a result, the number of stocks in the S&P Entertainment and Leisure Index may increase or decrease due to changes in the composition of the S&P 500. The CBOE has no influence over the process by which replacement stocks are chosen.

Index Options Trading

The Exchange proposes to base trading in options on the S&P Entertainment and Leisure Index on the full value of that Index. The Exchange may list long-term index option series ("LEAPS"), as provided in proposed

amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduced-value Index LEAPS, for which the underlying Index value will be computed at one-tenth (1/10th) of the value of the S&P Entertainment and Leisure Index.

Exercise and Settlement

S&P Entertainment and Leisure Index options will have European-style exercise [2] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.9 which is being amended to refer specifically to S&P Entertainment and Leisure Index options.[3] The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable to Industry index Options

Except as modified by this rule filing, the rules in Chapter XXIV of the CBOE Rules will be applicable to S&P Entertainment and Leisure Index options.

The CBOE is amending Rule 24.1 to make clear that a "market index," a term which includes the S&P 500, S&P 100, the FT-SE (U.K.) 100, and the FT-SE Eurotrack 200 indexes, also is a "broad-based index" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.4 which relates to position limits for broad-based index options. The amendment to Rule 24.1 further provides that the terms "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or a group of related industries. An industry index contract such as the S&P Entertainment and Leisure Index option will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. In addition, in the context of reduced-value Index LEAPS, ten reduced-value options will equal one full-value contract for position limit purposes.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to enhance the existing self-regulatory framework for the trading of options on industry indexes, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR-CBOE-92-26 and should be submitted by December 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28258 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[2] A European-style option can only be exercised during a specified period before the option expires.

[3] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

[Release No. 34-31448; File No. SR-CBOE-92-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options on the S&P Chemicals Index

November 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the Standard & Poor's ("S&P") Chemicals Index ("S&P Chemicals Index" or "Index") pursuant to a license from S&P. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The proposal was amended on September 28, 1992, to clarify that options on the Index will be A.M.-settled options subject to the provisions of Exchange Rule 24.9(e).

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on an industry index, the S&P Chemicals Index, as provided in Exchange Rule 24.2.

The S&P Chemicals Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the chemicals industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed chemicals industry funds, as well as a means of hedging the risks of investing in the chemicals industry. The CBOE proposes to list S&P Chemicals Index options pursuant to a license from Standard & Poor's Corporation.

Index Design

The S&P Chemicals Index is comprised of twenty-two chemical industry (including diversified and specialty chemical) stocks that are included in the S&P 500 Index. All twenty-two of these stocks currently trade on the New York Stock Exchange. The Index is capitalization-weighted, meaning that the price of each stock is multiplied by that company's shares outstanding in order to calculate the current index level. The Index will be calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $170 million to $33.1 billion as of August 31, 1992. The median capitalization as of that date was $2.6 billion. The largest stock, Du Pont (E.I.), accounted for 32.68% of the total capitalization of the Index, while the smallest, First Mississippi Corp., accounted for 0.17%. All twenty-two component stocks presently have options listed on them.

Calculation

The Index will be calculated continuously by S&P or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to the broad-based S&P 500 Stock Index, the S&P Chemicals Index is capitalization-weighted and reflects changes in the total capitalization of the component stocks relative to the capitalization of the Index on the base date. The Index is calculated by taking the summation of the capitalizations of the component stocks (share price multiplied by the number of shares outstanding) and dividing the result by the divisor.

Maintenance

The Index will be maintained by S&P. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

If it becomes necessary for S&P to remove a stock from the S&P 500 (generally due to a takeover or merger), the stock will also be removed from the Index. However, the stock chosen as a replacement for the S&P 500 may or may not be in the chemicals industry. As a result, the number of stocks in the Index may increase or decrease due to changes in the composition of the S&P 500. The CBOE has no influence over the process by which replacement stocks are chosen.

Index Options Trading

The Exchange proposes to base trading in options on the Index on the full value of that Index. The Exchange may list long-term index option series ("LEAPS"), as provided in proposed amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduced-value Index LEAPS, for which the underlying Index value will be computed at one-tenth (1/10th) of the value of the S&P Chemicals Index.

Exercise and Settlement

The Index options will have European-style exercise [2] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.9 which is being amended to refer specifically to S&P Chemicals Index options.[3] The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable to Industry Index Options

Except as modified by this rule filing, the rules in Chapter XXIV of the CBOE Rules will be applicable to the Index options.

The CBOE is amending Rule 24.1 to make clear that a "market index," a term which includes the S&P 500, S&P 100, the FT–SE (U.K.) 100, and the FT–SE Eurotrack 200 indexes, also is a "broad-based index" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.4 which relates to position limits for broad-based index options. The amendment to Rule 24.1 further provides that the terms "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or a group of related industries. An industry index contract such as the S&P Chemicals Index option will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. In addition, in the context of reduced-value Index LEAPS, ten reduced-value options will equal one full-value contract for position limit purposes.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to enhance the existing self-regulatory framework for the trading of options on industry indexes, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii)

[2] A European-style option can only be exercised during a specified period before the option expires.

[3] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28259 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31449; File No. SR-CBOE-92-28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Listing Options on the S&P Insurance Index

November 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the Standard & Poor's ("S&P") Insurance Index ("S&P Insurance Index" or "Index") pursuant to a license from S&P. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-type stock index options on an industry index, the S&P Insurance Index, as provided in Exchange Rule 24.2.

The S&P Insurance Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the insurance industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed insurance industry funds, as well as a means of hedging the risks of investing in the insurance industry. The CBOE proposes to list S&P Insurance Index options pursuant to a license from Standard & Poor's Corporation.

Index Design

The S&P Insurance Index is based on sixteen life, property and casualty, and multiline insurance industry stocks that are included in the S&P 500 Index. Fifteen of those stocks currently trade on the New York Stock Exchange and one currently trades through the facilities of the National Association of Securities Dealers Automated Quotation System. The Index is capitalization-weighted, meaning that the price of each stock is multiplied by that company's shares outstanding in order to calculate the current index level. The Index will be calculated on a real-time basis using last-sale prices.

The Index is composed of stocks that ranged in capitalization from $716 million to $20.4 billion as of August 31, 1992. The median capitalization as of that date was $3.2 billion. The largest stock accounted for 28.7% of the total capitalization of the Index, while the smallest accounted for 1.0%. Fifteen of the sixteen stocks (representing 99% of total Index capitalization) presently have options listed on them.

Calculation

The Index will be calculated continuously by S&P or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to the broad-based S&P 500 Stock Index, the S&P Insurance Index is capitalization-weighted and reflects changes in the total capitalization of the component stocks relative to the capitalization of that Index on the base date. The Index is calculated by taking the summation of the capitalizations of the component stocks (share price multiplied by the number of shares outstanding) and dividing the result by the divisor.

Maintenance

The Index will be maintained by S&P. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

If it becomes necessary for S&P to remove a stock from the S&P 500 (generally due to a takeover or merger), the stock will also be removed from the Index. However, the stock chosen as a replacement for the S&P 500 may or may

[1] The proposal was amended on September 28, 1992, to clarify that options on the Index will be A.M.-settled options subject to the provisions of Exchange Rule 24.9(e).

not be in the insurance industry. As a result, the number of stocks in the S&P Insurance Index may increase or decrease due to changes in the composition of the S&P 500. The CBOE has no influence over the process by which replacement stocks are chosen.

Index Option Trading

The Exchange proposes to base trading in options on the S&P Insurance Index on the full value of that Index. The Exchange may list long-term index option series ("LEAPS"), as provided in proposed amendments to Rule 24.9. In such a case, the Exchange also may provide for the listing of reduce-value Index LEAPS, for which the underlying Index value will be computed at one-tenth (1/10th) of the value of the S&P Insurance Index.

Exercise and Settlement

S&P Insurance Index options will have European-style exercise [2] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.9 which is being amended to refer specifically to S&P Insurance Index options.[3] The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable to Industry Index Options

Except as modified by this rule filing, the rules in Chapter XXIV of the CBOE Rules will be applicable to S&P Insurance Index options.

The CBOE is amending Rule 24.1 to make clear that a "market index," a term which includes the S&P 500, S&P 100, the FT-SE (U.K.) 100, and the FT-SE Eurotrack 200 indexes, also is a "broad-based index" within the meaning of the rules in Chapter XXIV of the CBOE Rules, including Rule 24.4 which relates to position limits for broad-based index options. The amendment to Rule 24.1 further provides that the terms "narrow-based index" and the previously defined "industry index" both mean an index designed to be representative of a particular industry or a group of related industries. An industry index contract such as the S&P Insurance Index option will, therefore, be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. In addition, in the context of reduced-value Index LEAPS, ten reduced-value options will equal one full-value contract for position limit purposes.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to enhance the existing self-regulatory framework for the trading of options on industry indexes, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR-CBOE-92-28 and should be submitted by December 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28260 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[2] A European-style option can only be exercised during a specified period before the option expires.

[3] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

[Release No. 34-31451; File No. SR-CSE-92-08]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc. Amending the Assignment of Designated Issues

November 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1992, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On October 1, 1992, the CSE submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its Code of Regulations ("By-Laws") so that they expressly authorize the Securities Committee to delegate to an Exchange officer its authority to approve Designated Issues and Dealers. The following is the text of the proposed rule change (additions are italicized):

Article VI, Section 3.1—Securities Committee

The Securities Committee shall have the authority to adopt operating procedures necessary and appropriate for the Exchange's automated interface with the Intermarket Trading System (ITS). *The Securities Committee also*

[1] See letter from Kevin S. Fogarty, General Counsel, CSE, to Elizabeth Cosgrove, Attorney, SEC, dated July 30, 1992 which makes minor clarifying changes to the proposed rule change.

may delegate its authority in Rule 11.9 to approve Designated Dealers and Designated Issues to an officer of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to state expressly in the Exchange's By-Laws, now silent on the issue, that when CSE lists or obtains unlisted trading privileges on an issue, the Securities Committee may delegate its authority to an Exchange officer to designate that issue for inclusion in the National Securities Trading System ("NSTS"); or when a member wishes to participate in CSE's multiple market maker system as a dealer, the Securities Committee may delegate its authority to an Exchange officer to assign the member to a security or securities. The Exchange adds issues quite frequently to NSTS and it would be impractical to assemble the Securities Committee for each designation of issues. This proposals does not affect the Committee's authority to reassign issues in light of market maker performance or to establish general policy; nor does it delegate any authority with respect to applications for membership or listing.

2. Statutory Basis

The proposed rule change is consistent with the provisions of section 6(b) of the Act in general and, in particular, will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-92-08 and should be submitted by December 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28252 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31465; File No. SR-DTC-92-12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Mandatory Use of the Automated Tender Offer Program

November 16, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 7, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change concerns the manner in which tender and exchange offers are processed through the facilities of DTC. Effective with offers commencing on April 1, 1993, DTC will process offers only through its Automated Tender Offer Program ("ATOP"), including the modified version of ATOP called ATOP II.[2] After that date, DTC will discontinue its older service in which some offers are processed outside of ATOP through the use of hardcopy (*i.e.*, paper) documents, including hardcopy letters of transmittal.

DTC intends to retain for some time a limited capability of processing offers through the older service in case an offer has unusual features which DTC cannot anticipate at this time and which prevent DTC from processing through ATOP. In such a case, DTC may process the offer through the older service if DTC determines, in its discretion, that the interests of DTC's Participants would best be served by making DTC's facilities available for the offer.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a description of ATOP, refer to Securities Exchange Act Release Nos. 27139 (August 14, 1989), 54 FR 34841 [File No. SR-DTC-88-19] (order implementing and approving on a temporary basis the ATOP program); 29188 (May 7, 1991), 56 FR 22742 [File No. SR-DTC-91-04], (order extending temporary approval); and 30678 (May 13, 1992), 57 FR 20541 [File No. SR-DTC-91-11], (order extending temporary approval).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Prior to the development of ATOP, Participants could accept an offer by submitting hardcopy instructions to DTC along with manually signed copies of the letter of transmittal used in the offer. DTC implemented ATOP in 1989 in order to automate the manner in which offers are processed through DTC's facilities. Since that time DTC has been processing offers both through ATOP and through the older service.

ATOP enables Participants to accept offers by means of electronic instructions to DTC. A principal feature of ATOP is the elimination of hardcopy letters of transmittal signed by Participants. In place of the signed letters of transmittal, DTC receives electronic instructions from Participants and transmits electronic messages containing those instructions to tender and exchange agents. The electronic instructions received by DTC from each Participant and transmitted to the agent include a single character by which the Participant acknowledges its receipt of, and agreement to be bound by, the offeror's letters of transmittal. ATOP does not change current practices regarding the preparation and distribution of offering materials, including letters of transmittal.

ATOP alleviates problems arising from the use of hardcopy documents in offers, such as the risk of loss, delay during shipment, and the expense and labor involved in the physical handling of documents. In addition, ATOP provides agents with an improved ability to control the processing of offers by making a variety of information available to the agent (and to the offeror) while an offer is open. The cost to an agent to utilize ATOP, including ATOP II, is minimal.

DTC implemented ATOP II in 1991 in order to make the benefits of ATOP available to agents that do not handle a large volume of offers and that do not have a computer terminal and printer available for ATOP. Under ATOP II, Participants send DTC electronic instructions just as they do in the full version of ATOP. For ATOP II, DTC generates a message to the agent on a printer at DTC and delivers the message to the agent at the end of the day by courier service. During the day the ATOP II agent can access information about the offer through a personal computer

ATOP, including ATOP II, has become the predominant method of processing offers at DTC. During 1991 and the first six months of 1992: (i) 57% of the offers processed at DTC were ATOP offers and 43% were offers using the older service; (ii) 71% of the acceptances of offers by Participants were acceptances submitted in ATOP offers and 29% were acceptances submitted in offers using the older service; (iii) 83% of the cash paid in tender offers through DTC was paid in ATOP offers and only 17% was paid in offers using the older service; and (iv) 78% of the market value of all securities surrendered in exchange offers at DTC was surrendered in ATOP offers and only 22% was surrendered in offers using the older service.

Based on its experience to date, DTC believes that there would be no substantive opposition by offerors and agents to the proposed rule change. Lack of familiarity with ATOP on the part of some offerors and agents is the only bar to the use of ATOP for all offers.

In view of the successful operation of ATOP during the past three years, DTC believes that the time has come to process all offers at DTC through ATOP, including ATOP II. Participants, offerors, agents, and DTC will realize the full benefits of automation only when ATOP is the exclusive method of processing offers at DTC.

The proposed rule change is consistent with the requirements section 17A of the Act [3] and the rules and regulations thereunder applicable to DTC since the proposed rule change will further automate the processing of offers involving securities on deposit at DTC. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or for which it is responsible since the proposed rule change enhances DTC's existing ATOP and ATOP II services.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

[3] 15 U.S.C. 78q–1 (1988).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change has been discussed with agents. Written comments from DTC Participants or others have not been solicited or received on the proposed rule change. Prior to the effective date of the proposed rule change, DTC intends to discuss the proposed rule change with various securities industry groups as well as additional agents and other interested persons.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization

All submissions should refer to File No. SR–DTC–92–12 and should be submitted by December 11, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28245 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31452; File No. SR-MCC-92-11]

Self-Regulatory Organizations; Midwest Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change to Cap Inbound RIO Trade Recording Fees

November 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 23, 1992, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MCC proposes to amend the application of its Trade Recording Fees for trades submitted to MCC through the facilities of the Regional Interface Organization ("RIO"). MCC proposes to cap trade recording fees for inbound RIO trades at $500 per month. MCC also proposes to exclude inbound RIO trades recorded for purposes of calculating the trade recording fee volume discount.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow MCC participants to settle trades, executed in other market centers, at MCC without having to pay duplicate comparison and trade recording fees.

RIO offers participants the option of clearing and settling trades at the clearing facility of their choice, regardless of the market of execution. For example, participants recording trades with the National Securities Clearing Corporation ("NSCC") may use the RIO program to designate that all trades recorded at NSCC be forwarded to MCC for settlement. The same is true for trades recorded at Stock Clearing Corporation of Philadelphia ("SCCP").[2]

Currently, MCC participants who execute trades in other market centers, and who choose to settle those trades at MCC, incur a trade comparison or reporting fee for each trade side at the clearing corporation where the trade is recorded, and a trade recording fee for that same trade side when it is sent to MCC for settlement via RIO. This essentially represents a duplicate trade recording fee.

MCC proposes to reduce the financial burden on participants who use the inbound RIO process by capping the trade recording fees applicable to trades sent to MCC via RIO, per account, at $500. MCC believes this will provide a cost benefit to participants who use the inbound RIO program, as well as an incentive for other participants who execute trades in other market centers to use the services of MCC.

MCC does not believe it can eliminate entirely the trade recording fees for inbound RIO trades because MCC will continue to incur expenses in connection with the processing of these trades. Moreover, because MCC will cap each account designated for inbound RIO trades at $500, inbound RIO trades will be excluded for purposes of computing the trade recording fee volume discount.

Trades received from sources other than registered clearing agencies will continue to be billed according to MCC's current trade recording fee schedule.

The proposed rule change is consistent with section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among participants.

[2] Participants may also use the RIO program to request that trades recorded at MCC be forwarded to another clearing facility for settlement.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by MCC and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicition of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to file number SR-MCC-92-11 and should be submitted by December 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28248 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31463; File No. SR-MSE-92-12]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Amendments to its Certificate of Incorporation and its Constitution

November 16, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 6, 1992, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Certificate of Incorporation ("Charter") and its Constitution to restructure and revise the duties of the Chairman, Vice Chairman and President and the method by which they are selected. The proposal would also expand the number of members of the Nominating Committee from three to five members and would change its composition. Simultaneously, the Exchange is submitting a proposal to amend its Rules to correspond with the changes herein proposed.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to restructure the organization and governance of the Exchange in order to increase management accountability to the membership, increase membership participation in the senior officer selection process, and improve communication among the membership, management and the Board of Governors. The proposal transfers the chief executive officer duties and responsibilities from the Chairman to the President, changes the process of Chairman selection and the qualifications for that position, and restructures the Nominating Committee.

Chairman. Under the proposal, the Chairman would become a non-management, part-time position. The Chairman would be required to make an annual report to the membership and would oversee the governance function of the Board with respect to management performance. The Board would be reduced from 27 to 26 members and would appoint the Chairman from among its members for a two-year term with a limit of two terms. The Chairman would be an ex-officio member, without the right to vote, of all committees, except the Nominating Committee. The Chairman would, however, be the Chairman of the Executive Committee with all voting powers.

Vice Chairman. Under the proposal, the Vice Chairman would serve a two-year term with a two-term limit. The Vice Chairman would continue to be elected by the membership and to have the power to appoint committees; however, only Exchange members active on the trading floor would be eligible for the position. The Vice Chairman would no longer be an ex-officio member of any committee, nor would he have the authority to call meetings of the Board or the Exchange members.

President. The proposal would make the President the chief executive officer of the Exchange. The President would be appointed by the Board to serve at its pleasure. The President would be required to make an annual report to the members. The President would be an ex-officio member, without the right to vote, of all committees, except the Nominating, Audit and Compensation Committees.

Nominating Committee. At present, the Nominating Committee consists of three Exchange members elected at-large by the membership. Under the proposed change, the Committee composition would increase from three to five members, three of whom would be Exchange members elected by the membership ("Member Committee members"). At least one of those three members would be active on the trading floor, and at least one would not be active on the floor The third member could be from either category. A vacancy among the Member Committee members would be filled by the other Committee members. The remaining two members of the Committee would be non-member, or public, persons appointed by the Board ("Non-Member Committee members"). They could be chosen from among the public Governors on the Board. Any vacancy among the Non-Member Committee members would be filled by Board appointment.

Annual meeting. The Exchange's annual meeting is currently held on the second Monday in January every year. The proposal would change the day of the annual meeting to the second Tuesday in April, unless the Board otherwise determines for good cause. The meeting would be preceded by the annual reports of the Chairman and the President. It would be an open meeting at which members could ask questions of management.

Charter amendments. At present, the Charter can only be amended by the majority vote of all Exchange members. Under the proposal, amendments to the Charter would succeed with the majority vote of those present at a meeting of members, as permitted by Delaware law for nonstock corporations. This change would result in the number of member votes needed to amend the Charter and the Constitution being the same.

Miscellaneous. Finally, the proposal provides that references to Options-only Members would be deleted from the Charter in order to conform it to the Constitution, which was changed in 1980 to eliminate references to the Exchange's Options program. The proposal also eliminates certain out-of-date references to Board composition in the Constitution.[2]

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[1] See File No. SR-MSE-92-13. NSE-92-13 proposes additional substantive changes, such as the establishment of a Committee on Organization and Governance.

[2] The Commission notes that these changes would eliminate certain inconsistencies in the Constitution with regard to Board composition. In addition, the proposal would change one Board position, which currently could be either a public or

Continued

2. Statutory Basis

The MSE believes that the proposed rule change is consistent with section 6(b)(3) of the Act in that it helps to assure a fair representation of the Exchange's members in the selection of its directors and the administration of its affairs. The proposed rule change, in the MSE's view, is also consistent with section 6(b)(1) in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.[3]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-92-12 and should be submitted by December 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28248 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

member representative, to be exclusively a member representative. According to the MSE, this change only codifies existing practice because historically this Board position has always been a member representative.

[3] The proposed was approved by a majority of members entitled to vote at a special meeting of members held on November 5, 1992.

[Release No. 34-31466; File No. SR-MSE-92-13]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Stock Exchange, Inc., Relating to Amendments to its Rules To Transfer the Powers and Duties of the Chief Executive Officer From the Chairman to the President of the Exchange

November 16, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 6, 1992, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules to transfer the powers and duties of the chief executive officer from the Chairman to the President. The proposed rule change would also establish a Committee on Organization and Governance as a standing committee of the Board of Governors. In addition, the proposal would establish a minimum number of members of the Compensation Committee and clarify that Committee's responsibility for determining the benefits, as well as the compensation, policy for the Exchange. Simultaneously, the MSE is submitting a proposal to amend its Certificate of Incorporation and Constitution to correspond with the changes herein proposed.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to transfer the powers and duties of the chief executive officer from the Chairman to the President and to conform the Rules of the Exchange with the proposed changes to its Certificate of Incorporation and Constitution.[2] The specific powers and duties of the chief executive officer which would transfer to the President include: [3]

A. Sell memberships and distribute proceeds for insolvency, non-payment of fines, etc.;
B. Extend the time frames and approvals for membership registration issues;
C. Appoint Judiciary Committee when necessary for appeals of disciplinary actions;
D. Approve wire connections and communications on the trading floor;
E. Suspend or restrict member operations due to financial or operational difficulty;
F. Conduct and decide disciplinary actions;
G. Suspend and remove securities from trading; and
H. Inspect books and records.

Under the proposal, the Committee on Organization and Governance would be established as a standing committee of the Board of Governors. Also, the

[1] See File No. SR-MSE-92-12. MSE-92-12 also includes other substantive changes concerning the governance of the MSE, such as the process for selecting the Chairman and the structure of the Nominating Committee.

[2] *Id.*

[3] The MSE is not proposing to change the powers and duties of the chief executive officer but rather is transferring those powers from the Chairman to the President.

proposal would establish a minimum number of members of the Compensation Committee and clarify that Committee's responsibility for determining the benefits policy for the Exchange employees.

2. Statutory Basis

The MSE believes that the proposed rule change is consistent with section 6(b)(1) of the Act in that it helps to assure that the Exchange is so orgnaized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-92-13 and should be submitted by December 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-28249 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31453; File No. SR-PHLX-92-27]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Restrictions on Registered Options Traders

November 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Exchange Rule 1014 ("Obligations and Restrictions Applicable to Specialists and Registered Options Traders") to prohibit a Registered Options Trader ("ROT") from executing a proprietary options transaction in an Exchange-listed option on an over-the-counter/unlisted trading privilege ("OTC/UTP") security if, during the preceding hour, the ROT has been physically present on the PHLX's equity trading floor. The proposed trading restriction will not apply unless the PHLX's reported equity share volume in the OTC/UTP security represents over ten percent of the total reported volume for the OTC/UTP security during the previous calendar quarter. The text of the proposed rule change is available at the Office of the Secretary, PHLX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to amend Exchange Rule 1014 to prohibit an ROT from executing a proprietary options transaction in an Exchange-listed option on an OTC/UTP security if, during the preceding hour, the ROT has been physically present on the PHLX's equity trading floor. The proposed rule change was recommended to the Exchange's Board of Governors by its Options Committee in conjunction with a corresponding proposal, File No. SR-PHLX-92-04, respecting the listing and trading of securities traded through the facilities of the National Association of Securities Dealers Automated Quotation System that are designated as National Market System securities ("NASDAQ/NMS") on the PHLX on a UTP basis. The proposed restriction on ROT proprietary transactions is designed to prevent any abusive options trading that may result from ROTs capitalizing on any informational advantages that they may acquire while on the PHLX's equity trading floor. The proposed trading restriction will not apply unless the PHLX's reported equity share volume in the OTC/UTP security represents over ten percent of the total reported volume for the OTC/UTP security during the previous calendar quarter.

The PHLX believes that the proposed rule change is consistent with the Act, and, in particular, with section 6(b)(5), in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28247 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31450; File No. SR-Phlx-92-17]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending the By-Laws Regarding the Board of Governors Term of Office

November 13, 1992.

On July 9, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its By-Laws to provide for an extension of one week of the term of office for members of the Board of Governors ("Board"). This would permit the Board to hold its organizational meeting following the annual election on the fourth Wednesday of March, instead of on the third Wednesday of March.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30947 (July 22, 1992), 57 FR 33539 (July 29, 1992). No comments were received on the proposal.

Section 3-3 of the Phlx By-Laws, Term of Office, currently provides that the term of office for persons elected to the Board begins on the third Wednesday of March, after the date of their election.[3] In the event of death, withdrawal or disqualification of a nominee prior to an annual election for one of the positions on the Board (other than the offices of Chairman and Vice Chairman), section 3-8 of the By-Laws specifies that the election shall proceed and the vacant office may be filled by a person elected by the Board at a meeting held subsequent to the election. The person elected also would serve until the third Wednesday of March after the date of his or her election. Section 3-5 of the By-Laws, which governs terms for members of the Nominating Committee, provides that no member of the Board whose term is expiring on the third Wednesday of March, following an annual election, shall be eligible to serve on a Nominating Committee to nominate candidates for membership on the Board of such annual election.

The Phlx proposes to amend sections 3-3, 3-5 and 3-8 to provide a one week extension of the terms of office for Board members in order to provide an additional week between the annual election and the scheduled organizational meeting of the Board. At the present time, the annual election is held on the second Monday of March and the scheduled organizational meeting of the Board currently is held on the third Wednesday of March. The proposed rule would extend the terms of office until the fourth Wednesday of March and therefore would permit the Phlx's scheduled organizational meeting to be held on the fourth Wednesday of March.

The Phlx states that the proposed rule change was suggested by its recently elected Chairman. The Chairman noted at the Board's organizational meeting, held one week following the annual election, that he had insufficient time to deliberate, consult, and contact members and persons associated with member organizations concerning his recommendations to the Board for appointments to Standing and Special Committees. The Exchange argues that the proposed By-Law amendments are designed to aid the governance process at the Phlx by allowing the newly-elected Chairman adequate time to consider and make recommended selections to Standing and Special Committees. These committee members are approved by the Board at its organizational meeting.[4]

The Exchange believes that the proposed rule change is consistent with section 6(b)(3) of the Act in that it is designed to assure a fair representation of the Exchange members in the selection of Committees and to facilitate the proper administration of its affairs.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (1), (3) and (5) of the Act.[5] Section 6(b)(1) requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. Section 6(b)(3) of the Act requires, among other things, that the rules of an exchange assure a fair representation of its members in the selection of its directors and the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The Phlx holds its annual election on the second Monday in March. See, Philadelphia Stock Exchange Guide, Article III, § 3-2, Annual Meeting," (last amended December 19, 1985).

[4] See, Philadelphia Stock Exchange Guide, Article V, § 5-3, "Appointment of Committees," (last amended December 29, 1980).

[5] 15 U.S.C. 78f(b) (1), (3), (5) (1988).

administration of its affairs. Section 6(b)(5) of the Act requires, among other things, that exchange rules be designed to protect investors and the public interest.

The Commission believes that the proposed rule change, which will extend the terms of office of the Board members for one week, is consistent with the requirements of section 6(b)(1) of the Act because the proposal is designed to enhance the governance process of the Exchange. As a result of this proposal, the Chairman will have an additional week to prepare his recommendations to the Board for the appointment of members to the Standing and Special Committees. These committees play a vital role in the governance of the Phlx. The Chairman must appoint members (subject to Board approval) to the Admissions Committee, Arbitration Committee, Business Conduct Committee, Finance Committee, Floor Procedure Committee and Options Committee, to name a few. In managing the Phlx, these various committees are essential. The Commission believes that the one week extension of Board member terms should assist the Chairman by giving him more time to recommend qualified people for appointment to the various committees.

The Commission also believes the proposal is consistent with the requirements of section 6(b)(3) because the proposal should ensure a fair representation of Phlx members in the administration of Exchange affairs. As noted above, the proposal will provide the Chairman with additional time to consider his recommendations for membership on the Standing and Special Committees. These committee members are generally selected from Phlx employees, members of the exchange and members of the public. The Commission notes that the additional week should permit the Chairman to review qualifications and consider a wider range of eligible candidates for membership on these committees. The proposal, therefore, should work to ensure a fair representation of Phlx members and public representatives on the Exchange's Standing and Special Committees.

Finally, the Commission believes that the proposal is consistent with the objectives of section 6(b) (5) of the Act, which requires, among other things, that the rules of the exchange be designed to protect investors and the public interest, in that the proposed rule allows the Chairman more time to review the qualifications of, and to recommend qualified, committee members. As noted above, the Committee of an exchange play an important role in the management of an exchange and affect the integrity of the marketplace and the exchange's ability to carry out its responsibilities under the Act. Accordingly, a one week extension in Board terms appears to be a reasonable, and relatively minor change that can provide benefits to the market.

It is therefore ordered, pursuant to section 19(b) (2) of the Act,[6] that the proposed rule change (SR–Phlx–92–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–28253 Filed 11–19–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19098; 812–8048]

Capital Investments, Inc.; Application

November 13, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Capital Investments, Inc.

RELEVANT ACT SECTIONS: Section 23(c)(3) of the Act and rule 23c–1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order under section 23(c)(3) of the Act that would enable it to effect a reverse stock split, repurchase the fractional interests created thereby, and repurchase shares from remaining stockholders who are not affiliated persons of Applicant.

FILING DATES: The application was filed on August 14, 1992, and an amended and restated application was filed on October 16, 1992. Counsel, on behalf of Applicant, has agreed to file a further amendment during the notice period to make several changes to the application, which changes are reflected herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 18, 1992, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 744 North Fourth Street, Milwaukee, Wisconsin 53203.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Wisconsin corporation, is a closed-end investment company registered under the Act, and also is regulated by the Small Business Administration ("SBA") as a small business investment company ("SBIC") under the Small Business Investment Act of 1958. As an SBIC, Applicant's policy is to invest in small business concerns, as defined by the SBA. At September 30, 1992, Applicant had approximately $12.5 million in assets.

2. Applicant has issued an outstanding 549,158 shares of common stock. While there are 95 shareholders of record, Applicant believes there are about 130 beneficial shareholders, because several record holders hold shares in nominee accounts. Eight of the shareholders, each of whom is an affiliated person of Applicant, together own 510,923 shares of common stock, or approximately 93% of the issued and outstanding shares. The remaining shareholders own the other 7% of Applicant's shares, and, to Applicant's knowledge, all but a few of them own less than 1,000 shares each.

3. Applicant's Board of Directors has approved a proposal to amend Applicant's articles of incorporation to provide for a reverse stock split of Applicant's outstanding shares of common stock, whereby each 3,000 shares issued and outstanding on November 16, 1992 shall be combined into one share of Applicant's common stock. Each fractional share shall be converted into the right to receive a cash payment equal to 100% of the net asset value of such share as of the effective date of the proposed reverse stock split. Under applicable Wisconsin law, the

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[6] 15 U.S.C. 78s(b) (2) (1988).

[7] 17 CFR 200.30–3(a) (12) (1991).

interests of minority shareholders can be terminated by means of a reverse stock split, and no dissenters' rights are available.

4. As of November 13, 1992, to Applicant's knowledge, only 11 individuals were holders of record or beneficial owners of 3,000 or more shares of its common stock. Accordingly, the effect of the reverse stock split and the repurchase of fractional interests created thereby will be to reduce the number of beneficial owners of Applicant's common stock to not more than 100 persons so that Applicant would no longer be an "investment company" as defined in the Act and could seek to deregister from the Act. An additional effect will be to reduce the number of beneficial owners of Applicant's common stock to not more than 35 so that Applicant can elect to be taxed as a Subchapter S corporation for the fiscal year commencing January 1, 1993, if so desired.

5. Applicant also proposes to offer to repurchase shares of common stock held by three of the 11 remaining shareholders following the reverse stock split, who, to Applicant's knowledge, will be its only remaining unaffiliated shareholders. Applicant will offer to repurchase these shares for cash at a price equal to 100% of their net asset value as of the effective date of the reverse stock split.

6. The reverse stock split will be submitted for approval by the shareholders of Applicant at a special meeting scheduled to be held on December 28, 1992. An information statement describing the reverse stock split and the reasons therefor will be sent to Applicant's shareholders on or about December 8, 1992. Applicant will meet the requirements of rule 14c–7 under the Securities Exchange Act of 1934 in providing copies of the information statement to all beneficial shareholders whose shares are held in a nominee account. The information statement was filed with the SEC on September 10, 1992, and no comments were received within the ten day statutory period. In addition, Applicant will mail a copy of this notice of application to all shareholders on or before November 19, 1992.

7. As set forth in the information statement, the eight affiliated shareholders of Applicant who will remain after the proposed reverse stock split (including Michael R. Zook, the president and a director of Applicant, six other directors, and one investor "acting in concert" with the others) own a sufficient number of shares of common stock to approve and adopt the proposed amendment to Applicant's articles of incorporation and the reverse stock split. They have informed Applicant that they intend to vote their shares in favor of both proposals.

Applicant's Legal Analysis

1. Section 23(c) of the Act prohibits a registered closed-end investment company from purchasing its own securities except (1) on a securities exchange or other open market designated by the SEC, (2) pursuant to tenders to all holders of securities of the class to be purchased, or (3) under such other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors so that such purchases do not unfairly discriminate against any holders of the class of shares to be purchased. The proposed repurchases of fractional and full share interests of Applicant's common stock would be subject to section 23(c), and sections 23(c)(1) and 23(c)(2) are not adequate to achieve Applicant's purposes to ensure a shareholder base of less than 100 and less than 35 persons. Thus, Applicant seeks exemptive relief under section 23(c)(3) of the Act.

2. Pursuant to the authority set forth in section 23(c)(3), the SEC has adopted rule 23c–1, which sets forth certain conditions that must be complied with in order for a closed-end investment company to purchase for cash its own shares from shareholders without seeking an exemptive order from the SEC. After consideration of the conditions of rule 23c–1(a), Applicant's Board of Directors has determined that the reverse stock split and subsequent repurchase of fractional interests would be in compliance therewith, except possibly two conditions: condition (4), relating to repurchases from affiliates; and condition (6), concerning valuation of the shares to be purchased. Applicant's Board of Directors also has determined that the proposed repurchase of shares from the three unaffiliated shareholders following the reverse stock split would be in compliance with all of the conditions of rule 23c–1(a), except possibly one condition: Condition (6), concerning valuation of the shares to be purchased.

3. The repurchase of fractional interests will not comply with condition (4) of rule 23c–1(a), because eleven of the shareholders whose interests will be repurchased (three of whom will no longer remain as shareholders after the repurchase) are affiliates of Applicant. However, these affiliates will receive the same price per share, on the same conditions, as other shareholders who will receive cash payment for their fractional shares, and thus the directors do not believe that non-compliance with condition (4) violates the purposes and intent of the prohibitions contained in section 23(c).

4. With respect to valuation, condition (6) of rule 23c–1(a) provides that any repurchase of shares must be made at price not above the market value, if any, or the asset value, whichever is lower, at the time of such purchase. At November 13, 1992, the bid price for shares of Applicant's common stock was $6.00 per share, and the new asset value per share was $8.20. During the last five years Applicant's common stock consistently has traded at a discount from net asset value. Applicant's Board of Directors does not believe, however, that there is a "real" public trading market for Applicant's shares, because those shares are thinly traded and there was some question as to whether the available market quotations were sufficient to determine their market value. Accordingly, the directors determined that the lower "market" price per share that would have been paid pursuant to rule 23c–1 would be inadequate, and not truly indicative of the "real" value of Applicant's shares of common stock. Instead, after careful consideration of all relevant factors, including Applicant's financial performance and its future prospects, Applicant's directors determined that the repurchase price should be 100% of the net asset value per share as of the effective date of the reverse stock split.

5. Applicant's directors, in determining to recommend the reverse stock split and the repurchase to the shareholders, recognized and attempted to minimize the conflicts that often exist in connection with repurchase offers. They noted that the drafters of section 23(c)(3) were concerned with the repurchase of closed-end companies' shares at prices below net asset value, since the drafters believed that such repurchases led to numerous problems, such as (i) the selling shareholders did not receive prices near the net asset value of their shares, and (ii) the repurchases would enrich the remaining shareholders in a manner not attributable to management expertise. The directors believe that the repurchase price of 100% of the net asset value of the interests to be repurchased is fair and will not unjustly enrich the remaining shareholders nor will it unjustly enrich the shareholders who will be cashed out. The directors also believe that the terms of the reverse stock split, the proposed repurchase of fractional interests created thereby, and

the proposed repurchase of common shares are in Applicant's best interest.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28251 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25676]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 13, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for pubic inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 7, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Power System, Inc., et al. (70-7588)

Allegheny Power System, Inc. ("APS"), a registered holding company, and its subsidiary, Allegheny Power Service Corporation ("APSC"), both located at 12 East 49th Street, New York, New York 10017, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and Rule 43 thereunder.

By order dated December 12, 1990 (HCAR No. 25208), APSC was authorized to issue short-term notes ("Notes") to APS in the aggregate principal amount outstanding at any one time of $7.5 million through December 31, 1992. The Notes may bear interest at a rate equal to the average interest rate on short-term borrowings by APS during each calendar quarter, as previously authorized by the Commission (HCAR No. 24620, February 14, 1989) ("Order"). In any quarter in which APS has no short-term borrowings outstanding, the Order provides that the Notes may bear interest at the prime rate in effect from time-to-time.

APS has made one open account advance to APSC in the amount of $2.5 million, maturing on December 31, 1992. APS and APSC now propose to extend the time in which APSC may issue Notes to APS up to the aggregate principal amount of $7.5 million through December 31, 1994, under the same terms and conditions as previously authorized by the Commission in the Order.

General Public Utilities Corp., et al. (70-7727)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, General Portfolios Corporation ("GPC"), Mellon Bank Center, Tenth and Market Streets, Wilmington, Delaware 19001, a subsidiary company of GPU, and Energy Initiatives, Inc. ("EII"), One Upper Pond Road, Parsippany, New Jersey 07054, a nonutility subsidiary company of GPC (collectively, "Applicants"), have filed a post-effective amendment under sections 6(a), 7, 12(b) and 12(c) of the Act and Rules 42, 45, 46 and 50(a)(5) thereunder to their application-declaration filed under sections 6, 7, 9(a), 10, 12(b) and 12(c) of the Act and Rules 42, 45, 46 and 50(a)(5) thereunder.

By order dated June 26, 1990 (HCAR No. 25108) ("June 1990 Order"), the Commission, among other things, authorized EII to engage in preliminary project development and administrative activities ("Project Activities") in connection with its investments in qualifying cogeneration facilities ("QF"), as defined in the Public Utility Regulatory Policies Act of 1978 ("PURPA") and regulations thereunder, located anywhere in the United States and qualifying small power production facilities ("SPP"), as defined in PURPA and the regulations thereunder, located in the service territories of the companies which are parties to the Pennsylvania-New Jersey-Maryland Interconnection Agreement. By order dated September 20, 1991 (HCAR No. 25381) ("September 1991 Order"), the Commission authorized EII to engage in certain project development activities in Canada.

The June 1990 Order authorized GPU to make capital contributions to GPC, and from GPC to EII, through December 31, 1992, in an aggregate amount of up to $60 million. In addition, the June 1990 Order authorized GPC to borrow up to $60 million from commercial banks, insurance companies and other institutional lenders for terms not exceeding 10 years and at interest rates generally available at the time of such borrowings for comparable unsecured loans made by similarly situated borrowers. The June 1990 Order further authorized GPU to enter into support agreements with GPC for the benefit of lenders whereby GPU will covenant to maintain ownership, positive net worth and adequate liquidity of the borrower. Through August 31, 1992, GPU has made capital contributions to GPC, which GPC has in turn contributed to EII, in an aggregate amount of $10,850,000 under the June 1990 Order. The Applicants seek to extend the authority granted in the June 1990 Order for GPU and GPC to make investments in EII for Project Activities until December 31, 1994 up to an aggregate amount of $60 million. EII also seeks to expand authorization granted in the June 1990 Order to engage in Project Activities with respect to SPPs anywhere in the United States. The Applicants also will engage in Project Activities for exempt wholesale generators ("EWGs") as defined in the Energy Policy Act of 1992 ("Energy Policy Act"), located in any geographical area.

EII further seeks to obtain irrevocable bank letters of credit ("LOC"), or guarantees or similar obligations ("Guarantees") of GPU and/or GPC in order to secure agreements with lenders to make investments in particular projects. Under the LOCs, GPU would enter into letter of credit reimbursement agreements ("Reimbursement Agreements") which would obligate GPU or GPC, as applicable, to repay the LOC bank in the event of any draw on the LOC. The LOCs would have an aggregate face amount of up to $60 million (less the aggregate amount which GPU and GPC had contributed directly to EII, and for which GPU or GPC had entered into Guarantees on behalf of EII), and would expire not later than December 31, 1994. Drawings on the LOCs would bear interest at not more than 5% above the prime rate, as in effect from time to time. GPU and GPC may also be required to pay letter of credit fees which would not exceed 1% annually of the face amount of the LOC.

The Guarantees (i) would be in an aggregate face amount of up to a maximum of $60 million (less the aggregate amount which GPU and GPC had contributed directly to EII, and for which GPU and GPC had entered into letter of credit reimbursement agreements on behalf of EII) and (ii) would expire not later than December 31, 1994.

Finally, EII seeks to declare and pay cash dividends on its common stock from time-to-time to GPC, and from GPC to GPU, out of capital surplus from time to time through December 31, 1994, in order to return excess cash distributed to EII for its investments in Project Activities. At June 30, 1992, EII and GPC had $19,894,028 and $26,813,015, respectively, of "surplus," as defined by the Delaware General Corporation Law, that may be paid out as dividends.

Central and South West Corporation, et al. (70–7918)

Central and South West Corporation ("CSW"), a registered holding company, and three of its nonutility subsidiaries, CSW Energy, Inc. ("Energy"), CSW Development-I, Inc. ("Energy Sub"), as with CSW each located at 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, and ARK/CSW Development Partnership (the "Joint Venture"), 23293 South Pointe Drive, Laguna Hills, California 92653, (collectively, "Applicants"), have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 45, 50 and 51 thereunder.

By prior order dated February 18, 1992 (HCAR No. 25477) ("February Order"), CSW, Energy, Energy Sub and the Joint Venture were authorized to invest in a 122.2 megawatt, gas-fired cogeneration facility (the "Project") located near Bartow in Polk County, Florida. Once operational, the Project would be a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978. Under the February Order, CSW, Energy, Energy Sub and the Joint Venture were also authorized to organize Polk Power Partners, L.P. ("Partnership"), a Delaware limited partnership, to own and operate the Project and organize Polk Power GP, Inc. ("JV Sub") to be the sole general partner of the Partnership. JV Sub is a wholly subsidiary of the Joint Venture, a Delaware general partnership owned equally by Energy Sub and ARK Energy, Inc. ("ARK"), a nonassociate corporation. JV Sub, a Delaware corporation, has a 1% interest in the Partnership. The two limited partners are Energy Sub and ARK. They each hold as 49.5% interest in the Partnership. By order dated August 6, 1992 (HCAR No. 25599) ("August Order"), the Commission authorized the Partnership to enter into a construction agreement with Energy or Energy Sub for the purpose of developing and constructing the Project. The August Order also authorized the Applicants to increase the amount to be borrowed from third party lenders for use in constructing and developing the Project to $135 million and to increase the amount of capital contributions that Energy Sub and ARK would each contribute to the Partnership to $13.5 million.

The Applicants now propose to (1) increase to $160 million the total amount expected to be financed to construct the Project; and (2) increase the maximum amount (excluding Advances, as defined below) of the aggregate equity contributions to the Partnership by JV Sub, Energy Sub and ARK to $32 million, which would constitute a maximum equity contribution equal to 20% of the amount to be financed.

In the event that Project financing is unavailable on terms satisfactory to the Partnership, the Applicants seek to enter into a sale-leaseback arrangement. Upon completion of the Project construction and the start of commercial operations, the Applicants would convert and finance the construction loan with a lease ("Lease") of approximately 20 years ("Base Lease Term") on substantially similar terms to the Partnership as the term loan financing. Under the Lease, the Project would be transferred to the lender or other party transferee ("Lessor") and the Partnership would lease-back the Project from the Lessor.

At the completion of the Base Lease Term, the Partnership would have options to extend the Base Lease Term for additional terms (but in no event beyond a period which when added to the Base Lease Term would exceed 80% of the estimated economic useful life of the Project). In this event, with rent payments would be equal to a percentage of the average Lease rental during the Base Lease Term or fair market value at such time. In lieu of extending the term of the Lease, the Partnership would also have the option to purchase the Project from the Lessor at a purchase price equal to the fair market value of the Project at the time of exercise of the option to purchase the Project.

Alternatively, the Lease may be structured so that the Lessor would include a to-be-formed special purpose Delaware corporation in which Energy or Energy Sub would acquire voting common stock commensurate with an ownership interest not to exceed 50%. The initial capitalization of such corporation would not exceed $25,000. The remaining interest, if any, in such special purpose corporation would be owned by an unrelated third party other than ARK. Under this scenario, the Project would be transferred to the Lessor and ARK would lease the Project from the Lessor. At the conclusion of the Lease, the Lessor would own the Project and ARK's interest would be terminated. The Applicants request an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereof for the Lease arrangements.

In order to meet Project deadlines, it may be necessary for the Partnership to begin Project construction prior to the closing of third party construction financing. In the event the Partnership is unable to obtain third party Project financing prior to the start of Project construction, Energy seeks, directly or indirectly, to make loans, open account advances, or additional equity contributions to the Partnership in an aggregate amount not to exceed $85 million (the "Advances").

Energy may itself make the Advances, directly or indirectly, or may form a special purpose joint venture with an unrelated third party (other than ARK) to make the Advances. Energy would acquire an equity interest in such joint venture, which would have an initial capitalization not to exceed the amount of the Advances. Capital contributions, loans or other advances to the joint venture would be made solely by the joint venture partners in proportion to their joint venture interests. To the extent possible, Energy would limit its liability to the amount of its investment.

The Advances would be used for construction and operation of the Project, including performance testing, start-up costs and working capital costs. If the Advances are made in the form of additional equity contributions to the Partnership, then the Advances would be repaid out of the proceeds of third party financing (such financing to be either the construction loan, the term loan or the Lease) prior to the start of commercial operation of the Project, together with a reasonable return on capital to reflect the value added to the Partnership by the construction of the Project.

If the Advances are made in the form of loans or open account advances, then the Advances would bear interest at a rate per annum not in excess of the prime commercial lending rate as in effect from time to time at Mellon Bank plus 3% and would have a final maturity not to exceed 20 years. However, it is

anticipated that, on or prior to the completion of Project construction, the Advances would be refinanced by the construction loan, the term loan or the Lease, as appropriate, upon the terms set forth above. In no event would any Advances remain outstanding at the start of commercial operations of the Project to the extent that such Advances would cause the Project not to qualify as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 and rules and regulations thereunder.

Ohio Power Company, et al. (70–8054)

Ohio Power Company ("Ohio Power"), an electric public-utility subsidiary company of American Electric Power Company, a registered holding company, and its coal mining subsidiary companies, Southern Ohio Coal Company ("SOCO") and Windsor Coal Company ("Windsor Coal") (Ohio Power, SOCO, and Windsor Coal, "Declarants"), each Declarant located at 301 Cleveland Avenue, SW., Canton, Ohio 44702, have filed a declaration under sections 6(a), 7, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

SOCO and Windsor Coal propose to issue and sell unsecured promissory notes ("Notes") in the aggregate principal amount of $85 million and $5 million, respectively, to one or more commercial banks, financial institutions or to other institutional investors pursuant to one or more term loan agreements ("Term Loan Agreements"). SOCO and Windsor Coal request an exception from the competitive bidding requirements pursuant to Rule 50(a)(5) in connection with the issuance and sale of the Notes. The Term Loan Agreements would be for a term of between nine months and ten years from the date of borrowing.

The Term Loan Agreements will provide that the Notes bear interest at either a fixed rate, a fluctuating rate, or some combination thereof. The actual rate of interest will be subject to negotiation between the borrower and the lender. Any fixed rate of interest of the Notes will not be greater than 250 basis points above the yield at the time of issuance of the Notes to maturity of United States Treasury obligations that mature on or about the date of maturity of the Notes. Any fluctuating interest rate will not be grater than 200 basis points above the rate of interest announced publicly from time to time as the base or prime rate by a major bank.

Declarants state that no compensating balances shall be maintained with, or fees in the form of substitute interest paid to, a lender under the Term Loan Agreements. However, should a bank or financial institution arrange for a borrowing from a third party, such institution may charge the borrower a placement fee, not to exceed ⅞% of the principal amount of such borrowing. In addition, Declarants state that should a lender assign or sell a participation in all or any part of the Term Loan Agreements to other entities, such assignee ("Assignee") would have the same rights and benefits under the Term Loan Agreements as the lender. The Assignee, however, would not have any rights under the Term Loan Agreements as a participant, but would have rights against the lender with respect to the agreement between the participant and the lender.

The Term Loan Agreements specify that, in the event a Note bearing interest at a fixed rate is paid prior to maturity in whole or in part and the fixed rate at that time exceeds the yield to maturity of certain United States Treasury securities that mature on or about the date of maturity of the Note, the borrower shall pay to the lender an amount based upon the present value of such prepaid amounts discounted at such treasury yield.

The Term Loan Agreement may contain restrictive covenants which would prohibit the borrower and Ohio Power from, among other things:

(1) Creating, incurring, assuming or suffering to exist any liens on its property, with certain stated exceptions;

(2) Creating or incurring any indebtedness for borrowed money, other than as specified therein;

(3) Failing to maintain a specified level of capitalization; and

(4) Certain mergers, consolidations and dispositions of assets.

Ohio Power proposes to agree unconditionally that if the borrower fails to make any payment of principal or interest when due, pursuant to the terms of the Term Loan Agreements, Ohio Power shall, within ten days after receipt of written notice thereof from the lender, pay to such lender the amount due and unpaid by the borrower.

Declarants state that they will use the proceeds from the term loans to pay at maturity or refund prior to maturity the $40 million of debt that becomes due on January 29, 1993 and the $50 million of debt that becomes due on January 31, 1994.

Transok, Inc. (70–8065)

Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma 74101, a wholly owned, non-utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 45 and 50(a)(5) thereunder.

Transok proposes to acquire a 50% general partner interest in Downtown Plaza II ("Downtown Partnership"), a general partnership organized and existing under the laws of the State of Oklahoma, for $9.4 million. The Downtown Partnership owns, as its only material asset, a 28-story building known as "110 Occidental Place," located at 110 West Seventh Street, Tulsa, Oklahoma (the "OXY Building"). OXY Tulsa Inc. ("OXY Tulsa") (formerly, Cities Service Tulsa, Inc.) and Tulsa Limited Partnership ("TLP"), a New York limited partnership, each presently own a 50% general partnership interest in Downtown Partnership. Transok proposes to acquire TLP's 50% interest (the "TLP Interest").

In order to acquire the TLP Interest, Transok proposes to form a new wholly owned subsidiary, Transok Properties, Inc. ("TPI"). TPI will be a Delaware corporation, with authorized capital of 1,000 shares of common stock without par value. Transok will subscribe to all of TPI's common stock at a subscription price of $1.00 per share.

TPI will acquire the TLP Interest pursuant to a purchase agreement between TLP and Transok. Transok will assign its rights and obligations under the purchase agreement to TPI. In connection with the purchase, TPI will assume all of TLP"s obligations as of the closing date under the Downtown Partnership Agreement, as amended (the "Amended Partnership Agreement"), and Transok will guarantee those obligations of TPI. Under the Amended Partnership Agreement, TPI and OXY Tulsa will share equally in allocations of net cash flow, income, gains, expenses and losses from the Downtown Partnership.

The total consideration to be paid by Transok for the TLP Interest is $9.4 million. Of that amount, $3.8 million will be payable in cash and the remainder, $5.6 million, will consist of TPI's assumption of TLP's obligations under two mortgage instruments secured by the OXY Building and rental payments thereon (the "Mortgages"). As of December 31, 1991, the outstanding principal under the first mortgage note, maturing in July 2001, was $10,831,503, with interest payable thereon at a rate per annum of 7⅝%. As of December 31, 1991, the outstanding principal under the second mortgage note maturing in December 1996 was $390,736. Interest under such note is payable at a rate per annum of 8¾%.

Since TPI will have general partner liability under Oklahoma law after the

consummation of the proposed transactions, and since Transok will guarantee the obligations of TPI, both Transok and TPI will be potentially responsible for the amount outstanding under the Mortgages on the closing date of the proposed transaction to the extent that TLP was so obligated. Assuming a closing date of December 31, 1992, the amount of principal and interest then due under the Mortgages is estimated to be $10,437,408.

Transok will obtain cash to fund the transaction and for its working capital purposes from the CSW Money Pool, as authorized by HCAR No. 25288 (March 29, 1991). Transok will loan such funds to TPI pursuant to a revolving loan agreement in order to make funds available to TPI for payment of the cash purchase price, and TPI's working capital needs. The loan will be for an aggregate principal amount not exceeding, at any one time outstanding, $10,000,000, with a maturity of not more than one year, provided that TPI may, with Transok's consent, extend the loan agreement for an additional term of one year.

TPI will pay interest on the loan at the same rate paid by Transok on the funds borrowed from the CSW Money Pool ("Money Pool Rate"). The Money Pool Rate is a varying rate, calculated daily, equal to: (i) CSW's weighted average daily effective cost for all short-term borrowings (a) through the issuance of commercial paper or (b) from other sources of short-term funds, if such sources are substituted for commercial paper issuances on any date in whole or part; or (ii) if short-term borrowings have not been effected as described in clause (i) on any date, a rate equal to the certificate of deposit yield equivalent of the 30-day Federal Reserve "AA" Industrial Commercial Paper Composite on such date (or next preceding day for which such Composite has been established, if applicable). TPI's obligations to Transok under the loan agreement will be evidenced by an unsecured promissory note issued by TPI to Transok. Transok determined that the CSW Money Pool was the most cost-effective sources of funds after reviewing a number of other financing options.

Arkansas Power & Light Company (70–8071)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

AP&L proposes to institute a demand-side management program ("Program") for its residential, commercial and industrial customers. The Program is designed to assist utility customers in the more efficient use of energy and to maximize the efficiency of AP&L electrical generation resources.

It is contemplated that the Program would (1) finance for all classes of AP&L customers the acquisition and installation of heat pumps and other standard electric appliances, energy conservation and weatherization materials and related ductwork and wiring, and extended warranties, electrical efficiency testing and service plans for such appliances and materials ("Appliance Activities"); and (2) finance for AP&L non-residential customers the acquisition and installation of efficient electrical equipment and electrotechnologies ("Equipment Activities").[1]

The Appliance Activities would be financed through direct loans. Such secured and unsecured loans would be at market interest rates and on market terms and conditions. The term of the loans will range from three months to seven years. The maximum amount of principal obligations outstanding under this part of the Program at one time, exclusive of obligations for Appliance Activities not otherwise exempt from section 9(a) of the Act, would not exceed $7 million in the aggregate and would not exceed $10,000 for a single customer.

The Equipment Activities would be financed through direct loans and lease agreements. The maximum amount of such secured and unsecured obligations outstanding at one time for such equipment would not exceed $14 million and the maximum amount financed for a single customer would not exceed $2 million. Interest on loans and imputed interest included in lease payments would be at market rates. The loans would be at market rates, which would not exceed the maximum Arkansas lawful rate for interest of five percent per year above the Federal Reserve Discount Rate. The loans also would contain market terms and conditions. The term of the loans will range from three months to seven years.

Expenses associated with the Program will not exceed $2 million annually, exclusive of expenses allocable to loans for standard electric appliances. AP&L would finance the Program with its general corporate funds and might assign obligations acquired from customer to banks or other financial institutions, at a discount, with or without recourse. The obligations might be secured or unsecured.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–28250 Filed 11–19–92; 8:45 am]

BILLING CODE 8010–01–M

[1] Electrotechnologies include technologies for plasma arc-cutting equipment; process heating and melting equipment used to cut and melt metals; microwave, induction and dielectric heating devices used to cook foods, fuse plastics and heat metals; and the electrical protection and control systems used in conjunction with such technologies.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 225
Friday, November 20, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, November 24, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Supplemental requirements for financial disclosure, qualified trusts, and certificates of divestiture for employees of the Corporation.

Memorandum re: Maintenance of Automated Information System.

Discussion Agenda:

Staff presentation re: Impact of current economic conditions on the adequacy of assessment rates.

Memorandum and resolution re: Statement of Policy on Assistance to Operating Insured Depository Institutions.

Memorandum and resolution re: Proposed amendments to Part 357 of the Corporation's rules and regulations, entitled "Determination of Economically Depressed Regions," which would reflect the Corporation's most recent periodic review and reasonable application of the factors which the Corporation considers in determining which regions are economically depressed.

Recommendation regarding the form of Federal Register notice for publication of the Corporation's determination to provide assistance to an institution prior to the appointment of conservator or receiver.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should contact Llauger Valentin, Equal Employment Opportunity Manager, at (202) 898-6745 (Voice); (202) 898-3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: November 17, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-28364 Filed 11-18-92; 11:55 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, November 24, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9) (A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: November 17, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-28365 Filed 11-18-92; 11:52 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, November 17, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of a certain insured bank.

Matters relating to the Corporation's corporate activities.

Matters relating to an assistance agreement with an insured bank.

Recommendation concerning an administrative enforcement proceeding.

Matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: November 17, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–28366 Filed 11–18–92; 11:49 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, November 25, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 18, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–28384 Filed 11–18–92; 2:44 pm]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 25, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed regulation to adopt a uniform multi-agency criminal referral form.

Discussion Agenda

2. Proposed 1993 Federal Reserve Board budget.
3. Proposed 1993 budget for the Office of Inspector General.
4. Further consideration of proposed amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to implement section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 regarding uniform real estate underwriting standards. (Proposed earlier for public comment; Docket No. R–0765)
5. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 18, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–28385 Filed 11–18–92; 2:48 pm]

BILLING CODE 6210–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 53384 November 9, 1992]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC

DATE PREVIOUSLY ANNOUNCED: Wednesday, November 4, 1992.

CHANGE IN THE MEETING: Deletions.

The Commission closed meeting scheduled for Tuesday, November 10, 1992, was held at 5:00 p.m., the following items were deleted from the agenda.

Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Opinions.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272–2000.

Dated: November 16, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–28317 Filed 11–17–92; 4:24 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 225
Friday, November 20, 1992

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 HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OIS-018-N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions

Correction

In the correction to notice document 92-25111 appearing on page 52827 in the issue of Thursday, November 5, 1992, in the first column, in the next to last line, "page 47469" should read "page 47473".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 10)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1992 Update

Correction

In rule document 92-27080 beginning on page 53295 in the issue of Monday, November 9, 1992, make the following corrections:

§ 1002.2 [Corrected]

1. On page 53297, in § 1002.2(f):

a. In the first column, in (46)(iv), in the second line, "(D)" should read "(d)".

b. In the second column, in (51), in the third line, insert a period after "agreement".

2. On page 53298, in § 1002.2(f), in (85), in the first line, "railroad" was misspelled.

BILLING CODE 1505-01-D

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A cumulative list of Public Laws for the second session of the 102d Congress will be published in Part II of the **Federal Register** on November 23, 1992.

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Free **Electronic Bulletin Board** Service for Public Law Numbers is available on 202–275–1538 or 275–0920.

New Publication
List of CFR Sections Affected
1973-1985

A Research Guide

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☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date)

Thank you for your order!

(Signature)

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