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Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Law Enforcement Officers and Firefighters

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations governing the special retirement provisions for law enforcement officers and firefighters employed under the Civil Service Retirement System (CSRS). The regulatory change will clarify the definition of qualifying duties, bringing the regulatory definition into conformance with a parallel definition in Federal Employees Retirement System (FERS) regulations.

EFFECTIVE DATE: December 5, 1990.

FOR FURTHER INFORMATION CONTACT: Roderick T. Meader, (202) 606-0777, extension 207.

SUPPLEMENTARY INFORMATION: On February 26, 1990, OPM published a proposed regulation (55 FR 6646) to revise regulations governing the special retirement provisions for law enforcement officers and firefighters employed under the CSRS. Specifically, we proposed to clarify the definition of "primary duties," bringing the regulatory definition into conformance with a parallel definition in Federal Employees Retirement System (FERS) regulations. We received comments from one agency, one employee organization, and eight individuals. All of the commenters appear to have misunderstood the purpose of our proposed amendment to the "primary duties" definition. The commenters apparently believe that the regulatory change would establish a requirement tha' to meet the "primary duties" definition, law enforcement officer or firefighter duties must in all cases occupy at least 50 percent of an employee's time. This is not the case. The 50-percent standard is merely an optional substitute standard. It does not supplant the regular definitional requirements. It simply means that those requirements generally can be deemed by OPM to be met if the 50-percent-of-the-time standard is satisfied. In other words, duties which occupy 50 percent of an employee's time are generally deemed to be his or her primary (paramount) duties without the need for further evidence or support. In our experience, a position that does not meet the 50-percent standard will almost always fail to satisfy the paramount duties standard. However, there may be rare instances where special circumstances allow a position to meet the paramount duties standard even though it does not meet the 50-percent standard.

Several commenters asked if it were possible that the 50-percent standard could be met if 50 percent of an employee's time was spent performing duties which are either law enforcement officer or firefighter duties. The law does expressly allow years of qualifying law enforcement officer and firefighter service to be combined for purposes of meeting the 20-year minimum service requirement under 5 U.S.C. 8336(c); however, it does not address the idea of granting special retirement coverage for employees in hybrid positions combining both law enforcement officer and firefighter duties. At present, we are not aware of any position not already qualifying solely as a law enforcement officer or firefighter position that would be qualifying as a hybrid position. It should be noted that the regulations exclude from the definition of "primary duties" any duties that are of an emergency, incidental, or temporary nature; such duties do not constitute part of the basic reason for the existence of the position and thus do not enter into a determination regarding special retirement coverage. For example, a position that does not qualify as a law enforcement officer position because law enforcement duties are not the primary duties would still not qualify even if the incumbent spent additional time on a temporary or emergency basis to assist in extinguishing fires.

Several commenters argued that the revised definition of "primary duties" incorporating the 50-percent standard should be applied only on a prospective basis. As we explained in the supplementary information of the proposed rule, the 50-percent standard has been applied under CSRS for many years. Furthermore, since the 50-percent standard is not an absolute requirement but merely a shortcut approach to establishing that the paramount duties standard is satisfied, no employee will be harmed by applying the revised regulatory definition of "primary duties" to claims for past service credit.

Accordingly, we adopt the proposed rule 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 within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect Federal employees and retirees only.

List of Subjects in 5 CFR Part 831

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

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 831 as follows:

PART 831—RETIREMENT

Subpart I—Law Enforcement Officers and Firefighters

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

Authority: 5 U.S.C. 8347.

2. In § 831.902, the definition of "primary duties" is revised to read as follows:

§ 831.902 Definitions.

* * * * *

Primary duties means those duties of a position that—

(a) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;

(b) Occupy a substantial portion of the individual's working time over a typical work cycle; and

(c) Are assigned on a regular and recurring basis.

Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion. In general, if an employee spends as average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties.

* * * * *

[FR Doc. 90-28490 Filed 12-4-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

RIN 0580-AA16

Fees for Federal Aflatoxin Test and Falling Number Determination Services

AGENCY: Federal Grain Inspection Service, USDA. [1]

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is establishing a laboratory fee for any aflatoxin test (other than the TLC or Minicolumn method) and separate hourly rate for certain test services provided at an applicant's facility when performed under the Agricultural Marketing Act (AMA) of 1946, as amended. In addition, FGIS is establishing a unit fee for the use of an aflatoxin test kit. This unit fee will be assessed, in addition to the applicable hourly rate, when the test is performed at the applicant's facility. The laboratory fee, assessed when the test is performed at the FGIS Commodity Test Laboratory in Beltsville, Maryland, or for tests when not performed at the applicant's facility, is being established to cover the costs of the test and the aflatoxin test kit. Further, FGIS is establishing a separate hourly rate for falling number determination services provided at the applicant's facility.

These fees are intended to cover, as nearly as practicable, projected operating costs, which include related supervisory and administrative costs, and to maintain reasonable operating reserves.

EFFECTIVE DATE: December 5, 1990.

FOR FURTHER INFORMATION CONTACT: Paul D. Marsden, Resources Management Division, USDA, FGIS, Box 96454, Washington, DC, 20090-6454, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Mr. John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official aflatoxin test and falling number determination services do not meet the requirements for small entities.

Information Collection and Record Keeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub.L. 96-511) and section 3504 (h) of the Act, the previously approved information collection and record keeping requirements concerning applications for inspection services including aflatoxin test and falling number determination test services have been approved by OMB under control number 0580-0012.

Background

FGIS provides laboratory tests on grain and processed commodities under the authority of the AMA. These tests have historically been performed at the FGIS Commodity Test Laboratory in Beltsville, Maryland. Aflatoxin tests on corn and other products, and falling number determination on wheat, are two of the many tests performed by FGIS in Beltsville.

The fees charged for aflatoxin and falling number determination tests appear in title 7 § 68.90 of the Code of Federal Regulations (7 CFR 68.90). Currently, when these tests are performed at the applicant's facility, described as the point of service in the proposal, the applicable hourly rates that appear in § 68.90, Table 1, apply. When these tests are not performed at the applicant's facility, fees are charged according to Table 3, Laboratory Fees.

In 1977, FGIS established aflatoxin laboratories at the applicant's facility. Since then, FGIS has relied on the Holaday-Velasco (HV) minicolumn method as a screening test and the ThinLayer Chromatograghy (TLC) method for quantitative tests. The HV minicolumn method tests samples against a standard of 20 parts per billion and the TLC method measures the actual level of aflatoxin.

In the September 29, 1989, **Federal Register** (54 FR 40151), FGIS announced the use of six FGIS-approved aflatoxin tests kits at field locations effective October 1, 1989. FGIS also announced that it would discontinue using the HV minicolumn and TLC test methods at field locations as of April 1, 1990. However, HV minicolumn and TLC test methods will continue to be available for all commodities at the FGIS Beltsville Laboratory. Since that time, it has been determined that the TLC method will continue to be available at some field locations for the unit fee of $44.00 per test. Information concerning these locations may be obtained by contacting FGIS field locations. Further, the proposal of March 30, 1990, indicated that the HV minicolumn test would be available at field locations other than the applicants facility. However, this test is not available at field locations.

Test services that are performed at the Beltsville Laboratory are being charged at a unit rate of $18.90 per HV minicolumn aflatoxin test, and $44.00 per TLC aflatoxin test. In addition, other approved aflatoxin tests performed at the Beltsville Laboratory are charged under the other laboratory test category based upon the noncontract rate listed in Table 1 § 68.90.

An additional test service, falling number determination, was implemented at applicant's facilities on September 25, 1989, with the publication of Program Directive 918.38, entitled Falling Number Determination. This test determines the falling number reading of wheat flour and meal, indirectly measuring the alpha-amylase activity in a manner that simulates some of the changes flour or meal undergo during baking. Test services that are performed at the Beltsville Laboratory or at field locations other than at the applicant's facility are being charged a unit rate of $6.30 per falling number test.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5)

Foreign buyers are increasingly requesting aflatoxin and falling number determination test services. They are also requesting that test results be determined at the applicant's facility, thereby eliminating any delays caused by mailing samples to the Beltsville Laboratory.

The shift to routinely providing aflatoxin and falling number tests at the applicant's facility has caused FGIS to examine the fees for providing these services. When these tests are provided by FGIS employees at the applicant's facility, FGIS charges an hourly rate. The current hourly rate is $18.40 per hour, contract, regular workday (Monday–Saturday), $21.00 per hour, nonregular workday (Sunday and Holiday), $22.40 per hour, noncontract, regular workday (Monday–Saturday), or $25.40 per hour, noncontract, nonregular workday (Sunday and Holiday).

This hourly rate is also charged at all locations (including an applicant's facility) where processed commodities are sampled and inspected. It is based on operating costs prior to FGIS employees performing the aflatoxin and falling number determination tests at the applicant's facility. Currently, costs are not being recovered by applying the above referenced hourly rates.

Comments

In the March 30, 1990, **Federal Register** (55 FR 12140) FGIS proposed to establish a laboratory fee of $22.10 for any aflatoxin test (other than the TLC) and separate hourly rates for certain aflatoxin and falling number determination test services provided at applicant's facility when performed under the AMA, as amended. The hourly fees, as proposed, were: Contract, regular workday (Monday–Saturday) $28.40 per hour; nonregular workday (Sunday and Holiday) $38.80 per hour; noncontract, regular workday (Monday–Saturday) $29.20 per hour; nonregular workday (Sunday and Holiday) $39.80 per hour. Further, FGIS proposed to establish a unit fee of $7.50 for the use of each aflatoxin test kit in addition to the hourly rate for each test performed. The proposal requested interested persons to submit written comments by April 30, 1990.

Five comments were received regarding the proposal. The commenters represent both association and operational interests of grain handlers and processors providing export and domestic services in the grain industry.

The commenters recognize the need to establish a separate hourly rate for aflatoxin test and falling number determination services but view the proposed rate as more than required for FGIS to recover its costs and provide quality inspection service. However, further analysis by FGIS of the actual and projected program costs and revenue has determined that the proposed contract, regular workday (Monday–Saturday) hourly rate of $28.40 per hour and the contract nonregular workday (Sunday and Holiday) of $38.80 per hour can be reduced to $24.10 and $32.90 per hour respectively, but confirms that the noncontract hourly rate as proposed should not be changed. Accordingly, these fees, as made final herein, are reasonable and necessary to cover, as nearly as practicable, costs, including related supervisory and administrative costs, and to maintain reasonable operating reserves.

The commenters also recognize the need for a unit fee to cover the cost of each aflatoxin test kit but view the unit fee as excessive and designed to recover revenue losses in the short term. The unit fee for each aflatoxin test kit includes a number of costs. These include the cost of the kit itself, required hazardous chemical disposal, periodic medical examinations for employees conducting the tests, protective clothing and equipment, and additional equipment and supplies required to conduct the tests. Hence, FGIS disagrees with this view and concludes that the unit fee as proposed and made final herein is reasonable and necessary to cover, as nearly as practicable, costs, including related supervisory and administrative costs, and to maintain reasonable operating reserves.

One commenter objected to the amount of the proposed laboratory fee for the aflatoxin test at the FGIS Commodity Test Laboratory in Beltsville, Maryland. This proposed laboratory fee is calculated by adding the cost of a test kit as previously discussed, to the average labor cost for performing the test at the noncontract hourly rate. Therefore, FGIS disagrees with this comment and concludes that the laboratory fee as proposed and made final herein is reasonable and necessary to cover, as nearly as practicable, costs, including related supervisory and administrative costs, and to maintain reasonable operating reserves.

Final Action

Section 203 of the AMA, as amended (7 U.S.C. 1622) provides for the collection of fees that are reasonable, and as nearly as practicable, to cover the costs of the services rendered. These fees include covering the FGIS administrative and supervisory costs for the performance of official services. FGIS costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies and equipment.

The current $44.00 fee for the TLC method aflatoxin test is not changed under this rule and continues to be available at some field locations. Additionally, the TLC and HV minicolumn methods will continue to be available for all commodities at the FGIS Beltsville Laboratory. The proposed rule deleted the existing laboratory fee of $18.90 for the HV minicolumn method of aflatoxin testing. However, this fee is included in this final rule as it was not intended that the laboratory fee for the aflatoxin HV minicolumn test be $22.10. Accordingly, this final rule retains the existing $18.90 laboratory fee for the aflatoxin HV minicolumn test and makes necessary conforming changes.

Further, the term "points of service," which was used in the proposal, is changed for clarity and consistency to read "at the applicant's facility." This terminology is more specific and conveys a clearer definition of where inspection services are performed. Table 1, footnote 2, and Table 2, footnote 1 are revised accordingly.

The $22.10 laboratory fee for aflatoxin tests (other than TLC or minicolumn method) includes the costs of the aflatoxin test and any aflatoxin test kit used. In addition, new hourly rates for official aflatoxin tests and falling number determination services which are performed at the applicant's facility appear in the new Table 3. These new fees are: contract, regular workday (Monday–Saturday) $24.10 per hour, nonregular workday (Sunday and Holiday) $32.90 per hour, noncontract regular workday (Monday–Saturday) $29.20 per hour, nonregular workday (Sunday and Holiday) $39.80 per hour. Furthermore, a unit fee of $7.50 per aflatoxin test kit is assessed in addition to the hourly rate for each aflatoxin test performed.

This rule redesignates in Table 1, Hourly Rates, the existing footnote 1 as footnote 2 and adds a new footnote 1 to indicate that hourly rates for aflatoxin tests and falling number determination appear in a new Table 3. The existing Table 3 is redesignated as Table 3A. Also, the undesignated heading that appears before the table is updated and revised for clarity to read "Fees for Inspection of Commodities Other Than Rice".

Several changes are made to the tables as proposed. A new undesignated heading, Fees for Laboratory Test Services, is inserted by this final actio

just before the new Table 3A. This heading is added for clarity and consistency to distinguish between Table 3, Hourly Rates, and Table 3A, Laboratory Fees.

Further, a footnote number 3 is being added by this final action to Table 3 for clarity and consistency. Adding the footnote to the table provides applicants for the aflatoxin test service a means to determine under which schedule charges will be assessed for services.

The title for Table 3 was proposed to be Hourly Rates for Aflatoxin Test and Falling Number Determination. However, for clarity and consistency, the title has been revised to read: Table 3—Hourly Rates.

FGIS monitors its program costs, revenue, and operating reserve levels to assure that there are sufficient resources for its operations. Operating costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment. While demand for test services may fluctuate, several of these costs remain constant in order to provide quality service on demand. Nonetheless, the AMA, as amended (7 U.S.C. 1622), authorizes FGIS to charge and collect fees that are reasonable and as nearly as practicable cover the cost for performing official inspection services including the related administrative and supervisory costs.

Therefore, FGIS is revising § 68.90 of the regulations to establish: (1) A laboratory fee for any aflatoxin test (other than TLC or Minicolumn method), (2) a separate hourly rate for aflatoxin test service when the test is performed at the applicant's facility, (3) a unit fee for each aflatoxin test kit used when test is performed at the applicant's facility, and (4) a separate hourly rate for falling number determination services when performed at the applicants facility.

Pursuant to the Administrative Procedures Act (5 U.S.C. 553), it is found that good cause exists for not postponing the effective date of this final action until 30 days after publication in the **Federal Register** and for making this final rule effective upon publication in the **Federal Register** because the Official Aflatoxin Test (other than the TLC and Minicolumn method) and Falling Number Determination Programs are not recovering costs and the applicable operating reserves have been, and continue to be reduced rapidly. Accordingly, these fees should be implemented as soon as possible.

List of Subjects in 7 CFR Part 68:

Administrative practice and procedure, Agricultural commodities.

For the reasons set out in the preamble, 7 CFR part 68 is revised as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*)

2. Section 68.90 is amended to read as follows:

Fees

§ 68.90 Fees for certain Federal inspection services.

The following fees apply to Federal inspection services specified below.

Fees for Inspection of Commodities Other Than Rice

TABLE 1.—HOURLY RATES [1]

Service [2]	Regular Workday (Monday—Saturday)	Nonregular Workday (Sunday & Holiday)
Contract (per hour per Service representative)	$18.40	$21.00
Noncontract (per hour per Service representative)	22.40	25.40

[1] Hourly rates for aflatoxin tests and falling number determination appear in Table 3.
[2] Original and appeal inspection services include: grading, sampling, factor analysis, checkweighing, checkloading, condition examination, demonstration of grading, and other services requested by the applicant when performed at the applicant's facility.

TABLE 2.—UNIT RATES

Service [1]	Bean, Peas and Lentil	Hops	Nongraded, Nonprocessed Commodities
Lot or sample (per lot or sample)	$—	$22.40	$—
Field run (per lot or sample)	15.00	—	—
Other than field run (per lot or sample)	11.20	—	—
Factor analysis (per factor)	3.75	—	3.75
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeal) for kind, class, grade, factor analysis, and any other quality designation as defined in the official U.S. Standards or applicable instructions when performed at other than at an applicant's facility.

Fees for Official Aflatoxin Test Services and Falling Number Determination

TABLE 3.—HOURLY RATES

Service [1 2 3]	Regular Workday (Monday—Saturday)	Nonregular Workday (Sunday & Holiday)
Contract (per hour per Service representative)	$24.10	$32.90
Noncontract (per hour per Service representative)	29.20	39.80

[1] Service includes sampling, grinding, tests, and certificationwhen performed at an applicant's facility.
[2] In addition to the hourly rate, $7.50 per test kit will be assessed for each aflatoxin test performed.
[3] When the service is not performed at an applicant's facility, the applicable laboratory fee from Table 3A will be charged.

Fees for Official Laboratory Test Services Performed at the FGIS Commodity Test Laboratory at Beltsville, Maryland, for Processed Agricultural Products

TABLE 3A.—LABORATORY FEES [1]

	Fees
Laboratory report	$ 3.00
Laboratory testing:	
(a) In addition to the fees if any, for sampling or other requested service a fee will be assessed for each laboratory test (original, retest, or appeal) as follows:	
(1) Acidity Greek	6.30
(2) Acid value-oil	6.30
(3) Aflatoxin test (other than TLC or Minicolumn method)	22.10
(4) Aflatoxin (TLC)	44.00
(5) Aflatoxin (Minicolumn method)	18.90
(6) Appearance, flavor and odor-oils	3.15
(7) Arachidic acid	12.10
(8) Ash	7.60
(9) Bacteria count	7.90
(10) Baking test Bread	18.90
(11) Baking test-cake	26.50
(12) Baking test-cookies	23.60
(13) Baume	6.30
(14) Bostwick (cooked)	12.60
(15) Bostwick (uncooked)	6.30
(16) Calcium (AOAC)	7.90
(17) Calcium enrichment	7.90
(18) Carotenoid color	9.45
(19) Checked and broken macaroni units	6.30
(20) Clarity of oil involving heating	6.30
(21) Cold test-oil	6.30
(22) Coliform	18.90
(23) Color-bleached	9.45
(24) Color-gardner	3.15
(25) Color-lovibond	3.15
(26) Color-oil and shortening	3.15
(27) Congeal point	15.10
(28) Cooking test	6.30
(29) Crude fat	6.30
(30) Crude fiber	10.10
(31) Density	6.30
(32) Dextrose equivalent	18.00
(33) Diastatic activity of flour	18.90
(34) Enrichment-quick test	3.15
(35) Falling number	6.30
(36) Farinograph characteristics	23.60
(37) Fat-acid hydrolysis	12.60
(38) Fat acidity	9.45
(39) Fat stability-AOM	12.60
(40) Filth-heavy	15.60
(41) Filth-light	18.90
(42) Flash point-open and close cup	9.45
(43) Foam test	18.90
(44) Foots-heated and/or chilled	6.30
(45) Foreign material-processed grain products	9.45
(46) Free fatty acids	6.30
(47) Heating test-oil and shortening	6.30
(48) Hydrogen ion activity pH	9.45
(49) Insoluble bromides	6.30
(50) Insoluble impurities-oil and shortening	6.30
(51) Iodine number or value	9.45
(52) Iron enrichment	12.60
(53) Linolenic acid (fatty acid profile)	12.10
(54) Lipid phosphorous	47.00
(55) Loaf volume	18.90
(56) Lysine from fortification	23.10

TABLE 3A.—LABORATORY FEES [1]—Continued

	Fees
(57) Lysine from hydrolysis of protein	12.10
(58) Maltose value-flour	18.90
(59) Marine oil in vegetable oil-qualitative	6.30
(60) Melting point-Wiley	12.60
(61) Moisture-distillation	9.45
(62) Moisture-oven	4.40
(63) Moisture and volatile matter-oil and shortening	6.30
(64) Neutral oil loss	18.90
(65) Nitrogen solubility index	15.70
(66) Oven leak test-oil can	9.45
(67) Oil content-oilseed	9.45
(68) Particle size-flour	14.90
(69) Performance test-prepared bakery mix	21.70
(70) Peroxide value	6.30
(71) Phosphorous	12.60
(72) Popping value-popcorn	18.90
(73) Potassium bromate-qualitative	3.15
(74) Potassium bromate-quantitative	9.45
(75) Protein dispersibility index	15.70
(76) Protein, Kjeldahl	7.30
(77) Purity-Monosodium glutamate	25.20
(78) Reducing sugars	18.90
(79) Refractive index	9.45
(80) Riboflavin	25.20
(81) Rope spore count	31.50
(82) Salmonella	37.00
(83) Salt content	9.45
(84) Saponification number	9.45
(85) Sedimentation	15.70
(86) Sieve test	4.40
(87) Smoke point	9.45
(88) Softening point	12.60
(89) Solid fat index	21.80
(90) Specific baking volume-cake mix	21.80
(91) Specific gravity-oils	12.60
(92) Starch damage-flour	14.90
(93) Staphylococcus aureus	24.50
(94) Sucrose	18.90
(95) Test weight per bushel-other than grain	2.60
(96) Tilletia controversa Kuhn (TCK)	25.20
(97) Unsaponifiable matter	12.60
(98) Urease activity	9.45
(99) Viscosity	12.60
(100) Water soluble protein	15.70
(101) Xanthydrol test for rodent urine	12.60
(102) Other laboratory tests	([2])
(b) If a requested test is to be reported on a specified moisture basis, a fee for moisture test will also be assessed.	

[1] When laboratory test service is provided for FGIS by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to FGIS for the service provided.

[2] Fees for other laboratory tests not referenced above will be based on the noncontract hourly rate listed in Table 1.

Dated: November 28, 1990.

John C. Foltz,

Administrator.

[FR Doc. 90-28368 Filed 12-4-90; 8:45 am]

BILLING CODE 3410-EN-F

Agricultural Marketing Service

7 CFR Part 907

[Docket No. FV-90-174FR]

Navel Oranges Grown in Arizona and Designated Part of California; Weekly Levels of Volume Regulation for the 1990-91 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the weekly shipping schedule and percentage allocation between districts of California-Arizona navel oranges for the 1990-91 season. Consistent with program objectives, such action is expected to be needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges during the 1990-91 season and to enhance producer returns. This action is based on a marketing policy which was adopted by the Navel Orange Administrative Committee (Committee) on July 10, 1990, and subsequently revised at open meetings held throughout the production area and on comments received from interested persons. The Committee locally administers the marketing order covering navel oranges grown in Arizona and a designated part of California.

EFFECTIVE DATE: December 5, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2524-S., P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-8139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order

12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 130 handlers of navel oranges who are subject to regulation under the marketing order and approximately 4,070 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel oranges may be classified as small entities.

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

The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis is expected to contribute to the Act's objectives of orderly marketing and improving producers' returns.

Like many citrus types, mature navel oranges can be stored on the tree to be marketed at a later time. Usually a high proportion of the crop is mature early in the season and could be marketed; but markets may be insufficient to absorb that quantity of fruit in a short period of time. The on-tree storage characteristic of the navel orange permits the effective use of the flow-to-market (volume regulation) provisions of the order. Thus, volume regulations can be a valuable tool in achieving the goal of market stabilization for navel oranges.

The major reason for the use of volume regulations under the navel orange marketing order is to establish and maintain orderly marketing conditions for navel oranges and thereby benefit producers through higher returns. Such regulation can at the same time benefit consumers by maintaining adequate supplies of navel oranges in the marketplace.

The navel orange marketing order also contains a variety of provisions designed to provide handlers with marketing flexibility within an established volume regulation week. When volume regulation is established by the Secretary for a given week, the Committee calculates the quantity of oranges (allotment) which may be handled by each handler. The provisions of the order allow handlers to ship navel oranges in excess of their allotments, within specified limits, in response to marketing opportunities. The order includes provisions for: (1) Marketing incentive allotments; (2) shipment of oranges in excess of a handler's allotment (overshipments); (3) shipment of oranges in quantities less than a handler's allotment (undershipments); and (4) allotment loans. Marketing incentive allotments provide handlers additional allotment (up to 10 percent of each handler's weekly allotment for a specified number of weeks) for market development programs and allow handlers to take advantage of special marketing opportunities. Handlers who want to ship more than their allotment are permitted to overship that amount by one car (one car equals 1,000 cartons at 37.5 pounds net weight each) or by 20 percent of their allotment level, whichever is greater. A handler may overship in a given week, but the overshipment must be offset against the following week's allotment. Handlers may also ship less than their allotment during a given week which would give them the opportunity to ship more than their allotment during the next two succeeding weeks. Finally, handlers may borrow allotment from other handlers who choose to ship less than their allotment or who cannot fully utilize their allotment.

In addition, the order includes provisions that exempt the handling of certain navel oranges from volume regulation. Oranges which are used for the following purposes are exempt from volume regulation: (1) Charitable institutions or relief organizations for distribution by such agencies; (2) commercial processors for processing into products, including juice; (3) export markets; and (4) parcel post and express shipments. The Committee may also recommend for approval by the Secretary the exemption of minimum quantities of oranges from order provisions.

Pursuant to § 907.50 of the marketing order, the Committee is required to submit a marketing policy to the Secretary prior to recommending volume regulations for the ensuing season. The order authorizes volume and size regulations applicable to fresh shipments of California-Arizona navel oranges to markets in the continental United States and Canada. The marketing order does not authorize regulation of export shipments of navel oranges or navel oranges utilized in the production of processed orange products.

The Committee adopted its marketing policy for the 1990–91 season at its July 10, 1990, meeting in Los Angeles, California. The Committee presented its policy at district meetings for further discussion and review as follows: (1) Districts 1 and 4 on September 25, 1990, in Visalia, California; (2) District 3 on October 2, 1990, in Tempe, Arizona; and (3) District 2 on October 9, 1990, in Redlands, California.

The Committee estimates the 1990–91 navel orange crop to be 79,350 cars. This compares to last year's total production of nearly 89,000 cars. The 79,350 car estimate is a revision of the Committee's initial estimate of 68,650 cars and was adopted by the Committee at its September 25 district meeting.

The Committee estimates District 1, Central California, 1990–91 production at 70,000 cars compared to 79,300 cars produced in 1989–90. In District 2, Southern California, the crop is expected to be 8,000 cars compared to 8,400 cars produced last year. In District 3, the California-Arizona Desert Valley, the Committee estimates a production of 800 cars compared to 650 cars produced last year. In District 4, Northern California, the crop is expected to be 550 cars compared to 600 cars produced last year. The Committee's production estimates are revisions of the Committee's initial estimates of 59,200 cars for District 1, 8,100 cars for District 2, 850 cars for District 3, and 500 cars for District 4. These revised estimates were adopted by the Committee at its September 25 district meeting. The Committee's production estimates are expected to be modified as the season progresses.

At each district meeting, the Committee reviewed current crop conditions. At the September 25 meeting (Districts 1 and 4), the average orange size for District 1 was reported as 87 per carton, 7 percent larger than last year. It was also reported that there were 104,560 acres of navel orange groves producing in District 1, a 10 percent increase since 1982. In addition, crop quality, maturity and condition were reported as widely variable at that time. At the October 2 meeting (District 3), the average orange size for District 3 was

projected to be 5 percent smaller than last year. It was also reported that harvesting might begin as early as the week of October 8 in the Edison area. At the October 9 meeting (District 2), the average orange size was projected at 96 per carton, 14 percent larger than last year.

There may be times when small sizes as well as excessively large sizes will be shipped in fresh fruit channels at heavily discounted prices which could produce a negative return to producers. Such discounting could be disruptive to the orderly marketing of navel oranges. This condition could be alleviated through the use of size regulations authorized under the marketing order. However, because of the anticipated crop volume and distribution of orange sizes, the Committee has indicated that it presently does not believe it will be necessary to recommend to the Secretary the implementation of size regulation for the 1990–91 navel orange crop.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. According to the Committee, major export markets continue to be Hong Kong and Japan with nearly 76 percent of all navel orange exports shipped to these two markets in the past year. Navel oranges which are diverted to processing are generally those oranges which do not meet grade requirements or are too small to market economically as fresh fruit.

In terms of total crop utilization, the Committee estimates that approximately 51,250 cars of the 1990–91 crop of 79,350 cars (65 percent) will be utilized in fresh domestic markets compared with 54,000 cars (61 percent) in 1989–90; fresh exports are projected at 9,750 cars (12 percent) of the total 1990–91 crop compared to 10,000 cars (11 percent) in 1989–90; and 18,350 cars (23 percent) of the 1990–91 crop will be utilized in by-product channels and other forms of processing compared with 25,000 cars (28 percent) in 1989–90. The Committee's crop utilization estimates, like its production estimates, are revisions of its initial estimates of 45,000 cars (65 percent) utilized in fresh domestic markets; fresh exports at 9,500 cars (14 percent), and 14,150 cars (21 percent) utilized in by-product channels and other forms of processing. These revised utilization estimates were adopted by the Committee at its September 25 district meeting.

The 1990–91 season average on-tree price for California-Arizona navel oranges is not expected to exceed the season's average fresh parity equivalent price. Domestic fresh utilization about equal to the Committee's estimate of 51,250 cars is expected to result in a season average fresh on-tree price of $4.33 per carton, about 66 percent of the estimated fresh on-tree parity equivalent price of $6.56 per carton. In contrast, the preliminary estimate of the 1989-90 season average fresh on-tree price is $3.70 per carton, or 58 percent of the preliminary on-tree parity equivalent price of $6.34 per carton.

Based on the information available and for the purposes of this rulemaking process, the Committee recommended to the Secretary on July 10, 1990, a proposed weekly schedule of the quantities of navel oranges that can be shipped, if volume regulation is recommended, approved and implemented for the 1990–91 season. That proposed shipping schedule, which was based on the Committee's initial domestic utilization estimate of 45,000 cars, was revised at its September 25 district meeting and is now based on a domestic utilization estimate of 51,200 cars. The Committee estimates that fresh domestic shipments this season will be between 47,000 and 53,000 cars. The revised shipping schedule is based on a total of 51,250 cars. This figure may be adjusted throughout the season to reflect revised crop estimates.

In developing the proposed shipping schedule, the Committee considered equity of marketing opportunity and established an equity factor pursuant to § 907.51(b). The Committee compiles production estimates in cars for each district. These production estimates are based on the entire anticipated tree crop in each district. The Committee combines these production estimates to project the total production for all four districts. The Committee then projects the number of cars that could be marketed in fresh domestic channels. From the relationship between these two totals an equity factor is derived and then applied to each district's estimated production in order to determine the estimated amount of each district's production that could be moved into fresh domestic markets under regulation. Therefore, all districts, no matter how much handlers ship weekly to fresh domestic markets, should be provided the opportunity to ship, under volume regulation, the same proportionate amount to fresh domestic markets during the season. The equity factor for this season is 68 percent and is the same for all districts.

The shipping schedule also establishes the percentage allocation, pursuant to § 907.110(d) of the regulations, for each district for each week, which is used to determine each district's proportionate share of volume regulations issued for a particular week. Each district's volume limitation for a particular week is then equitably apportioned among all handlers in each district. Thus, each handler's individual allotment is based on the entire quantity of navel oranges available for all uses, including export.

A proposed rule concerning this action was published in the September 6, 1990, issue of the **Federal Register** (55 FR 36653). That rule was based on the Committee's initial shipping schedule as adopted on July 10, 1990, and provided for volume regulation for the period from the week ending on November 22, 1990, through the week ending on May 31, 1991.

Comments concerning this action were invited until October 9, 1990. Forty-four comments were received. Comments supporting the proposed action, with some modification, were submitted by the Committee, Sunkist Growers, Inc. (Sunkist) and two handlers. Comments opposing the proposed action were submitted by the Antitrust Division of the U.S. Department of Justice (DOJ); the Small Business Administration's Office of Advocacy (SBA); Farmers Alliance for Improved Regulation (FAIR); Citizens for a Sound Economy Foundation (CSE); Public Voice for Food and Health Policy (Public Voice); and twenty-five growers and/or handlers.

In addition, the Department received two requests, one from the DOJ and one from FAIR, to extend the comment period on this action. These requests were subsequently denied, as the Department determined that ample time had been provided for interested persons to analyze the proposed rule and prepare comments. Interested persons were also given the opportunity to submit information and views at open Committee meetings which were held throughout the production area.

Comments submitted by the Committee, Sunkist, and two handlers supported the proposed use of volume regulations for navel oranges during the 1990–91 season, in general, with some modifications. The Committee submitted a comment after each district meeting (September 25, October 2, and October 9) informing the Department of its revised production and utilization estimates. In summary, the Committee revised its total production forecast from 68,650 to 79,350 cars; revised its

estimate of domestic shipments from 45,000 to 51,250 cars; and revised its weekly shipping schedule to reflect these changes. These changes, as recommended and adopted by the Committee, are adopted in this final rule.

All of the commenters supporting the proposed rule contended that the published starting date for the onset of volume regulation (week ending on November 22) was too late. The Committee requested that the published shipping schedule reflect the starting date as contained in the Committee's marketing policy (week ending on October 11) rather than the week ending on November 22. The Committee stated that a later starting date would indicate to the industry that no regulation would be in effect prior to that time, and could lead to compliance and enforcement problems under the marketing order. Both the Committee and Sunkist commented that handlers could potentially flood the market prior to the first week of regulation, and that large volumes of such unregulated shipments could create a market glut with correspondingly low prices and low returns to producers. The Committee also stated that such conditions would be contrary to the orderly marketing objectives of the Act.

The Department is aware that crop and/or marketing conditions are variable and that the Committee may recommend the implementation of volume regulations sooner or later than contemplated by this rulemaking action. The Department would consider the Committee's recommendations and take whatever action is appropriate under the order to achieve the order's and the Act's purposes and objectives. Thus, no modification to the proposal regarding the onset of regulation is necessary.

Sunkist also commented that the proposed rule discussed several flexibilities provided to handlers under the navel orange order, but did not mention the Committee's authority to recommend mid-week increases in total volumes shipped in a given week, as provided in § 907.51(c) of the order. Sunkist stated that if the original supply estimate, as published in this rule or as revised at weekly volume regulation meetings, underestimates the market demand and there is no opportunity for an upward adjustment in supplies, it essentially represents a market opportunity permanently lost to the industry.

The Department recognizes the possible need for mid-week increases in the weekly allotment levels throughout the season. As in past seasons, the Department would review any recommendation for such action by the Committee and, if warranted, issue a final rule amending the initial regulation.

Sunkist also provided a discussion of its support for the navel orange marketing order. Sunkist stated that the main advantage of the order's rate of flow provision is that it allows producers as an industry to harvest and market their fruit in a manner that tailors supply to market demands, a major criterion for orderly marketing. Sunkist also stated that orderly marketing benefits producers by stabilizing and enhancing shipping point prices and benefits consumers by ensuring an adequate supply of high quality fruit over an extended period of time.

One handler commenting in general support of the proposed rule also included a discussion of the beneficial use of the navel orange marketing order. That handler stated that the regulatory provisions of the order provide a fair and practical system to stabilize volumes of navel oranges placed into the market, which results in reducing gluts and shortages, thereby enhancing producer returns and maintaining an available supply of oranges to consumers over longer periods of time. In addition, that handler also stated that due to the volume estimated for the 1990–91 navel orange crop, the costs of growing, harvesting, packing and marketing, combined with the other characteristics inherent to the industry, volume regulation for the 1990–91 season is absolutely necessary in order to assure producers a fair return on their labor and investment.

The remaining commenters raised several issues opposing the use of volume regulation for the 1990–91 navel orange crop. Many commenters who raised objections to the proposed action posed several questions on various aspects of volume regulation and the marketing order. Each issue raised is addressed herein.

Several commenters who opposed the proposal contended that volume regulations would have a significant adverse economic impact on small entities. The majority of handlers who opposed the proposal commented that the use of volume regulation causes severe operational and economic consequences for small entities. Several handlers commented that a small entity's weekly allotment under volume regulation is usually so low that it cannot operate its packinghouse at full capacity. This in turn results in an inefficient operation creating higher labor and packinghouse costs. Several handlers also commented that small entities are unable to meet the needs of the domestic and export markets under volume regulation.

The Department, in compliance with the RFA, has considered the economic impact of weekly volume regulations on small entities. Since the inception of the order, the Department has collected evidence through both formal and informal rulemaking proceedings, analyses of marketing policies, analyses related to the collection of information under the Paperwork Reduction Act, and the like that has led the Department to conclude that such regulations do not have a significant adverse impact on a substantial number of small entities.

The general purpose for, and effect of, prorate regulations, as demonstrated in the legislative histories of the Act and the order, is to benefit all producers. Prorate regulations would also help to assure a share of the domestic fresh market for the smallest and least powerful handlers as well as the largest. Small entities would find access to the fresh domestic market more difficult if the program were discontinued, and their revenues would likely be consistently lower.

Relating to small business concerns, one handler questioned the methodology for determining that there are approximately 130 handlers in the industry. The marketing order requires handlers to submit reports to the Committee's staff which allows the staff to characterize the industry in terms of number of handlers, production, disposition, and the like. Thus, the estimate of 130 handlers, the majority of which are small entities, is an accurate reflection of the average composition of the industry.

The SBA, CSE, and FAIR in their comments urged the Department to perform a regulatory flexibility analysis before adopting any recommendations of the Committee concerning the use of volume controls. The Department has certified that this action will not have a significant economic impact on small entities and, thus, the Department is not required to do a regulatory flexibility analysis under the RFA. As previously stated, the Department has collected a body of information through various proceedings under the order to support this certification.

Two handlers commenting in opposition to the proposal objected to the Department's position that this action, in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, has been determined to be a non-major rule. One handler calculated that the Committee's initial domestic utilization estimate of 45,000 cars would have an

estimated free on board (f.o.b.) value of $360 million. The commenter concluded that the regulation exceeds the threshold of $100 million which makes the regulation a major rule under Departmental Regulation 1512-1 and Executive Order 12291.

The estimated f.o.b. shipping point value is not the proper measure of the annual effect on the economy, as defined by Secretary's Memorandum 1512-1, dated June 11, 1981, for major regulations as defined under Executive Order 12291. The appropriate test is the difference between crop value with regulation and crop value without regulation. With prorate in effect, the Committee projects 1990-91 California-Arizona fresh domestic navel orange shipments at 51,250 cars. At an estimated f.o.b. shipping point price of $8.08 per carton, value at this level would total $414 million. With no prorate regulations, as much as 90 percent of the crop might be marketed in fresh domestic and export markets, but the estimated f.o.b. shipping point price would only be $5.25 per carton. Under this assumption, shipping point value would be expected to drop to about $375 million. Thus, the difference of $39 million would be less than the threshold value specified in Secretary's Memorandum 1512-1.

Two handlers who opposed the proposed rule commented that volume regulations extend the normal marketing season of navel oranges resulting in a greater amount of fruit that deteriorates and ends up going to less profitable markets. A major objective of the use of volume regulation under the marketing order is to provide the industry with the opportunity to market the largest volume of navel oranges possible in fresh domestic channels in an orderly manner. Under the order, the normal marketing season for navel oranges is that period in which the fruit is of such quality that it can be shipped and will be acceptable to consumers.

Several commenters who opposed the proposed use of volume regulation alleged that Sunkist, the industry's largest marketing cooperative organization, controls the market and manipulates the Committee and prorate to benefit its producers. FAIR alleged that Sunkist is virtually unrestricted by volume controls because it can control the weekly prorate figure with five Committee votes.

The Department's view is that volume regulations are handling regulations which help control the flow of supplies to market. All handlers are equally subject to such regulation and therefore, are limited equally.

In addition, recommendations for volume recommendations are developed by the Committee, which is comprised of members nominated by producers and handlers to represent their interests in administering the navel orange marketing order. Such individuals have an in-depth understanding of the navel orange industry and the California-Arizona citrus industries in general and are fully qualified to represent their producer and handler constituents. These members meet weekly to consider all views presented by producers, handlers, and other interested persons in making recommendations for volume regulation. A minority of members on the eleven member Committee currently represent Sunkist.

One handler contended that producers and non-Sunkist members appeared to have no input into the Committee's 1990-91 marketing policy. All producers and handlers had opportunities at the July 10 marketing policy meeting, and at subsequent district meetings held on September 25, October 2, and October 9 to review and provide input to the Committee's marketing policy.

That handler commented further that the Committee had failed to follow the requirement that all meetings held by the Committee, particularly those concerning adoption of the 1990-91 marketing policy, by announced and open to the public.

Section 907.50(b) of the order states that "All meetings of the Committee held for the purpose of formulating such marketing policies shall be open to growers and handlers. The Committee shall give notice to growers by publications of notice of such meeting in such newspapers as they deem appropriate and shall advise all handlers by mail of such meetings."

Handlers were notified through handler bulletins and public notices of the July 10 meeting and subsequent district meetings (September 25, October 2, and October 9) held regarding the 1990-91 navel orange marketing policy. These notices invited producers, handlers, and other interested persons to attend such meetings. The Committee's marketing policy was presented and adopted at its July 10 meeting. Subsequent to that action, open meetings were held throughout the production area to review and modify the policy. Changes were recommended and adopted at each such district meeting to reflect the needs of producers and handlers for the ensuing season.

Many commenters who opposed the proposed rule questioned why there are no volume restrictions on Florida and Texas navel oranges and other competing fruits. Florida and Texas navel oranges are also regulated under marketing orders. However, these marketing orders do not contain provisions for volume regulation as does the California-Arizona navel orange marketing order. Producers in Florida and Texas approved marketing orders developed through a formal rulemaking process to fit their own unique fresh marketing conditions, as was done by California-Arizona navel orange producers.

Several commenters opposing the proposal questioned why volume regulations have not been used for California-Arizona Valencia oranges during the past four seasons, but have been used for California-Arizona navel oranges. The Valencia orange industry, as represented by the Valencia Orange Administrative Committee (VOAC), has not recommended regulation for the past four seasons due to the nature of the crops and the market for Valencia oranges. The California-Arizona Valencia orange crop is traditionally more alternate bearing than the California-Arizona navel orange crop and crop maturity across growing areas is more dispersed. Moreover, the processing and export markets for Valencia oranges have been expanding and the latter provides a particularly attractive outlet for the Valencia crop. Also, most California-Arizona Valencia oranges are sold when no other competing fresh oranges are in the market. Given this combination of factors, there has been little need to regulate the flow of Valencia oranges to the fresh domestic market through the use of volume regulations. The Valencia orange regulatory record demonstrates that the industry is not opting to use features of the marketing order to regulate when regulation is not deemed necessary.

Several commenters who opposed the proposed rule questioned the equity of marketing opportunity provisions of the marketing order and the Committee's 1990-91 marketing policy and shipping schedule. In relation to equity of marketing opportunity, one handler and FAIR commented that District 1 is severely handicapped by the use of volume regulation, and is often forced to divert merchantable oranges to byproducts. Several handlers and FAIR commented that District 2 more from export opportunities than the other three districts benefits. FAIR also commented that the proposed regulations violate the Equal Protection Clause of the Constitution.

In response to these concerns regarding equity between districts,

§ 907.51 of the order requires the Committee to provide equity of marketing opportunity in the regulated market to handlers in all districts. Section 907.110 provides that the Committee must establish an equity factor which is the same for all districts. The equity factor shall be stated as a percentage of the tree crop in each district and shall reflect a quantity of oranges (grown in each district) for which there will be equitable marketing opportunity under volume regulation during the ensuing season. In the development of its marketing policy, the Committee sets an equity factor which is used in the development of the weekly shipping schedules for all districts. While this schedule may change later in the season, i.e., when crop forecasts are most reliable (the schedule has already been revised since the Committee's initial marketing policy meeting on July 10 because of changes in the crop forecast), the equity factor will always be applied equally to all districts. Thus, all districts, no matter how much they ship weekly to any market should eventually be provided the opportunity to ship, under regulation, the same proportionate amount to fresh domestic markets during the season. This is in accord with the marketing order and the underlying statute, both of which have consistently been upheld after litigation in this regard.

One handler from District 4 contended that the use of volume regulations will cause severe problems for District 4. The handler suggested that no volume regulation should be imposed on any district until such district was handling four or five percent of the industry's volume. The marketing order, however, contains no general exemption for any district. The adoption of such a general exemption would require an amendment to the marketing order. The Committee, therefore, each year must study the probable effect and timing of volume regulations in each district. The Committee, which represents the interests of the majority of producers and handlers in the industry, considered many factors in projecting a weekly shipping schedule for the season. The schedule represents the desires of the majority of producers and handlers in each district as to the length and scheduling of their shipping seasons, and provides each district with equitable marketing opportunity. In addition, the weekly shipping schedule as published in this final rule is subject to modification throughout the season. The Committee is expected to meet on a weekly basis throughout the season to consider the appropriateness of specified weekly volume regulations and recommend amendments, when necessary, to the amounts allotted by this rule for each district for the upcoming week.

In a related issue, one handler suggested that Districts 3 and 4 be removed from the weekly shipping schedule and the allotment scheduled be transferred to Districts 1 and 2. As stated above, the Committee is expected to meet weekly throughout the season to review current and prospective marketing conditions prior to recommending any level of volume regulation. The Committee may recommend open movement for Districts 3 and 4 during any week such action is warranted. It would be inappropriate to make such a change to the shipping schedule at this time.

Several handlers commenting on the proposed rule contended that there are too many loopholes and inequities in the prorate system, i.e., allotment loans and provisions for overshipment and undershipment. As previously mentioned, such provisions are not loopholes but are designed to provide handlers with marketing flexibility within an established volume regulation week.

Several commenters opposing the use of volume regulation for the 1990–91 navel orange crop alleged that the proposed rule did not satisfy the "criteria" for establishing volume regulations under the Act. Volume regulations under the Act and the marketing order may be promulgated if the Secretary finds such action would tend to effectuate the policy of the Act. As stated previously, the declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. It is the Department's view that limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis during the 1990–91 season may contribute to the Act's objectives of orderly marketing and improving producers' returns.

Related to this issue, many commenters asked the Department to define the terms "orderly marketing" and "unreasonable fluctuation in supplies and prices." These are terms used by Congress to describe its policy to establish and maintain such orderly marketing conditions for specified agricultural commodities as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices. Thus, there is no need for such definitions in this regulation.

FAIR, in its contention that the proposed rule violates the Act, alleged that the Department is using an improper "local" parity figure, which is only authorized for milk marketing orders, as opposed to the national parity price for oranges. FAIR claimed that if the Department had used the correct national parity figure, projected season average navel prices would be substantially above parity, thus making regulation impossible, according to FAIR, due to the parity limitation in the Act.

The Act provides for regulation in above parity situations in order to avoid a disruption of orderly marketing in the public interest. Furthermore, under the Act, marketing orders are issued for specific commodities, areas and usages. Parity equivalent prices which apply to most of the specific commodities, areas and usages regulated under marketing orders are not published by the National Agricultural Statistics Service (NASS).

The parity price published by the NASS for oranges includes all varieties of oranges grown in Arizona, California, Florida and Texas for all uses. Such an aggregate parity price does not adequately reflect parity for California-Arizona oranges sold in fresh market outlets. Therefore, the Department computes a parity equivalent price for the area and usage specified under Marketing Order No. 907, based on the U.S. parity price for oranges and historical relationships between U.S. average prices for oranges and average prices for fresh California-Arizona oranges. This is no statutory impediment to this method of calculating parity.

FAIR and two handlers also commented that the Department failed to "comply" with the Department's *Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'* (Guidelines) "requirement" that prorate programs used as a means of market allocation provide at least 110 percent of recent seasons' sales for the fresh domestic market. FAIR also contended that the Department failed to "comply" with the Guidelines' "requirement" to utilize volume regulations in a guarded manner.

The Guidelines recommend for market allocation and reserve pool programs that the primary markets have available a quantity equal to 110 percent of recent years' sales in those outlets before approving secondary market allocation or pooling. However, the navel orange

marketing order utilizes weekly volume regulations which have flow-to-market functions, not market allocation and reserve pool requirements, to provide an orderly flow of available navel oranges in order to avoid unreasonable fluctuations in supplies and prices. Therefore, the 110 percent recommendation is not applicable. Furthermore, the Guidelines provide recommendations only, and are not requirements with which the Secretary must comply.

In addition, the 1990–91 navel orange marketing policy meets the requirements of § 907.50 of the navel orange marketing order and follows the Guidelines' recommendations which permit each industry utilizing prorate recommendations to assess its own unique problems and needs in order to effectively serve the interests of both producers and consumers.

FAIR alleged in its comment that both the Department and the Committee have completely ignored the criteria for evaluating the potential use of supply controls set forth in the 1986 Criteria Commission report. The "Criteria Commission" was an independent team which conducted a study and published a report through the facilities of the Department's Economic Research Service. The "Criteria" were considered in this rulemaking process. However, the "Criteria" report was published as an informational tool and imposes no requirements on AMS.

Several commenters opposing the proposed rule contended that the Department has failed to comply with the Administrative Procedure Act (APA). It is the Department's view that it has acted properly and in accordance with the requirements of the Act and other applicable legislation and within the limits of the navel orange marketing order in issuing volume regulations.

The Department is using new procedure to provide even further opportunity for public comment. The procedure, implemented this season and discussed previously in this rule, includes issuing a proposed rule for public comment on the need for regulation, the shipping schedule, and other factors in advance of the first regulation, analyzing the comments and, if warranted, issuing a final rule in advance of the issuance of the first regulation of the season.

CSE and other commenters questioned how the inherent characteristics of the navel orange permit the effective use of volume regulation to maintain orderly marketing conditions. As previously mentioned, mature navel oranges can be stored on the tree and picked as needed to provide the market with a steady supply of oranges throughout the season. This on-tree storage feature is particularly valuable early in the season when a large portion of the crop is often mature but the market may not be able to absorb that amount of fruit at the time. This feature is also valuable during large crop years, such as the 1989–90 season.

One handler contended that the proposed rule should be rejected because the Committee's crop estimate was simply based on supposition. The Committee's crop estimate is based on surveys and on-going grove measurements by the Committee's field staff. The crop estimate is periodically revised throughout the season based on the results of these ongoing surveys. As stated previously in this rule, the Committee has already revised its total crop estimate from 68,650 to 79,350 cars, resulting in a revision of its estimate of domestic utilization from 45,000 to 51,250 cars.

Several commenters who raised objections to the proposed rule questioned various economic issues raised by the implementation of volume regulation. Both the DOJ and FAIR contended that producers do not benefit from prorate in the long run. The DOJ and FAIR alleged that the results of numerous economic studies provide evidence that the use of prorate programs has negative effects on producers' returns and the availability of supplies, and contributes to resource misallocation.

Several commenters asserted that some researchers have concluded that their respective analyses support the contentions that, contrary to the objectives of the Act, volume regulations have reduced producer returns as compared with returns under no regulations, and that such regulations have contributed to the inefficient allocation of resources. The Department does not agree with such an interpretation of the relevant data. Such an interpretation does not take into account many factors that might be present if there were no volume regulations, including declining shipments to processors, fluctuating prices in the fresh market, and bearing acreage and production capacity concentrated in fewer hands. Therefore, the Department does not agree that the data presented necessarily leads to the conclusions suggested by the commenters.

During the years since the inception of the navel orange marketing order, there have been significant changes in the marketing system for California-Arizona navel oranges. At one time, navel oranges were sold at public auction in terminal markets. The fruit was shipped to the auctions by rail and handlers paid the freight. The auctions were open to all buyers and sellers. In the 1960s, the auctions were abandoned in favor of the current system of selling the fruit on an f.o.b. basis under which buyers pay the freight. At the same time, there continue to be marketing risks to producers and handlers that are not effectively offset by other mechanisms, such as pricing methods, risk sharing organizations and income diversification. In addition, the major objectives of the marketing order are unchanged—achieving orderly marketing and parity prices to producers. There is no evidence that, in the absence of flow-to-market controls, a price-depressing surplus of shipments would be any less likely now than it was four decades ago. There is evidence to support the conclusion that such regulations have mitigated the adverse effects of price-depressing surpluses, particularly early each season.

Several commenters who objected to the proposed rule questioned whether producers maximize their returns under volume regulation. Related to this issue, one handler presented a calculated net monetary loss due to prorate regulations. The Department contends that, consistent with the objectives of the Act, the use of volume regulations can improve returns to producers. To illustrate, the following table compares the likely returns for the estimated 79,350 car tree crop under a 65 percent domestic fresh allotment (as recommended by the Committee) with a 96 percent allotment (assuming that 96 percent of the crop is merchantable) on an industry-wide basis. While a commenter estimated that 96 percent of the crop is merchantable fresh, the Department believes this estimate is much too high. The season average fresh on-tree price referenced in the table will vary, depending on the total volume shipped to fresh outlets.

CALIFORNIA—ARIZONA NAVEL ORANGES: PRICES AND RETURNS FOR A 79,350 CAR TREE CROP UNDER ALTERNATIVE FRESH DOMESTIC ALLOTMENT LEVELS

Item	Fresh domestic allotment	
	65 percent	96 percent
Crop size (Cars)	79,350	79,350
Domestic allotment (Cars)	51,250	76,178
Estimated exports (Cars)	9,750	(1)
Total fresh shipments (Cars)	61,000	76,178

CALIFORNIA—ARIZONA NAVEL ORANGES: PRICES AND RETURNS FOR A 79,350 CAR TREE CROP UNDER ALTERNATIVE FRESH DOMESTIC ALLOTMENT LEVELS—Continued

Item	Fresh domestic allotment	
	65 percent	96 percent
Estimated season avg. fresh on-tree price ($/carton)	$4.33	$1.43
Estimated season avg. fresh on-tree value ($ million)	$264,043	$108,892
Revenue loss on fresh sales attributable to increased allotment ($ million)		−$155,151
Percentage reduction in revenue (Percent)		−59

[1] Assume that 96 percent of production is marketed in fresh outlets, either domestic or export.

The table shows that, on an industry-wide basis, marketing 96 percent of the crop in fresh channels would reduce fresh on-tree revenue by nearly 60 percent. An individual producer's returns would likely be reduced comparably.

Several commenters alleged that the Committee has provided no evidence that producers' revenue will be consistently lower without prorate. The issuance of volume regulations under the Act is not conditioned on proving such a proposition. Moreover, revenues were modeled for the 1990–91 season under a no-regulation option and the assumption that producers would ship all of their merchantable oranges to the fresh market, as two commenters wished to do. As demonstrated above, producer revenue would be reduced as much as 59 percent compared with the seasonal projections with the recommended level of prorate.

Several commenters, including FAIR, CSE, and Public Voice, alleged that consumers do not benefit from volume regulation. Related to this issue, FAIR referenced a study by Dr. Lawrence Shepard which discussed the effects of deregulation, and suggested that: "* * * bearing acreage and shipments to processors would fall and processing prices would rise under a market-determined allocation of fruit. Prices and output would be more stable in the processing sector and less stable in the fresh orange market without the marketing order * * * average grower returns per carton would be somewhat higher but less stable and * * * productive capacity would be lower than under regulation * * * adjustment costs attending deregulation would prove transient once acreage and output matched (a new equilibrium described by the author as) market-determined levels of demand * * *."

The Department agrees that without the marketing order, shipments to processors would likely fall, and prices would be less stable in the fresh orange market. In addition, bearing acreage and productive capacity might be lower, and it would likely be concentrated in fewer hands. Adjustment costs associated with deregulation may prove transient to surviving producers but not to those unable to adjust quickly to the changed economic situation. Also, consumers would likely question the need to adjust to the much greater variability in supplies and prices. Thus, volume regulations can provide for the maintenance of ample supplies of navel oranges to consumers at times when they are needed and the ability to obtain a price which will provide suppliers the incentive to stay in business.

Additionally, there is a strong argument that prorates reduce variability in prices on an interseasonal basis, resulting in a rightward shift in the supply curve due to decreased producer uncertainty. That is, with decreased price variability, producers are willing to supply more oranges for a given return, resulting in an increase in social welfare.

CSE and several other commenters expressed the opinion that "no regulation" would foster a better long-term market outlook for navel oranges. On an intra-season basis, the program promotes orderly marketing, the purpose of which is to furnish sufficient navel orange supplies to fresh markets throughout the season and to avoid price-depressing gluts, particularly during the first few months of the season when supplies are heaviest. If the program were discontinued, projections based on historical relationships suggest that the short-run effects would be much greater variability in weekly supplies and prices than occurs with the use of prorate regulations. The expected long-run effect of discontinuing prorate is less certain, although there are indications that prices would rise because of more price risk to producers.

FAIR presented several alternatives to the 1990–91 shipping schedule as published in the proposed rule. First, FAIR suggested that the orange industry not be re-regulated. At this time, it is the Committee's view that volume regulation is needed for the 1990–91 season. However, the Committee is not precluded from a no-prorate option. In fact, experience shows that when the Committee deems prorate inappropriate, no regulations are recommended. During the 1989–90 season, for example, prorate regulations did not commence until the week ending on November 9, 1989, and were discontinued following the week ending on March 29, 1990.

Second, FAIR suggested that the Department and Committee comply with the provision in the Guidelines and establish an allocation to the fresh domestic market of 110 percent of recent seasons' primary market sales. This topic was discussed above.

Third, FAIR suggested that prorate should only be utilized as a flow-to-market tool, i.e., making the entire fresh quality crop (approximately 90 percent) available to the domestic fresh market. It is the Department's view that prorate regulations are utilized as a flow-to-market tool whereby the industry attempts to market the largest possible volume of navel oranges in fresh domestic markets in an orderly manner consistent with protecting producer returns. As illustrated earlier in this rule, if producers were able to ship a high percentage of their merchantable oranges into the fresh market, producers revenue could be reduced as much as 59 percent.

Fourth, FAIR suggested that prorate only be initiated when the weekly computed revenue falls below the three-week moving average revenue. Such a formula could be used, although on a delayed basis. In view of this delay, this alternative would be unworkable over the course of the season. Relative price levels are established early in the season based primarily on current and prospective supplies as well as consumer demand. Week-to-week price changes thereafter may or may not result in price levels requiring termination or implementation of prorate. Following this procedure would increase the difficulty of providing equity of marketing opportunity to the districts. The Committee is responsible for evaluating the market during the season and has the flexibility to adjust its recommendation for regulation to emerging conditions to support the orderly marketing of California-Arizona navel oranges.

Fifth, FAIR suggested setting prorates at a relatively high constant level (2,000 or 2,250 cars) for the entire season providing, according the FAIR, substantially increased flexibility and initiative and a consistent maximum shipping level. Recommending any specific level of volume regulation for the entire season would be inconsistent with the nature of the marketing order. The marketing order is one of flow-to-market rather than allocation and is designed to control the short term rate of flow. Further, a constant prorate level

would not reflect changes in supplies or market conditions. This approach would not provide the Committee with the opportunity to individually analyze the need for and level of regulation on a weekly basis.

Sixth, FAIR suggested establishing an early termination date for prorate at approximately February 15 to coincide with the end of freeze risk, and facilitate, according to FAIR, the objectives of the Guidelines that prorate be used guardedly and during limited portions of the season. While mid-February may usually bring an end to the risk of a serious freeze, the risk of a freeze is not the only reason to regulate during any season. The major objective is to provide an orderly flow to market of available navel oranges in order to avoid unreasonable fluctuations in supplies and prices. The 1990–91 navel orange marketing policy meets the requirements of section 907.50 of the navel orange order and conforms with the Guidelines, which call for each industry utilizing prorate recommendations to assess its own unique problems and needs in order to effectively serve the interests of both producers and consumers.

Seventh, FAIR suggested establishing a shipping schedule that allocates prorate consistent with recent historical shipping patterns, providing four-year average weekly shipments plus 10 percent as an example, with the objective of equalizing the burden of regulation felt by all handlers. The Committee uses historical patterns in developing an initial, tentative shipping schedule. However, in addition to historical patterns, it is also necessary to take into account the prospective size of the new season's crop and other factors required by the marketing order. Further, arbitrarily increasing the four-year average by any set amount would not necessarily provide a realistic reflection of available supplies or market needs. It is not clear how this alternative would equalize the burden of regulation.

Eighth, FAIR suggested establishing a shipping schedule that is equally binding on all districts. As discussed earlier, the shipping schedule as it appears in the Committee's marketing policy provides each district with equitable marketing opportunity whereby each district is provided the opportunity to ship, under volume regulation, the same proportionate amount to fresh domestic markets during the season.

Therefore, for the reasons stated, the above comments in opposition to the proposed rule, as well as the alternatives presented, are denied.

The shipping schedule set forth in this final rule has been revised, by extending the district carton figures and district percent allocation figures by one more decimal point for the purpose of accuracy. Also, the volume regulation amounts for the weeks ending on November 22, November 29, and December 6, 1990, have been omitted.

After consideration of all relevant material presented, including the Committee's recommendation, the comments received, and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Handlers have already begun harvesting their 1990–91 California-Arizona navel oranges; (2) the shipping schedule is based on a marketing policy which was adopted by the Committee at open meetings; and (3) this action is needed to establish and maintain orderly marketing conditions, consistent with the declared policy of the Act.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR part 907 continues to read as follows:

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

2. A new § 907.1020 is added to read as follows:

§ 907.1020 Navel orange regulation 720.

The shipping schedule below establishes the quantities of navel oranges grown in California and Arizona, by district, which may be handled during the specified weeks as follows:

Week Ending	District 1	District 2	District 3	District 4	Total
	cartons/ % (000)	cartons/ % (000)	cartons/ % (000)	cartons/ % (000)	cartons (000)
(a) 12-13-90	1,824.0/91.2	76.0/3.8	66.0/3.3	34.0/1.7	2,000
(b) 12-20-90	1,620.0/90.0	81.0/4.5	61.2/3.4	37.8/2.1	1,800
(c) 12-27-90	766.8/85.2	75.6/8.4	28.8/3.2	28.8/3.2	900
(d) 01-03-91	1,065.0/85.2	123.75/9.9	28.75/2.3	32.5/2.6	1,250
(e) 01-10-91	1,443.75/87.5	165.0/10.0	13.2/0.8	28.05/1.7	1,650
(f) 01-17-91	1,485.8/87.4	176.8/10.4	8.5/0.5	28.9/1.7	1,700
(g) 01-24-91	1,480.7/87.1	181.9/10.7	8.5/0.5	28.9/1.7	1,700
(h) 01-31-91	1,436.5/84.5	229.5/13.5	5.1/0.3	28.9/1.7	1,700
(i) 02-07-91	1,445.0/85.0	231.2/13.6		23.8/1.4	1,700
(j) 02-14-91	1,453.5/85.5	232.9/13.7		13.6/0.8	1,700
(k) 02-21-91	1,453.5/85.5	232.9/13.7		13.6/0.8	1,700
(l) 02-28-91	1,544.4/85.8	246.6/13.7		9.0/0.5	1,800
(m) 03-07-91	1,634.0/86.0	260.3/13.7		5.7/0.3	1,900
(n) 03-14-91	1,637.8/86.2	262.2/13.8			1,900
(o) 03-21-91	1,637.8/86.2	262.2/13.8			1,900
(p) 03-28-91	1,637.8/86.2	262.2/13.8			1,900
(q) 04-04-91	1,637.8/86.2	262.2/13.8			1,900
(r) 04-11-91	1,637.8/86.2	262.2/13.8			1,900
(s) 04-18-91	1,641.6/86.4	258.4/13.6			1,900
(t) 04-25-91	1,555.2/86.4	244.8/13.6			1,800
(u) 05-02-91	1,555.2/86.4	244.8/13.6			1,800
(v) 05-09-91	1,555.2/86.4	244.8/13.6			1,800
(w) 05-16-91	1,297.5/86.5	202.5/13.5			1,500
(x) 05-23-91	1,038.0/86.5	162.0/13.5			1,200

Week Ending	District 1	District 2	District 3	District 4	Total
	cartons/ % (000)	cartons/ % (000)	cartons/ % (000)	cartons/ % (000)	cartons (000)
(y) 05-30-91	521.4/86.9	78.6/13.1			600
(z) 06-06-91	219.5/87.8	30.5/12.2			250
(aa) 06-13-91	91.0/91.0	9.0/9.0			100

Dated: November 30, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-28484 Filed 12-4-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-207-AD; Amdt. 39-6824]

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737-300, -400, and -500 series airplanes, which requires visual inspection of certain wire bundles located above the overhead ceiling panels for damage due to chafing against ceiling panel hardware, and repair, if necessary. This amendment is prompted by a report of burned wire bundles caused by short circuits resulting from chafed wiring. This condition, if not detected and corrected, could result in fire and smoke in the passenger cabin and cockpit.

EFFECTIVE DATE: December 21, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Oshiro, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, telephone (206) 227-2793. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The FAA has recently received a report of burned wire bundles located above the overhead ceilings panels between fuselage stations 270 and 300 on a Model 737-300 series airplane. One operator reported that a strong burning odor was detected by the flight crew of a Model 737-300 airplane shortly after resetting several circuit breakers as part of a preflight checklist. Investigation has revealed that the odor resulted from the burning of wires above an overhead interior ceiling panel located between fuselage stations 270 and 300. The burned wires were the result of electrical short circuits caused by damage to wire insulation due to chafing of the wire bundle with the ceiling panel latch mechanism. This condition, if not detected and corrected, could result in fire and smoke in the cockpit and passenger cabin.

The ceiling panel design and wire bundle installation is common to the Model 737-300, -400, and -500 series airplanes. Therefore, the potentially unsafe condition could exist on any of these models.

The FAA has reviewed and approved Boeing Service Letter 737-SL-25-58, dated August 3, 1988, which describes procedures for the inspection and, if necessary, addition of protective sleeving. The manufacturer is developing a modification to the ceiling panel to prevent chafing of the wire bundles. The FAA may consider further rulemaking to terminate the repetitive inspections.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires visual inspection of wire bundles located above overhead ceiling panels between fuselage stations 270 and 300 for damage due to chafing against ceiling panel hardware, and repair if necessary.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39-[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to Model 737-300, -400, and -500 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the occurrence of fire and smoke in the passenger cabin and cockpit, accomplish the following:

A. Within the next 60 days after the effective date of this AD, visually inspect the wire bundles above the overhead ceiling panels between fuselage stations 270 and 300 for damage due to chafing or interference with ceiling panel bracketry and/or latch mechanisms. If wire damage is found, prior to further flight, repair in accordance with Boeing Standard Wiring Practices Document and add Expando PT or equivalent protective sleeving using methods specified in Boeing Service Letter 737-SL-24-58, dated August 3, 1988.

B. Repeat the inspection procedure required by paragraph A. of this AD at intervals not to exceed 120 days.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

This amendment becomes effective December 21, 1990.

Issued in Renton, Washington, on November 26, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-28503 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-147-AD; Amendment 39-6827]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all de Havilland Model DHC-7 series airplanes, which required repetitive visual inspections of the right-hand main landing gear (MLG) frame and attachment bolts to detect heat damage, and repair, if necessary. This condition, if not corrected, could result in degredation of the structural integrity of the right-hand MLG frame and attachment bolts and possible malfunction of the MLG. This action requires the installation of a modification which relocates the external power grounding stud to the nacelle longeron, and consititutes terminating action for the repetitive inspections.

EFFECTIVE DATE: January 14, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garrat Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-09-02, Amendment 39-6579 (55 FR 14411, April 18, 1990), applicable to all de Havilland Model DHC-7 series airplanes, to require the installation of a modification which relocates the external power grounding stud to the nacelle longeron, and constitutes terminating action for the repetitive inspections, was published in the **Federal Register** on September 17, 1990 (55 FR 38081).

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

Two comments were received in response to the proposal; both commenters supported the rule.

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

It is estimated that 43 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The modification kit will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,040.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6579 (55 FR 14411, April 18, 1990), AD 90-09-02, with the following new airworthiness directive:

Boeing of Canada, LTD., de Havilland Division: Applies to all de Havilland Model DHC-7 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent possible malfunction of the right main landing gear (MLG), accomplish the following:

A. Within 100 landings after May 29, 1990 (the effective date of AD 90-09-02), and thereafter at intervals not to exceed 500 landings, conduct a visual inspection of the right MLG frame and attachment bolts, in accordance with paragraph A. of the Accomplishment Instructions in de Havilland Service Bulletin No. 7-24-66, Revision B, dated June 23, 1989.

1. If no damage is found, reassemble parts and return the airplane to service.

2. If damage is found, replace with serviceable parts prior to further flight, in accordance with the service bulletin.

B. Within 180 days after the effective date of this AD, install Modification No. 7/2577, which relocates the external power grounding stud, in accordance with paragraph B of the Accomplishment Instructions in de Havilland Service Bulletin No. 7-24-66, Revision B, dated June 23, 1989. Installation of this modification constitutes terminating action for the repetitive inspections required by paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170.

Note: The request should be submitted directly to the Manager, New York Aircraft ACO, ANE-170, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York ACO, ANE-170.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

This amendment supersedes Amendment 39-6579, AD 90-09-02.

This amendment becomes effective January 14, 1991.

Issued in Renton, Washington, on November 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-28504 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-247-AD; Amdt. 39-6826]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F-28 Mark 0100 series airplanes, which requires repetitive inspections to detect missing, broken, or defective tie bolts and nuts in the main landing gear (MLG) wheel assemblies, and replacement of defective parts, if necessary; and eventual replacement of the main landing gear (MLG) wheel assemblies with modified wheel assemblies. This amendment is prompted by reports of MLG wheel assembly bolt failures. This condition, if not corrected, could result in wheel failure, reduced steering capability, loss of braking performance, structural damage, and possible injury to persons.

EFFECTIVE DATE: December 24, 1990.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314 and Aircraft Braking Systems Corporation, 1204 Massillon Road, Akron, Ohio 44306-4186. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of The Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Fokker Model F-28 Mark 0100 series airplanes. There have been several reports of the main landing gear (MLG) wheel assembly tie bolts failing on Fokker Model F-28 Mark 0100 series airplanes. In July 1990, Aircraft Braking Systems Corporation, the manufacturer of the wheel assemblies, issued a service bulletin which provides instructions to modify the MLG wheel assemblies and includes procedures to install larger diameter tie bolts. On September 26, 1990, an inboard wheel failed on a Model F-28 Mark 0100 while the airplane was taxiing prior to takeoff. Investigation revealed that all of the tie bolts on this airplane's unmodified MLG wheel assembly had failed. This condition, if not corrected, could result in wheel failure, reduced steering capability, loss of braking performance, structural damage, and possible injury to passengers or persons on the ground.

Fokker has issued Service Bulletin No. F100-32-044, dated October 24, 1990, which describes procedures to replace the MLG wheel assemblies with modified wheel assemblies. The Fokker service bulletin references Aircraft Braking Systems Corporation Service Bulletin Fo-100-32-24, dated July 30, 1990, for additional instructions on how to accomplish the modification.

The RLD has issued Airworthiness Directive (AD) BLA No. 90-122 addressing this subject. That AD requires (1) repetitive inspections of the wheels for missing bolts prior to each flight; (2) inspection of the tie bolts for cracks at each tire change, and replacement of the bolts, if necessary; (3) an inspection of all bolts and nuts for crossed threading and of their self-locking feature for minimum torque, and replacement of all defective parts, if necessary; and (4), as the final requirement, the eventual installation of wheels modified in accordance with Fokker Service Bulletin F100-32-044.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive visual inspections for missing bolts, magnetic particle inspections to detect cracked MLG wheel assembly tie bolts, replacement of bolts, if necessary, and eventual installation of modified MLG wheel assemblies; in accordance with the service bulletins previously described. The actions required by this AD parallel the substance of those required by the AD issued by the RLD, as described above.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Fokker: Applies to all Model F–28 Mark 0100 series airplanes, equipped with main wheel assemblies Part Nos. 5008131–2 and 5008131–3, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent wheel failure, reduced steering capability, loss of braking performance, structural damage and possible injury to people, accomplish the following:

A. Within 6 days after the effective date of this AD, and thereafter prior to each flight, perform a visual inspection of the main landing gear (MLG) wheel assemblies for missing or cracked tie bolts. If any bolt is broken or missing, prior to further flight, replace the wheel with a serviceable wheel.

B. Upon removal of any wheel in accordance with paragraph A. of this AD or for a tire change, accomplish the following:

1. After thorough cleaning, perform a magnetic particle inspection of all main wheel tie bolts for cracks.

a. If a bolt is cracked, prior to further flight replace the cracked bolt.

b. If a bolt is broken or missing, prior to further flight, replace the bolt and the two adjacent bolts (one on each side).

c. If more than one bolt is broken or missing, prior to further flight, replace all bolts.

2. Inspect all bolts and nuts for crossed threads, and the self-locking feature for a minimum torque of 18 inch-pounds (2.0 Nm). If defective parts are found, prior to further flight, replace all defective parts.

Within 60 days after the effective date of this AD, replace the MLG wheel assemblies, having Part Nos. 5008131–2 or 5008131–3, with modified wheel assemblies, Part Number 5008131–4, in accordance with Fokker Service Bulletin F100–32–044, dated October 24, 1990. Installation of the modified wheel assemblies constitutes terminating action for the repetitive inspections required by paragraphs A. and B. of this AD.

Note: The Fokker service bulletin references Aircraft Braking System Corporation Service Bulletin Fo–100–32–24, dated June 30, 1990, for additional instructions.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314 or Aircraft Braking Systems Corporation, 1204 Massillon Road, Akron, Ohio 44306–4186. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 24, 1990.

Issued in Renton, Washington, on November 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–28505 Filed 12–4–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket Number 90–ACE–15]

Alteration of Transition Area—Columbia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal Action is to alter the 700-foot transition area at Columbia, Missouri. The E.W. Cotton Woods Memorial Airport has changed status from a public-use Instrument Flight Rules (IFR) Airport to a private-use Visual Flight Rules (VFR) Airport. Therefore, the purpose of this amendment is to remove that portion of the Columbia, Missouri, transition area that is based on the E.W. Cotton Woods Memorial Airport.

EFFECTIVE DATE: 0901 u.t.c. February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE–530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On September 11, 1990, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to alter the transition area at Columbia, Missouri (55 FR 37331). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in

Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the 700-foot transition area at Columbia, Missouri. The E.W. Cotton Woods Memorial Airport, Columbia, Missouri, has changed status from public-use IFR to private-use VFR. Accordingly, action is taken herein to remove that portion of the Columbia, Missouri, 700-foot transition area which is based on the E.W. Cotton Woods Memorial Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.18 [Amended]

2. Section 71.181 is amended as follows:

Columbia, Missouri [Revised]

That airspace extending upward from 700 feet above the surface within an 8½ mile radius of Columbia Regional Airport (latitude 38°48'49" N., longitude 092°13'12" W.); within 2½-miles each side of the Hallsville, Missouri, VORTAC 193° radial extending from the 8½-miles radius area to 10 miles south of the VORTAC; excluding the portion which overlies the Jefferson City, Missouri, 700 foot floor transition area.

Issued in Kansas City, Missouri, on November 1, 1990.

William Behan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 90–28506 Filed 12–4–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ACE–32]

Alteration of VOR Federal Airway V–506; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes a segment of VOR Federal Airway V–506 between Vichy, MO, and Springfield, MO. An FAA traffic survey for that area has indicated negligible use for that segment of V–506. In our effort to reduce chart clutter, this airway segment is revoked.

EFFECTIVE DATE: 0901 u.t.c., February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION: .

History

On October 25, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke a segment of VOR Federal Airway V–506 located between Vichy, MO, and Springfield, MO (54 FR 43433). The FAA has determined that this segment of V–506 is virtually never used or requested and is therefore a candidate for revocation. This action reduces chart clutter. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes a segment of VOR Federal Airway V–506 between Vichy, MO, and Springfield, MO. An FAA traffic survey for that area indicated negligible use for that segment of V–506. In our efforts to reduce chart clutter, this airway segment if revoked.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–506 [Amended]

By removing the words "Springfield; INT Springfield 043° and Vichy, MO, 254° radials; Vichy." and substituting the words "to Springfield."

Issued in Washington, DC, on November 19, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90–28507 Filed 12–4–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333, 444, and 448

[Docket No. 76N-482B]

RIN 0905-AA06

Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC First Aid Antibiotic Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that amends the final monograph for over-the-counter (OTC) first aid antibiotic drug products in 21 CFR part 333 that establishes conditions under which these drug products are generally recognized as safe and effective and not misbranded. This amendment allows several antibiotic combinations of bacitracin zinc, polymyxin B sulfate, and neomycin sulfate to include a suitable local anesthetic as an active ingredient. FDA is concurrently amending the antibiotic regulations in 21 CFR parts 444 and 448 to be consistent with the monograph for OTC first aid antibiotic drug products. This amendment of the final monograph is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Effective December 5, 1991; a written notice of participation and request for hearing on the amendments to 21 CFR 444.542l, 448.513a, and 448.513c by January 4, 1991; data, information, and analyses to justify a hearing on the amendments to 21 CFR 444.542l, 448.513a, and 448.513c by February 4, 1991.

ADDRESSES: Written comments or requests for a hearing on the amendments to 444.542l, 448.513a, and 448.513c to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 11, 1987 (52 FR 47312), FDA issued a final monograph for OTC first aid antibiotic drug products in subpart B of 21 CFR part 333. The monograph provided for combinations of bacitracin ointment or bacitracin-neomycin sulfate-polymyxin B sulfate ointment and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient (21 CFR 333.120(b))(1) and (2)). In the **Federal Register** of August 18, 1989 (54 FR 34188), FDA issued a proposed amendment, and in the **Federal Register** of March 15, 1990 (55 FR 9721), FDA issued a final amendment to the final monograph for OTC first aid antibiotic drug products to allow bacitracin-polymyxin B sulfate topical aerosol to include a suitable local anesthetic as an active ingredient (§ 333.120(b)(3)).

On October 30, 1989, FDA received three citizen petitions (Docket Nos. 76N-482B/CP0001, CP0002, and CP0003), requesting the amendment of 21 CFR part 333 to include a suitable local anesthetic in several antibiotic combinations containing bacitracin zinc, polymyxin B sulfate, and neomycin sulfate. Specifically, the petitions requested that the following paragraphs be added to § 333.120(b):

(3) Bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment containing, in each gram, in a suitable ointment base the following:

(i) 500 units of bacitracin zinc, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(ii) 400 units of bacitracin zinc, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(iii) 500 units of bacitracin zinc, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient;

Provided, that it meets the tests and methods of assay in § 448.513c(b).

(4) Bacitracin zinc-polymyxin B sulfate ointment containing, in each gram, 500 units of bacitracin zinc, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable ointment base: *Provided*, that it meets the tests and methods of assay in § 448.513a(b).

(5) Neomycin sulfate-polymyxin B sulfate cream containing, in each gram, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle: *Provided*, That it meets the tests and methods of assay in § 444.542l(b).

The citizen petitions noted that each of the combinations of first aid antibiotic active ingredients and local anesthetic active ingredients listed under 21 CFR 333.120(b) contain the ingredient bacitracin. The petitions contended that formulations containing bacitracin and formulations containing bacitracin zinc may be interchanged freely with no adverse effects on safety or efficacy. The petitions noted that bacitracin zinc, as well as bacitracin, have been utilized in OTC drug products for many years, and the petitions argued that it is unnecessary to restrict the usage of the combination together with a topical anesthetic to the bacitracin base alone.

After reviewing the citizen petitions, the agency concluded that there was sufficient evidence to generally recognize the requested combinations as safe and effective and not misbranded for OTC first aid antibiotic-anesthetic use. The agency's proposed regulation, in the form of a proposed amendment of the final monograph for OTC first aid antibiotic drug products, was published in the **Federal Register** of June 8, 1990 (55 FR 23450). In that document, the agency proposed to amend 21 CFR 333.120, 444.542l, 448.513a, and 448.513c to allow several antibiotic combinations of bacitracin zinc, polymyxin B sulfate, and neomycin sulfate to include a suitable local anesthetic as an active ingredient.

One of the petitions requested three ointment combinations containing various potencies of bacitracin zinc-neomycin sulfate-polymyxin B sulfate. Two of the potencies corresponded to the potencies listed in § 333.120 (a)(5)(ii) and (a)(5)(iii) (21 CFR 333.120 (a)(5)(ii) and (a)(5)(iii)) for bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment. However, the petition did not request a local anesthetic be allowed with the monograph combination in § 333.120(a)(5)(i) and requested another combination not included in the monograph. That combination contained 500 units of bacitracin zinc, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B. The agency considered this additional potency to be sufficiently similar to those included in the monograph and proposed to add it to the monograph as new § 333.120(a)(5)(iii). The agency proposed to redesignate § 330.120(a)(5)(iii) as paragraph (a)(5)(iv) and to add bacitracin zinc-neomycin sulfate-polymyxin B sulfate-local anesthetic combinations in § 333.120(b)(1) (21 CFR 333.120(b)(1)) that correspond to the bacitracin zinc-neomycin sulfate-polymyxin B sulfate combinations without a local anesthetic in § 333.120(a)(5). Because a previous amendment to the final monograph added paragraph (3) to § 333.120(b) (55 FR 9721 at 9722; March 15, 1990), the agency numbered the new sections

being proposed for addition to § 333.120 as paragraphs (b)(4) through (b)(6) instead of paragraphs (b)(3) through (b)(5) as requested by the petitions. The potency of bacitracin zinc in these new sections will be listed as 500 units of bacitracin, not 500 units of bacitracin zinc as requested by the petitions, for consistency with other portions of the monograph. The agency also proposed to amend § 448.513c(a)(1) to list all of the potencies of these various combinations. Finally, the agency proposed to amend §§ 444.542l(a)(1), 448.513a(a)(1), and 448.513c(a)(1) to provide for the inclusion of a local anesthetic in these products. Interested persons were invited to submit written comments by August 7, 1990, and to submit requests for an informal conference on the proposed changes in 21 CFR 444.542l, 448.513a, and 448.513c by July 9, 1990.

No comments were received in response to the proposed amendments and no requests for an informal conference were received in response to the proposed amendments to 21 CFR 444.542l, 448.513a, and 448.513c.

As discussed in the proposal (55 FR 23450 at 23452), the agency advised that any final rule resulting from the proposal would be effective 12 months after its date of publication in the **Federal Register**. Therefore, on or after December 5, 1991, any OTC drug product that is not in compliance with the final rule may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 23450 at 23452). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this amendment of the final rule for OTC first aid antibiotic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC first aid antibiotic drug products is not expected to pose such an effect on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by the amendments to 21 CFR 444.542l, 448.513a, and 448.513c may file objections to them and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) On or before January 4, 1991, a written notice of participation and request for hearing, and (2) on or before February 4, 1991, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order, and filed with the Dockets Management Branch (address above)

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 333

First aid antibiotic drug products, Labeling, Over-the-counter drugs.

21 CFR Part 444

Antibiotics.

21 CFR Part 448

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, subchapter D of chapter I of title 21 of the Code of Federal Regulations is amended in parts 333, 444, and 448 as follows:

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 333.120 is amended by redesignating paragraph (a)(5)(iii) as paragraph (a)(5)(iv) and by adding new paragraphs (a)(5)(iii), (b)(4), (b)(5), and (b)(6) to read as follows:

§ 333.120 Permitted combinations of active ingredients.

* * * * *

(a) * * *

(5) * * *

(iii) 500 units of bacitracin, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B; or

* * * * *

(b) * * *

(4) Bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment containing, in each gram, in a suitable ointment base the following:

(i) 400 units of bacitracin, 3 milligrams of neomycin, 8,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(ii) 400 units of bacitracin, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(iii) 500 units of bacitracin, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(iv) 500 units of bacitracin, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredieint;

Provided, That it meets the tests and methods of assay in § 448.513c(b) of this chapter.

(5) Bacitracin zinc-polymyxin B sulfate ointment containing, in each gram, 500 units of bacitracin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable ointment base: *Provided*, That it meets the tests and methods of assay in § 448.513a(b) of this chapter.

(6) Neomycin sulfate-polymyxin B sulfate cream containing, in each gram, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle: *Provided*, That it meets the tests and methods of assay in § 444.542l(b) of this chapter.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR part 444 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

4. Section 444.542l is amended by revising paragraph (a)(1) to read as follows:

§ 444.542l Neomycin sulfate-polymyxin B sulfate cream.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Neomycin sulfate-polymyxin B sulfate cream is a cream containing, in each gram, neomycin sulfate equivalent to 3.5 milligrams of neomycin and polymyxin B sulfate equivalent to 10,000 units of polymyxin B in a suitable and harmless vehicle. It may contain a suitable local anesthetic. Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. The neomycin sulfate used conforms to the standards prescribed by § 444.42(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1) of this chapter.

* * * * *

PART 448—PEPTIDE ANTIBIOTIC DRUGS

5. The authority citation for 21 CFR part 448 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

6. Section 448.513a is amended by revising paragraph (a)(1) to read as follows:

§ 448.513a Bacitracin zinc-polymyxin B sulfate ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bacitracin zinc-polymyxin B sulfate ointment contains bacitracin zinc and polymyxin B sulfate in a suitable and harmless ointment base. It may contain a suitable local anesthetic. Each gram contains 500 units of bacitracin and 10,000 units of polymyxin B. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. The bacitracin zinc used conforms to the standards prescribed by § 448.13(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

* * * * *

7. Section 448.513c is amended by revising paragraph (a)(1) to read as follows:

§ 448.513c Bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment; bacitracin zinc-neomycin sulfate-polymyxin B sulfate hydrocortisone ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* This drug, in a suitable and harmless ointment base, contains in each gram the following:

(i) 400 units of bacitracin, 3 milligrams of neomycin, and 8,000 units of polymyxin B; or

(ii) 400 units of bacitracin, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B, with or without 10 milligrams of hydrocortisone; or

(iii) 500 units of bacitracin, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B; or

(iv) 500 units of bacitracin, 3.5 milligrams of neomycin, and 10,000 units of polymyxin B.

It may contain a suitable local anesthetic except for combinations in paragraph (a)(1)(ii) of this section that contain hydrocortisone. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its neomycin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. The bacitracin zinc used conforms to the standards prescribed by § 448.13(a)(1). The neomycin sulfate used conforms to the standards prescribed by § 444.42(a)(1) of this chapter. The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

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Dated: November 1, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-28526 Filed 12-4-90; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-90-1505; FR-2940-F-01]

Mortgage Insurance—Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations reduces the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this

program into line with competitive market rates.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Director, Financial Services Division, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708-4325. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 insurance programs has been lowered from 10.00 percent to 9.50 percent.

Until recently, HUD regulated interest rates not only for the section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the section 235 Program. The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56266 (1982), amending 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect 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 accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small adjustment in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance Program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low- and Moderate-Income housing, Mortgage insurance, Homeownership, Grant programs; Housing and community development.

Accordingly, the Department amends 24 CFR part 235 as follows:

PART 236—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before November 19, 1990, the loan may bear interest at the maximum rate in effect at the time of application

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or before November 19, 1990, the loan shall bear interest at the rate agreed on by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: November 19, 1990.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-28458 Filed 12-4-90; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8320]

RIN 1545-AM55

Treatment of Certain Losses Attributable to Periods After October 31 of a Taxable Year of a Regulated Investment Company

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the treatment by a regulated investment company (RIC) of a net capital loss, a net long-term capital loss, or a net foreign currency loss attributable to periods after October 31 of its taxable year (a "post-October loss"). The applicable tax law was amended by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The final regulations provide guidance relating to the treatment of a post-October loss in determining a RIC's

taxable income, the amount that a RIC may designate as capital gain dividends, and the RIC's earnings and profits.

EFFECTIVE DATE: The regulations are effective for taxable years of a regulated investment company ending after October 31, 1987.

FOR FURTHER INFORMATION CONTACT: Lauren G. Shaw of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue NW., Washington , DC 20224 (Attention CC:FI&P:2), or telephone (202) 566–3828 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1094. The estimated annual burden per respondent varies from 10 minutes to 20 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

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

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

Background

On January 31, 1990, the **Federal Register** published a notice of proposed rulemaking (55 FR 3231) [FI–105–88] by cross-reference to temporary regulations [T.D. 8287] published in the **Federal Register** for the same day (55 FR 3211) under section 852 of the Internal Revenue Code of 1986. The temporary and proposed regulations reflected the addition of Code section 852(b)(8) and the amendment of Code sections 852(b)(3) and 852(c) by sections 651(b)(2) and (3) of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat. 2085) and sections 1006(1)(3), (4), and (7) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647; 102 Stat. 3342).

The regulations were intended to improve the coordination between the income tax provisions applicable to a RIC under section 852 and the provisions of section 4982, which imposes an excise tax on a RIC that fails to distribute a certain amount of its income. Section 4982 uses a 12-month period ending on October 31 in determining capital gain net income subject to the excise tax distribution requirement for the calendar year. To avoid certain mismatches between the distribution requirements under the excise tax provisions and those under the income tax provisions, section 852 provides for special income tax treatment of a post-October loss.

The regulations provided guidance relating to the determination of the amount that a RIC may designate as capital gain dividends and to the determination of earnings and profits by a RIC when it has a post-October loss.

In addition, the regulations provided procedures by which a RIC could elect to defer part or all of a post-October loss to the succeeding year for purposes of determining its taxable income. The regulations also provided guidance relating to the proper calculation of taxable income and earnings and profits for the years affected by the election.

One public comment was received concerning these regulations. No public hearing was requested, and accordingly none was held. After consideration of the written comment, the temporary regulations are adopted as revised by this Treasury Decision and the notice of proposed rulemaking is withdrawn.

Public Comment

The commentator suggested that § 1.852–11T(c) (relating to the definition of a post-October loss) be amended to clarify that post-October declines in value on instruments that are required to be marked to market on October 31 for section 4982 purposes will be treated as post-October losses.

The conference report to the Tax Reform Act of 1986 states that "the conferees understand that in applying this rule [for determining the RIC's capital gain net income for excise tax purposes], the period ending October 31 of each calendar year would be treated as the taxpayer's taxable year for purposes of the capital loss carryover provisions and for purposes of the year-end straddle and mark to market rules." H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–243 n.29. Thus, all provisions that normally apply in determining a RIC's capital gains or losses for taxable income purposes on the last day of its taxable year also apply in determining its capital gain net income for excise tax purposes on October 31. In the case of assets that are required to be marked to market, for example, the amounts determined on October 31 then become the benchmark for future determinations of gains or losses for excise tax (but not income tax) purposes. Because of this, it is possible for an asset to have two separate adjusted bases—one for income tax purposes and another for excise tax purposes. This does not pose a problem if there is no post-October loss for the taxable year. However, if there is a post-October loss, there must be parallel treatment of gains and losses for both income tax and excise tax purposes so that the RIC's earnings and profits for the year will be adequate to treat all amounts distributed for excise tax purposes as dividends.

Accordingly, § 1.852–11(c) of the final regulations provides that any item (other than a capital loss carryover) that is required to be taken into account or any rule that must be applied, for purposes of section 4982, on October 31 as if it were the last day of the RIC's taxable year must also be taken into account or applied both on October 31 and again on the last day of the RIC's taxable year for purposes of determining whether the RIC has a post-October loss for the taxable year. Thus, for example, if losses are not taken into account for purposes of section 4982 due to application of section 1092 on October 31 but are taken into account for purposes of determining the RIC's taxable income for the taxable year, the losses will be treated as sustained during the post-October period of the taxable year for purposes of determining whether the RIC has a post-October capital loss.

If, using this methodology, the RIC has a post-October loss, any item that must be marked to market for purposes of section 4982 on October 31 as if it were the last day of the RIC's taxable year must also be marked to market on October 31 and again on the last day of RIC's taxable year for purposes of determining its taxable income. This rule does not apply, however, for purposes of determining the RIC's gross income for purposes of sections 851(b)(2) or (3).

The commentator also suggested that § 1.852–11T(f) (relating to the elective deferral of post-October capital losses and post-October currency losses for purposes of determining taxable income) be amended to clarify that the deferral of a post-October loss for taxable income purposes causes such losses to be treated as arising on the first day of

the RIC's next fiscal year for purposes of computing the capital loss carryforward period. In response to this comment, the regulations have been revised to clarify that a post-October loss deferred for purposes of determining a RIC's taxable income is treated as having actually arisen on the first day of the RIC's taxable year immediately succeeding the loss year not only for the loss year and the immediately succeeding year, but also for all years following. See § 1.853–11(f).

The commentator further suggested that § 1.852–11T(j) (relating to the transition rules) be amended to (1) permit year-to-year netting of overdistributions and under-distributions, and (2) permit a retroactive capital gain designation to be made solely for purposes of computing the RIC-level dividends paid deduction.

The purpose of the RIC excise tax is to match the timing of shareholders' inclusion in taxable income of dividends received from a RIC to the calendar year in which the RIC earned the income. A RIC that has been forced to over-distribute or that did not designate the maximum amount allowable as capital gain dividends because no election was available at the time may nevertheless have paid out in total more than its actual income. Accordingly, the regulations are amended to provide that a RIC may "pay" a retroactive dividend under rules similar to the provisions for throwback (spillover) dividends under section 855 of the Code, either out of an overdistribution arising in the succeeding year as a result of the retroactive election or by paying a dividend on or before December 31, 1990. The regulations also provide that a RIC may recharacterize previously distributed dividends as capital gain dividends for purposes of determining its dividends paid deduction for the years affected.

Dividends "paid" by either method may be either ordinary or capital, within the limitations prescribed by section 852(b)(3)(C) of the Code and § 1.852–11(e) of the regulations. A change in the timing or character of distributions may, however, apply for certain other purposes relating to dividend distributions for years affected by the retroactive election (as, for example, the determination of the RIC's distribution requirements under section 4982).

Furthermore, as of the date of these amendments, some RICs may have already paid a retroactive dividend in accordance with the rules set forth in temporary regulations § 1.852–11T. Although the final regulations set forth in this Treasury Decision require a RIC to make an irrevocable election in order to pay a retroactive dividend, the manner in which a RIC must make a retroactive election and pay a retroactive dividend under § 1.852–11T is the same as the method of making the election to pay an additional dividend required in the final rules. Therefore, if a RIC complies with the provisions of temporary regulations § 1.852–11T(j), it also complies with the provisions of § 1.852–11(j).

The regulations have also been revised to permit a retroactive capital gain designation to be made for purposes of computing the RIC-level dividends paid deduction.

Finally, the commentator recommended that the operation of the transition rules not affect the tax treatment of RIC shareholders. The Internal Revenue Service recognizes that the retroactive adjustments to RIC income and deductions are necessary because the regulations regarding deferral of post-October losses were not issued at the time the distributions were originally made. Thus, to the extent that a RIC's reporting position changes as a result of making a retroactive election, the Service views the adjustments made as being purely a matter of RIC accounting and having no effect on its shareholders.

The Internal Revenue Service has determined however that no amendment to the regulations is necessary under the circumstances and therefore no amendment to the regulations has been adopted.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Although a notice of proposed rule-making that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Lauren G. Shaw of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR Part 1.851–1—1.860–1

Income taxes, Investment companies, Real estate investment trusts.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, title 26, parts 1 and 602 of the Code of Federal Regulations is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS ENDING AFTER OCTOBER 31, 1987

Paragraph 1. The authority for part 1 is amended by removing the entry for § 1.852–11T and adding the following entry for § 1.852–11:

Authority: 26 U.S.C. 7805; * * * Section 1.852–11 is also issued under 26 U.S.C. 852(b)(3)(C), 852(b)(8), and 852(c).

§ 1.852–11T [Redesignated as § 1.852–11]

Par. 2. Section 1.852–11T is redesignated as § 1.852–11 and the word "(Temporary)" is removed from the end of the section heading.

Par. 3. § 1.852–11, as redesignated, is amended as follows:

1. The words "paragraph (c)(1) of this section" are removed from each place they appear in paragraphs (e)(2)(i), (f)(3)(i), and (f)(3)(ii)(A) and the words "paragraph (c)(1)(i) of this section" are added in their place.

2. The words "paragraph (c)(2) of this section" are removed from each place they appear in paragraphs (e)(2)(ii), (f)(3)(iii), and (f)(3)(iv) and the words "paragraph (c)(1)(ii) of this section" are added in their place.

3. The words "paragraph (c)(1) or (c)(2) of this section" are removed from paragraph (e)(3) and the words "paragraph (c)(1)(i) or (c)(1)(ii) of this section" are added in their place.

4. The words "from sales or exchanges after October 31 of" are removed from each place they appear in paragraphs (e)(2)(i), (e)(2)(ii), (f)(3)(i), (f)(3)(ii)(A), (f)(3)(iii), (f)(3)(iv), and (j)(1) and the words "taken into account in computing the post-October capital loss for" are added in their place.

5. The words "attributable to sales or exchanges after October 31 of" are removed from paragraph (f)(3)(ii)(B) and the words "taken into account in computing the post-October capital loss for" are added in their place.

6. The words "from sales or exchanges during" are removed from example (2) of paragraph (h) and the word "for" is added in their place.

7. The words "from sales or exchanges made during" are removed from examples (5) and (8) of paragraph (h) and the word "for" is added in their place.

8. The words "attributable to transactions after October 31 of" are removed from each place they appear in paragraphs (f)(3)(v) and (f)(3)(vi) and the words "taken into account in computing the post-October currency loss for" are added in their place.

9. The words "transactions during" are removed from example (11) of paragraph (h).

10. Paragraphs (a), (c), (d)(1), (f)(4), (j)(2)(i), (j)(4), and (j)(5) are revised to read as follows:

§ 1.852-11 Treatment of certain losses attributable to periods after October 31 of a taxable year.

(a) *Outline of provisions.* This paragraph lists the provisions of this section.

(a) Outline of provisions.
(b) Scope.
(1) In general.
(2) Limitation on application of section.
(c) Post-October capital loss defined.
(1) In general.
(2) Methodology.
(3) October 31 treated as last day of taxable year for purpose of determining taxable income under certain circumstances.
(i) In general.
(ii) Effect on gross income.
(d) Post-October currency loss defined.
(1) Post-October currency loss.
(2) Net foreign currency loss.
(3) Foreign currency gain or loss.
(e) Limitation on capital gain dividends.
(1) In general.
(2) Amount taken into account in current year.
(i) Net capital loss.
(ii) Net long-term capital loss.
(3) Amount taken into account in succeeding year.
(f) Regulated investment company may elect to defer certain losses for purposes of determining taxable income.
(1) In general.
(2) Effect of election in current year.
(3) Amount of loss taken into account in current year.
(i) If entire amount of net capital loss deferred.
(ii) If part of net capital loss deferred.
(A) In general.
(B) Character of capital loss not deferred.
(iii) If entire amount of net long-term capital loss deferred.
(iv) If part of net long-term capital loss deferred.
(v) If entire amount of post-October currency loss deferred.
(vi) If part of post-October currency loss deferred.
(4) Amount of loss taken into account in succeeding year and subsequent years.
(5) Effect on gross income.
(g) Earnings and profits.
(1) General rule.
(2) Special rule—treatment of losses that are deferred for purposes of determining taxable income.
(h) Examples.
(i) Procedure for making election.
(1) In general.
(2) When applicable instructions not available.
(j) Transition rules.
(1) In general.
(2) Retroactive election.
(i) In general.
(ii) Deadline for making election.
(3) Amended return required for succeeding year in certain circumstances.
(i) In general.
(ii) Time for filing amended return.
(4) Retroactive dividend.
(i) In general.
(ii) Method of making election.
(iii) Deduction for dividends paid.
(A) In general.
(B) Limitation on ordinary dividends.
(C) Limitation on capital gain dividends.
(D) Effect on other years.
(iv) Earnings and profits.
(v) Receipt by shareholders.
(vi) Foreign tax election.
(vii) Example.
(5) Certain distributions may be designated retroactively as capital gain dividends.
(k) Effective date.

* * * * *

(c) *Post-October capital loss defined*—(1) *In general.* For purposes of this section, the term *post-October capital loss* means—

(i) Any net capital loss attributable to the portion of a regulated investment company's taxable year after October 31; or

(ii) If there is no such net capital loss, any net long-term capital loss attributable to the portion of a regulated investment company's taxable year after October 31.

(2) *Methodology.* The amount of any net capital loss or any net long-term capital loss attributable to the portion of the regulated investment company's taxable year after October 31 shall be determined in accordance with general tax law principles (other than section 1212) by treating the period beginning on November 1 of the taxable year of the regulated investment company and ending on the last day of such taxable year as though it were the taxable year of the regulated investment company. For purposes of this paragraph (c)(2), any item (other than a capital loss carryover) that is required to be taken into account or any rule that must be applied, for purposes of section 4982, on October 31 as if it were the last day of the regulated investment company's taxable year must also be taken into account or applied in the same manner as required under section 4982, both on October 31 and again on the last day of the regulated investment company's taxable year.

(3) *October 31 treated as last day of taxable year for purpose of determining taxable income under certain circumstances*—(i) *In general.* If a regulated investment company has a post-October capital loss for a taxable year, any item that must be marked to market for purposes of section 4982 on October 31 as if it were the last day of the regulated investment company's taxable year must also be marked to market on October 31 and again on the last day of the regulated investment company's taxable year for purposes of determining its taxable income. If the regulated investment company does not have a post-October capital loss for a taxable year, the regulated investment company must treat items must be marked to market for purposes of section 4982 on October 31 as if it were the last day of the regulated investment company's taxable year as marked to market only on the last day of its taxable year for purposes of determining its taxable income.

(ii) *Effect on gross income.* The marking to market of any item on October 31 of a regulated investment company's taxable year for purposes of determining its taxable income under paragraph (c)(3)(i) of this section shall not affect the amount of the gross income of such company for such taxable year for purposes of section 851(b) (2) or (3).

(d) *Post-October currency loss defined.* For purposes of this section—

(1) *Post-October currency loss.* The term *post-October currency loss* means any net foreign currency loss attributable to the portion of a regulated investment company's taxable year after October 31. For purposes of the preceding sentence, principles similar to those of paragraphs (c)(2) and (c)(3) of this section shall apply.

* * * * *

(f) * * *

(4) *Amount of loss taken into account in succeeding year and subsequent years.* If a regulated investment company has a post-October capital loss or a post-October currency loss for any taxable year and an election under paragraph (f)(1) is made for that year, then, for purposes of determining the taxable income of the company for the succeeding year and all subsequent years, all capital grains and losses taken into account in determining the post-October capital loss, and all foreign currency gains and losses taken into

account in determining the post-October currency loss, that are not taken into account under the rules of paragraph (f)(3) of this section in determining the taxable income of the regulated investment company for the taxable year in which the loss arose shall be treated as arising on the first day of the succeeding year.

* * * * *

(j) * * *

(2) *Retroactive election*—(i) *In general.* A regulated investment company may make an election (a "retroactive election") under paragraph (f)(1) for a taxable year with respect to which it has filed an income tax return on or before May 1, 1990 (a "retroactive election year") by filing an amended return (including any necessary schedules) for the retroactive election year reflecting the appropriate amounts and by attaching a written statement to the return that complies with the requirements of paragraph (i)(2) of this section.

* * * * *

(4) *Retroactive dividend*—(i) *In general.* A regulated investment company that makes a retroactive election under this section for a retroactive election year may elect to treat any dividend (or portion thereof) declared and paid (or treated as paid under section 852(b)(7)) by the regulated investment company after the retroactive election year and on or before December 31, 1990 as having been paid during the retroactive election year (a "retroactive dividend"). This election shall be irrevocable with respect to the retroactive dividend to which it applies.

(ii) *Method of making election.* The election under this paragraph (j)(4) must be made by the regulated investment company by treating the dividend (or portion thereof) to which the election applies as a dividend paid during the retroactive election year in computing its deduction for dividends paid in its tax returns for all applicable years (including the amended return(s) required to be filed under paragraphs (j)(2) and (3) of this section).

(iii) *Deduction for dividends paid*—(A) *In general.* Subject to the rules of sections 561 and 562, a regulated investment company shall include the amount of any retroactive dividend in computing its deduction for dividends paid for the retroactive election year. No deduction for dividends paid shall be allowed under this paragraph (j)(4)(iii)(A) for any amount not paid (or treated as paid under section 852(b)(7)) on or before December 31, 1990.

(B) *Limitation on ordinary dividends.* The amount of retroactive dividends (other than retroactive dividends qualifying as capital gain dividends) paid for a retroactive election year under this section shall not exceed the increase, if any, in the investment company taxable income of the regulated investment company (determined without regard to the deduction for dividends paid (as defined in section 561)) that is attributable solely to the regulated investment company having made the retroactive election.

(C) *Limitation on capital gain dividends.* The amount of retroactive dividends qualifying as capital gain dividends paid for a retroactive election year under this section shall not exceed the increase, if any, in the amount of the excess described in section 852(b)(3)(A) (relating to the excess of the net capital gain over the deduction for capital gain dividends paid) that is attributable solely to the regulated investment company having made the retroactive election.

(D) *Effect on other years.* A retroactive dividend shall not be includible in computing the deduction for dividends paid for—

(*1*) The taxable year in which such distribution is actually paid (or treated as paid under section 852(b)(7)); or

(*2*) Under section 855(a), the taxable year preceding the retroactive election year.

(iv) *Earnings and profits.* A retroactive dividend shall be considered as paid out of the earnings and profits of the retroactive election year (computed with the application of sections 852(c) and 855, § 1.852–5, § 1.855–1, and this section), and not out of the earnings and profits of the taxable year in which the distribution is actually paid (or treated as paid under section 852(b)(7)).

(v) *Receipt by shareholders.* Except as provided in section 852(b)(7), a retroactive dividend shall be included in the gross income of the shareholders of the regulated investment company for the taxable year in which the dividend is received by them.

(vi) *Foreign tax election.* If a regulated investment company to which section 853 (relating to foreign taxes) is applicable for a retroactive election year elects to treat a dividend paid (or treated as paid under section 852(b)(7)) during the taxable year as a retroactive dividend, the shareholders of the regulated investment company shall consider the amounts described in section 853(b)(2) allocable to such distribution as paid or received, as the case may be, in the shareholder's taxable year in which the distribution is made.

(vii) *Example.* The provisions of this paragraph (j)(4) may be illustrated by the following example:

Example. X is a regulated investment company that computes its income on a calendar year basis. No election is in effect under section 4982(e)(4). X has the following income for 1988:

Foreign Currency Gains and Losses

Gains and Losses

Jan. 1–Oct. 31—100
Nov. 1–Dec. 31—(75)

Capital Gains and Losses

Jan. 1–Oct. 31—short term, 100; long term, 100
Nov. 1–Dec. 31—short term, 50; long term, (100)

(A) X had investment company taxable income of $175 and no net capital gain for 1988 for taxable income purposes. X distributed $175 of investment company taxable income as an ordinary dividend for 1988.

(B) If X makes a retroactive election under this section to defer the entire $75 post-October currency loss and the entire $50 post-October capital loss for the post-October period of its 1988 taxable year for purposes of computing its taxable income, that deferral increases X's investment company taxable income for 1988 by $25 (due to an increase in foreign currency gain of $75 and a decrease in short-term capital gain of $50) to $200 and increases the excess described in section 852(b)(3)(A) for 1988 by $100 from $0 to $100. The amount that X may treat as a retroactive ordinary dividend is limited to $25, and the amount that X may treat as a retroactive capital gain dividend is limited to $100.

(5) *Certain distributions may be designated retroactively as capital gain dividends.* To the extent that a regulated investment company designated as capital gain dividends for a taxable year less than the maximum amount permitted under paragraph (e) of this section for that taxable year, the regulated investment company may designate an additional amount of dividends paid (or treated as paid under sections 852(b)(7) or 855, or paragraph (j)(4) of this section) for the taxable year as capital gain dividends, notwithstanding that a written notice was not mailed to its shareholders within 60 days after the close of the taxable year in which the distribution was paid (or treated as paid under section 852(b)(7)).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. The table of OMB control numbers in § 602.101(c) is amended by removing the entry for § 1.852-11T and adding an entry reading: "1.852-11T * * * 1545-1094" to read: "1.852-11 * * * 1545-1094".

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: November 24, 1990.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 90-28432 Filed 11-29-90; 4:30 pm]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 352a

[DoD Directive 5118.5]

Defense Finance and Accounting Service (DFAS)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is established by the Secretary of Defense under the authority provided by title 10, U.S.C. 113, as an Agency of the Department of Defense (DoD). This rule informs the public of the new Defense Finance and Accounting Service.

EFFECTIVE DATE: November 26, 1990.

ADDRESSES: Office of the Director, Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, telephone (703) 697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 352a

Organization of functions (Government agencies).

Accordingly, title 32, chapter I, subchapter R of the Code of Federal Regulations is amended to add part 352a as follows:

PART 352a—DEFENSE FINANCE AND ACCOUNTING SERVICE (DFAS)

Sec.

352a.1 Purpose.
352a.2 Applicability.
352a.3 Organization and management.
352a.4 Responsibilities and functions.
352a.5 Relationships.
352a.6 Authorities.

Appendix to Part 352a—Delegations of Authority.

Authority: 10 U.S.C. 113.

§ 352a.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under provisions of title 10, United States Code, this part establishes the Defense Finance and Accounting Service (DFAS) as an Agency of the Department of Defense with responsibilities, functions, authorities, and relationships.

§ 352a.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; the Inspector General of the Department of Defense (IG, DoD); the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components")

§ 352a.3 Organization and management.

(a) The DFAS is established as an Agency of the Department of Defense under the direction, authority, and control of the Comptroller of the Department of Defense (C, DoD).

(b) The DFAS shall consist of a Director, selected by the Secretary of Defense, and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

(c) Military personnel shall be assigned to the DFAS in accordance with approved authorizations and procedures for assignment to joint duty.

§ 352a.4 Responsibilities and functions.

(a) The Director, Defense Finance and Accounting Service (DFAS), is the principal DoD executive for finance and accounting requirements, systems, and functions identified in DoD Directive 5118.3,[1] and shall:

(1) Organize, direct, and manage the DFAS and all assigned resources.

(2) Direct finance and accounting requirements, systems, and functions for all appropriated, nonappropriated, working capital, revolving, and trust fund activities, including security assistance.

(3) Establish and enforce requirements, principles, standards, systems, procedures, and practices necessary to comply with finance and accounting statutory and regulatory requirements applicable to the Department of Defense.

(4) Provide finance and accounting services for DoD Components and other Federal activities, as designated by the C, DoD.

(5) Direct the consolidation, standardization, and integration of finance and accounting requirements, functions, procedures, operations, and systems within the Department of Defense and ensure their proper relationship with other DoD functional areas (e.g., budget, personnel, logistics, acquisition, civil engineering, etc.).

(6) Execute statutory and regulatory financial reporting requirements and render financial statements.

(7) Serve as the proponent for civilian professional development in finance and accounting disciplines, and act as approval authority for competency standards and training requirements for appropriate military positions within the DFAS.

(8) Provide advice and recommendations to the C, DoD, on finance and accounting matters.

(9) Approve the establishment or maintenance of all finance and accounting activities independent of the DFAS.

(10) Develop, issue, and maintain DoD 7220.9-M,[2] in accordance with DoD 5025.1-M,[3] consistent with governing statutes, regulations, and policies.

(11) Perform other functions as the Secretary of Defense, Deputy Secretary of Defense, or the C, DoD, may prescribe.

(b) The Comptroller of the Department of Defense (C, DoD) shall provide guidance and direction to the Director, DFAS, on policies and procedures related to the development and operation of DFAS programs and systems.

(c) The Heads of DoD Components shall:

(1) Comply with the requirements, principles, standards, procedures, and practices issued pursuant to § 352a.4(a).

(2) Obtain finance and accounting services from the DFAS.

(3) Provide facilities, personnel, and other support and assistance required to accomplish DFAS objectives, consistent with this Directive and the responsibilities and functions in § 352a.4(a) and the authorities in § 352a.6.

(c) Operational commanders shall continue to be responsible for the control, location, and safety of deployed

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 352a.4(a).

[3] See footnote 1 to § 352a.4(a).

accounting and finance personnel and resources.

§ 352a.5 Relationships.

(a) In the performance of assigned responsibilities and functions, the Director, DFAS, shall:

(1) Maintain liaison with DoD Components, other Government Agencies, foreign governments, and private sector organizations for the exchange of information concerning assigned programs, activities, and responsibilities.

(2) Use established facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve modernization, efficiency, economy, and user satisfaction.

(b) The heads of DoD Components shall coordinate with the Director, DFAS, on all matters related to the responsibilities and functions listed in § 352a.4(a).

§ 352a.6 Authorities.

The Director, DFAS, is specifically delegated authority to:

(a) Represent the C, DoD, on finance and accounting matters.

(b) Have free and direct access to, and communicate with, DoD Components and other Executive Departments and Agencies concerning finance and accounting activities, as necessary.

(c) Enter into agreements with DoD Components and other Government or Non-Government entities for the effective performance of the DFAS mission and programs.

(d) Establish DFAS facilities if needed facilities or services of other DoD Components are not available. Establishment of new facilities and services will be accomplished during normal program and budget processes.

(e) Obtain reports, information, advice, and assistance from DoD Components, consistent with the policies and criteria of DoD Directive 7750.5.[4]

Appendix to Part 352a—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, Defense Finance and Accounting Service (DFAS), or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of the DFAS to:

1. Establish advisory committees and employ part-time advisors, as approved by the Secretary of Defense, in support of assigned DFAS functions pursuant to 10 U.S.C. 173; Pub. L. 92–463, "Federal Advisory Committe Act"; and DoD Directive 5105.4 [1], "Department of Defense Federal Advisory Committee Management Program," September 5, 1989.

2. Designate any position in the DFAS as a "sensitive" position, in accordance with 5 U.S.C. 7532; Executive Order 10450, as amended; and DoD Directive 5200.2 [2], "DoD Personnel Security Program," December 20, 1979, as appropriate.

a. Authorize, in case of an emergency, the appointment to a sensitive position, for a limited period of time, of a person for whom a full field investigiation or other appropriate investigation, including the National Agency Check, has not been completed.

b. Authorize the suspension, but not terminate the service, of the employee in the interest of national security.

3. Authorize and approve overtime work for assigned civilian personnel in accordance with 5 U.S.C. Chapter 55, Subchapter V, and applicable Office of Personnel Management (OPM) regulations.

4. Authorize and approve:

a. Travel for assigned personnel, in accordance with Joint Travel Regulations.

b. Invitational travel to persons serving without compensation whose consultative, advisory, or other services are required for assigned activities and responsibilities pursuant to 5 U.S.C. 5703.

5. Approve the expenditure of funds available for travel by assigned or detailed military personnel for expenses regarding attendance at meetings of technical, scientific, professional, or other similar organizations in such instances when the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

6. Develop, establish, and maintain an active and continuing Records Management Program and DoD Directive 5015.2 [3], "Records Management Program," September 17, 1980; DoD Directive 5400.74 [4], "DoD Freedom of Information Act Program," May 13, 1988; and DoD Directive 5400.11 [5], "Department of Defense Privacy Program," June 9, 1982.

7. Establish and use imprest funds for making small purchases of material and services, other than personal services, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.10 [6], "Disbursing Policies," January 17, 1989.

8. Authorize the publication of advertisements, notices, or proposals, in newspapers, magazines, or other public periodicals as required for the effective administration and operation of assigned responsibilities, consistent with 44 U.S.C. 3702.

9. Establish and maintain appropriate property accounts, appoint Boards of Survey, approve reports of survey, relieve personal liability, and remove accountability for Agency property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

10. Promulgate the necessary security regulations for the protection of property placed under the jurisdiction of the Director, pursuant to DoD Directive 5200.8 [7], "Security of Military Installation of Resources," July 29, 1980.

11. Establish and maintain a publications system for the promulgation of common accounting and finance regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1–M [8], "Department of Defense Directives System Procedures," April 1981, authorized by DoD Directive 5025.1 [9], December 23, 1988.

12. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 310, 302(b), and 3101 of the employment, direction, and general administration of assigned employees.

13. Administer oaths of office to those entering the Executive branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of the DFAS to perform this function.

14. Establish a DFAS Incentive Awards Board, and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the DFAS or its subordinate activities, in accordance with 5 U.S.C. 4503, OPM regulations, and DoD Directive 5120.15 [10], "Authority for Approval of Cash Honorary Awards for DoD Personnel," August 13, 1985.

15. Act as an agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certification required or provided for under the Internal Revenue Code of 1954, as amended (26 U.S.C. 3122), and the Social Security Act (42 U.S.C. 405(p)(1) and (2)), as amended, on assigned employees.

16. Enter into and administer contracts directly or through a Military Department, a DoD contracting administration service component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish the DFAS mission.

17. Oversee disbursing officials and operations in accordance with the procedures of 31 U.S.C., as follows:

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[4] See footnote 1 to § 352a.4(a).

[1] Copies may be obtained, at cost, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to paragraph 1. of this appendix.

[3] See footnote 1 to paragraph 1 of this appendix.

[4] See footnote 1 to paragraph 1 of this appendix.

[5] See footnote 1 to paragraph 1 of this appendix.

[6] See footnote 1 to paragraph 1. of this appendix.

[7] See footnote 1 to paragraph 1 of this appendix.

[8] See footnote 1 to paragraph 1 of this appendix.

[9] See footnote 1 to paragraph 1 of this appendix.

[10] See footnote 1 to paragraph 1 of this appendix.

a. Manage the approval and appointment process for disbursing and certifying officials pursuant to 31 U.S.C. 3321 and 3325.

b. Make determinations and recommendations with respect to the granting of relief to disbursing officials pursuant to the authority contained in 31 U.S.C. 3527.

C. Approve requests to hold cash at personal risk for authorized purposes, including imprest funds, and to redelegate such authority as appropriate in the administration and control of DoD funds, consistent with the Treasury Financial Manual (TFM) and under the authority of 31 U.S.C. 3321 and 3342.

d. Approve DoD Component disbursing regulations developed to implement the TFM and to grant waivers when delegated by the Secretary of the Treasury to heads of Executive Departments and Agencies.

The Director, DFAS may, in writing, redelegate these authorities as appropriate, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

Dated: November 29, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc 90-28384 Filed 12-4-90; 8:45 am]

BILLING CODE 3801-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43-CFR Public Land Order 6820

[CA-940-4214-10; CACA 17849]

Withdrawal of Public Land for Protection of the Rainbow Basin/Mud Hills Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,997.92 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect significant paleontological, geologic, scenic, and recreational values located in the Rainbow Basin/Mud Hills Area.

EFFECTIVE DATE: December 5, 1990.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not from the mineral leasing laws, for the protection of the Rainbow Basin/Mud Hills Area:

San Bernardino Meridian

T. 11 N., R. 1 W.,
Sec. 18, lots 1 and 2, and NE¼.
T. 11 N., R. 2W.,
Sec. 10, W½SW¼, SE ¼SW¼, and S½S½SE¼;
Sec. 11, S½S½SW¼;
Sec. 14, W½ and SW¼SE¼;
Sec. 15;
Sec. 22, E½NE¼;
Sec. 23, NE¼NE¼, W½NE¼, NW¼, N½SW¼, and W½SE¼.

The areas described aggregate 1,997.92 acres of public land in San Bernardino County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: November 21, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-28431 Filed 12-4-90; 8:45 am]

BILLING CODE 4310-40-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN Docket No. 87-389; FCC 90-371]

Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License—USCG/FAA Petition for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This action dismisses a petition for reconsideration of the *First Report and Order* in GEN Docket No. 87-389 54 FR 17710, April 25, 1989, filed by the United States Coast Guard (USCG) and the Federal Aviation Administration (FAA) on May 24, 1989. The petition requested that the Commission impose field strength limits on Power Line Carrier (PLC) systems that operate on a non-licensed basis under part 15 of the FCC's rules. The Commission finds that the petition for reconsideration provides insufficient information to demonstrate a need for field strength limits on PLCs at this time.

EFFECTIVE DATES: December 5, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Karen Rackley, Office of Engineering and Technology, (202) 653-7316.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum, Opinion and Order* in GEN Docket No. 87-389, FCC 90-371, adopted November 5, 1990 and released November 27, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. It may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Summary of the Memorandum, Opinion and Order

1. In 1987, the Commission issued a *Notice of Proposed Rule Making (NPRM)* in this Docket 52 FR 37988, October 13, 1987, proposing a comprehensive revision of the part 15 rules. The USCG filed comments on the NPRM requesting that field strength limits be adopted for power line carrier (PLC) systems that operate in the 75-125 kHz band, stating that such limits are needed to avoid the potential of harmful interference to LORAN-C receivers. In addition, the USCG requested that data concerning PLC operating parameters be made public to facilitate the location of sources of interference to signals of the LORAN-C radionavigation system. The USCG stated that these safeguarding provisions are needed in view of the pending construction of a new, mid-continental chain of LORAN-C transmitters that will greatly expand the coverage area for LORAN-C.

2. In the *First Report and Order* in this proceeding, the Commission denied the USCG's requests. The Commission was concerned that the imposition of field strength limits on PLC systems would require that electric utilities perform extremely burdensome and expensive radiated emission measurements on all power lines used for PLC operation, with benefit only to those LORAN-C receivers located extremely close to the powerlines. The Commission also noted

that the National Telecommunications and Information Agency (NTIA) of the U.S. Department of Commerce and the Utilities Telecommunications Council (UTC) had negotiated a Memorandum of Understanding (MOU) that would allow PLC operating parameters to be made available to LORAN–C users to resolve interference problems.

3. The USCG/FAA petition for reconsideration of the *First Report and Order* requests that the Commission: (1) Reconsider its decision regarding PLC field strength limit and, at the minimum, adopt as "interim guidelines" the field strength limitsd previously proposed by USCG; and, (2) initiate a Further Notice of Proposed Rulemaking to address mandatory field strength limits for PLC systems operating in the 75–125 kHz band. The petitioners contend that testing of all power lines used for PLC transmissions would not be necessary. They state that, instead, computer modeling programs, such as the Numerical Electromagnetic Code (NEC), could be used to predict whether a PLC system would conform to any limits imposed. The petitioners also argue that, since many of the PLC transmitters operating between 75 kHz and 125 kHz transmit short-term, narrow pulsed signals, testing is needed to determine the impact of such short-term PLC signals on LORAN–C receivers.

4. The Commission finds that the USCG/FAA petition for reconsideration provides insufficient evidence to warrant application of field strength limits to protect LORAN–C signals from interference by part 15 PLC operations. The petitioners have not demonstrated that PLC operations pose serious interference problems for the LORAN–C service or that the procedures already in place for resolving interference by PLC operations to LORAN–C do not provide an adequate regulatory safeguard. Although LORAN–C use will be increasing on and over the land areas of the United States, it is not yet clear whether the mid-continental chain of LORAN–C transmitters will make interference problems more common by attracting more LORAN–C users or eliminate potential interference problems by providing better LORAN–C coverage. In view of the above, the Commission believes that it would be premature to adopt or propose field strength limits for PLC systems operating on the 75–125 kHz band. Should a pending Department of Transportation study, or any other related information that may be made available, provide evidence that interference to LORAN–C reception by PLC operations is more serious than is presently indicated, or that the existing safeguards are inadequate, the Commission would, of course, take appropriate action.

5. Accordingly, pursuant to the authority contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, and Section 1.106 of the Commission's rules, *it is ordered* that the Joint Petition for Reconsideration and Further Rulemaking filed by the United States Coast Guard and the Federal Aviation Administration *is dismissed.*

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90–28475 Filed 12–4–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–17; Notice 3]

RIN 2127–AC65

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration; final rule, amendments and delay of effective date.

SUMMARY: This notice responds to petitions for reconsideration of amendments to Federal Motor Vehicle Safety Standard No.108 published in May 1990 that incorporated by reference (with minor exceptions) the current SAE Standards for stoplamps and turn signal lamps. The agency denies a petition to remove the exclusions from the definition of "effective projected luminous lens area." However, in recognition that this may create an immediate compliance problem, the agency is delaying the effective date of all amendments from December 1, 1990, to December 1, 1991.

DATES: The effective date of the rule published May 15, 1990 and of these amendments is December 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kevin Carey, Office of Rulemaking, NHTSA (202–366–5271).

SUPPLEMENTARY INFORMATION: A final rule was published May 15, 1990 (55 FR 20158) adopting updated SAE standards for stop lamps and turn signal lamps. The updated standards are SAE J586 FEB84 Stop Lamps for Use on Motor Vehicles Less than 2032 mm in Overall Width, SAE J588 NOV84 Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in overall Width, SAE J1395 APR85 Turn Signal Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width, and SAE J1398 MAY85 Stop Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width. Petitions for reconsideration of the rule were received from Ford Motor Company and General Motors Corporation. Subsequently, comments were received from Peterson Manufacturing Company, which this notice will also address. The comments concerned the intensity multiplier, definition of "effective projected luminous lens area," and miscellaneous items.

1. Issue of the Turn Signal—Headlamp Intensity Multiplier

In the final rule, paragraph S5.3.1.7 was adopted to clarify that if a turn signal lamp is closer than 4 inches (100 mm) to a lower beam headlamp, it must have 2.5 times the intensity otherwise required. The purpose of the requirement was to distinguish it from the SAE specification, which applies the factor of 2.5 only if the turn signal is closer than 60 mm to the lower beam headlamp. In the previous SAE specification incorporated by reference in Standard No.108, measurement was taken from the optical center of the turn signal lamp. The updated SAE specification requires it to be taken from the centroid of the lens. This has presented a problem to Ford, which stated that several 1991 and later model year vehicles cannot meet the requirements of the final rule without substantial redesign, if measurement is to be taken from the centroid. Ford pointed out that the new SAE requirement is intended to be used in combination with graduated turn signal intensity multipliers, which NHTSA did not adopt. Peterson, Grote, and TSEI supported retention of the existing requirement.

Ford based its argument on SAE Information Report J1221 DEC84 Headlamp-Turn Signal Spacing which documents the change in the SAE specifications. NHTSA notes that the research in the Report was performed in 1977, which was before higher intensity headlamps which comply with SAE J579c were in common use. As these headlamps are now in almost universal use in the United States, NHTSA regards the earlier research as not truly

relevant today. Given the advent and usage of higher intensity headlamps, there appears to be an even greater need than before to preserve the intensity ratio. NHTSA has done so by retaining the previously existing requirement of measurement from the optical center of the lens. The petition for reconsideration is granted, and an appropriate revision is made in S5.3.1.7.

2. Issue of Definitions

NHTSA adopted a definition for the term "effective projected luminous lens area" which specifically excluded "mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from small areas (½ deg. radius around the test point)." In its petition for reconsideration, GM called to the agency's attention a 20-year-old interpretation provided American Motors Corporation stating the "molded optical rings or markings shall be considered part of the total * * * even if they do not contribute significantly to the total light output." GM went on to say that it has depended on this interpretation as the basis for calculating lens area. In particular, GM has included the rim (or leg) of lenses in the calculation of lens area in those instances where the rim transmits unobstructed light. GM argues that it is disadvantaged by the new definition because at least one of its current production models requires inclusion of the lens rim area to meet the minimum lens area as now defined by Standard No. 108. It asked that NHTSA adopt the SAE definition. This same request was made by Ford, also concerned by the differences between the NHTSA definition, and SAE's.

NHTSA has carefully reviewed these comments. The definition in SAE J387 OCT88 includes lens parts, "even if they do not contribute significantly to the total light output." The agency has concluded that areas that do not contribute significantly to light output should not be included in determinations of minimum lens area because they do not add to the "effectiveness" of the lamp. To be fully effective, the lamp must project light in an appropriate manner. The optical parts of the reflector and lens are designed to achieve that purpose. Mounting bosses, screw holes, lens rims or legs do not contribute to the optical design. They take up surface area that can reduce the area of the optically designed part of the lens if they are allowed to be included in the computation of minimum lens area. After due consideration, the agency denies the petitions for adoption of the SAE definition.

3. Issue of Terminology

Paragraphs S5.1.1.11 and S5.1.1.12 establish requirements for lamps that are "manufactured to replace" equivalent lamps "designed to conform" to specified SAE requirements. Ford commented that the use of the word "manufactured" appeared to be in error, and that the word should have been "designed," in keeping with the standard's general requirement that equipment be "designed to conform," rather than "conform."

Choice of the word "manufactured" was deliberate, and not an error. The agency wished to avoid the use of the word "designed" twice in a single sentence, and found awkward the phrase "lamps designed to replace lamps designed to conform" to the SAE requirements. Such a phrase would not of itself require design compliance of replacement lamps with the SAE requirements. Neither section requires that the replacement lamps meet the SAE requirements that their original equipment counterparts are designed to meet (in which case the "design" language would be appropriate). Further, each provides an exception from those requirements if the lamps meet the specific requirements of Figure 1 of Standard No. 108. No petitioner argued that the lamps should be "designed to meet" Figure 1 which in this context appears the more appropriate argument.

However, in one instance Ford is correct. The phrase "manufactured to conform to SAE Standard J588e" appears in S5.1.1.12. NHTSA is amending that section to substitute "designed" for "manufactured."

4. Issue of Effective Date

The effective date of the final rule published on May 15, 1990 is December 1, 1990, except that the requirement that vehicles whose overall width is 80 inches or more be equipped with stoplamps and rear turn signal lamps with a minimum luminous lens area of 12 square inches is effective December 1, 1991. The retooling involved in equipping vehicles with the new lamps provided sufficient cause for finding that an effective date later than one year after issuance was in the public interest.

As noted previously, NHTSA's actions in this rulemaking appear to have presented compliance problems for GM. The company has stated that NHTSA's definition of "effective projected luminous lens area" has created a compliance problem for it. This problem remains because NHTSA has denied GM's petition to adopt the SAE definition of the term. In recognition of GM's problems, NHTSA has decided to delay the effective date for the amendments published on May 15, 1990, to December 1, 1991.

Therefore, the effective date for the amendments to 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* published on May 15, 1990 (55 FR 20158) is hereby changed from December 1, 1990, to December 1, 1991.

The final rule contained an erroneous effective date in paragraph S5.1.1.7(c), and an appropriate amendment is made.

Pursuant to 5 U.S.C. 553(d)(1), this notice is effective on December 1, 1990, a period less than 30 days after its issuance, because it is a substantive rule that relieves a restriction.

5. Miscellaneous Issue

Peterson brought to the agency's attention the possibility that confusion could be caused by the statement in the summary information in the final rule that rear turn signal lamps require a minimum luminous lens area of 12 square inches, implying that there is a different requirement for the front turn signal lamps.

There is no different requirement for front turn signal lamps. The newly incorporated SAE documents make clear that the minimum luminous lens area requirements apply to all turn signal lamps. The thrust of the agency's rulemaking was toward rear lamps, and it regrets any confusion that may have been caused by not mentioning the front lamps.

Impacts

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and procedures. The postponement made by this notice in the effective date does not alter the agency's conclusion in the May 1990 final rule that the economic impacts of that rule are so minimal as not to warrant the preparation of a full regulatory evaluation. As noted in that notice, most manufacturers already comply with the requirement regarding minimum luminous lens area. The postponement of the effective date would further reduce the negligible costs. Therefore, preparation of a full regulatory evaluation for this notice is not necessary.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will have no effect upon the human environment.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle lamps, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles and replacement lighting equipment will be minimally impacted because most motor vehicles subject to the requirement already comply with it.

Finally, the agency has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has concluded that the rule has no federalism implications.

List of Subjects in 49 CFR Part 571.

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 and § 571.108 Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, are amended as follows:

1. The authority citation for part 571 continues to read:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. The effective date of the amendments published on May 15, 1990 (55 FR 20161) is delayed until December 1, 1991.

3. In S5.1.1.7(c), the date "October 31, 1991" is changed to "November 30, 1991."

4. In S5.1.1.12, the phrase "manufactured to conform to SAE Standard J588e" is revised to read "designed to conform to SAE Standard J588e."

5. S5.3.1.7 is revised to read:

S5.3.1.7 On a motor vehicle on which the front turn signal lamp is less than 100mm from the lighted edge of a lower beam headlamp, as measured from the optical center of the turn signal lamp, the multiplier applied to obtain the required minimum luminous intensities shall be 2.5.

Issued on: November 28, 1990.

Jerry Ralph Curry,

Administrator.

[FR Doc. 90-28476 Filed 11-30-90; 2:50pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Astragalus cremnophylax var. cremnophylax (sentry milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines *Astragalus cremnophylax* var. *cremnophylax* (sentry milk-vetch), to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This plant is known from a single site on the South Rim of Grand Canyon National Park. The entire population consists of fewer than 500 plants. The plant is endangered by previous trampling by park visitors and degradation of habitat. This action will implement Federal protection provided by the Act for sentry milk-vetch. Critical habitat is not being designated.

EFFECTIVE DATE: January 4, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Ecological Services Field Office, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, at the above address (Telephone 602/379-4720 or FTS 261-4720).

SUPPLEMENTARY INFORMATION:

Background

Astragalus cremnophylax var. *cremnophylax* is a dwarf milk-vetch that is endemic to a single site on the South Rim of Grand Canyon National Park. The plant occurs in crevices and depressions with shallow soils on Kaibab limestone on a broad platform at the rim of the Grand Canyon gorge. This milk-vetch apparently prefers the unshaded, well drained soils or limestone pavement in an opening in the piñon-juniper woodland. The plant appears to occur on one specific layer of Kaibab limestone where the limestone forms a minimum-sized bench or "patio." Dominant species in the surrounding community include *Petrophytum caespitosum* (rock-mat), *Pinus edulis* (piñon pine), *Juniperus osteosperma* (Utah juniper), *Cercocarpus intricatus* (little-leaf mountain mahogany), *Ephedra viridis* (Mormon tea), *Purshia mexicana* (cliffrose), *Artemesia bigelovii* (sagebrush), *Agropyron smithii* (wheatgrass), and *Poa pratensis* (bluegrass) (Phillips et al. 1982). Sentry milk-vetch and rock-mat are the two dominant species in the dwarf plant community that occurs on this limestone pavement.

Astragalus cremnophylax var. *cremnophylax* is usually less than 2.5 cm (1 inch) high and forms a mat 2.5—25 cm (1—10 inches) in diameter (McDougall 1964). The short, creeping stems have compound leaves less than 1.0 cm (0.4 inches) long composed of 5—9 tiny leaflets. The fruit is obliquely egg-shaped and densely hairy. Whitish or pale purple flowers are 0.5 cm (0.2 inches) long and appear from late April to early May. Seeds are set in late May—June (Phillips et al. 1982). The plants appear to be long-lived and have a thick tap root that penetrates the limestone surface to reach a more constant source of moisture.

A thorough count of all plants in 1988 indicated that the population contained 489 plants. A 1989 inventory of the monitoring plots established in 1988 indicated that the population declined by about 10 percent. Data indicate the cause for this decline may have been trampling by park visitors. The effects of trampling on both plants and their habitat may have been amplified by the below average rainfall in 1989. From May 1989 to May 1990, subpopulations experienced from 19 percent to 63 percent mortality, depending on degree of human visitation.

In 1988, the seedling class comprised only 22.2 percent of the population. Given the trampled condition of most mature plants, a likely explanation for the small proportion of seedlings is that they are killed by trampling. Only those seedlings in sites relatively safe from trampling survive. Poor seed dispersal may also affect the number of seedlings.

Astragalus cremnophylax was first discovered in 1903 by Marcus E. Jones who reported it as "apparently common at Grand Canyon * * * on sandy ledges." He mistook the plant for *A. humillimus* Gray, of which only Brandegee's imperfect, now flowerless type from Mesa Verde, Colorado, is extent. Both are alike in diminutive stature and similar pubescence but differ in petioles and pods. Barneby and Ripley recollected the species in 1947 at a location west of El Tovar, Grand Canyon National Park. Barneby described it as a new species in 1948. In 1979, Barneby distinguished a new variety, *A. cremnophylax* var.

myriorraphis after plants were discovered by Ralph Gierisch and associates in 1978 on Buckskin Mountain in Arizona. The typical form then became *A. cremnophylax* var. *cremnophylax*.

On December 15, 1980, the Service published a revised Notice of Review for Native Plants in the **Federal Register** (45 FR 82480); *A. cremnophylax* was included in that notice as a category 1 species. Category 1 species are those for which the Service presently has sufficient information to support the biological appropriateness of their being listed as endangered or threatened species. The 1985 revision (50 FR 39526) of the 1980 notice included *Astragalus cremnophylax* var. *cremnophylax* in category 1, and moved *Astragalus cremnophylax* var. *myriorraphis* to category 3C. Category 3C includes taxa that have proven to be more abundant or widespread than was previously believed and/or those that are not subject to any identifiable threat. The 1990 Plant Notice of Review (55 FR 6184) listed *A. cremnophylax* var. *cremnophylax* as a proposed endangered species. A proposed rule to determine endangered status for *A. cremnophylax* var. *cremnophylax* was published in the **Federal Register** on October 18, 1989 (54 FR 42820).

Summary of Comments and Recommendations

In the October 18, 1989, 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. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in *The Arizona Sun* on November 12, 1989, and *The Phoenix Gazette/Arizona Republic* on November 15, 1989, which invited general public comment. Eight comments were received and are discussed below: Two Federal and two State agencies, and four private conservation organizations and individuals. Comments supporting the listing were submitted by the National Park Service (NPS), The Arizona Nature Conservancy, the Center for Plant Conservation, and two plant taxonomists.

Issue 1: The Arizona Commission of Agriculture and Horticulture expressed concerns regarding the effects of listing this plant. They stated that listing would prohibit State pest control programs for gypsy moths or grasshoppers if critical habitat is not designated, could reduce the amount of grazing land, and would unnecessarily restrict visitor's access to areas of Grand Canyon National Park.

Service Response: The sentry milk-vetch is restricted to a single population in Grand Canyon National Park. Listing of this plant would have no effect on pest control programs conducted outside Grand Canyon National Park, whether or not critical habitat is designated. Pest control programs inside park boundaries must have the approval of the National Park Service and the Department of the Interior. With this listing as an endangered species, any State-administered pest control programs that would occur in the vicinity of the single population would have to go through the section 7 consultation process.

Because grazing is not allowed in the vicinity of the site where sentry milk-vetch occurs, there is no anticipated restriction on the amount of grazing land following listing of this plant.

Regarding visitor's access in Grand Canyon National Park, the NPS has rerouted foot traffic around the main part of the sentry milk-vetch population, in a voluntary effort to protect the plants from trampling prior to a final listing decision. However, no other area has been affected, and numerous opportunities for public access exist along the South Rim.

Issue 2: The Arizona Commission of Agriculture and Horticulture stated that listing the sentry milk-vetch as endangered is not appropriate because it belongs to a species that occurs in other areas of the State. The U.S. Forest Service questioned the taxonomic status of the two varieties in the species *A. cremnophylax*. The Forest Service suggested that observed morphological differences between the varieties may have been influenced by the effects of trampling on the sentry milk-vetch population. They suggested that chemical analysis or further field investigations be used to evaluate whether unique gene pools are involved, and suggested that cooperative efforts between the Fish and Wildlife Service and the NPS could alleviate impacts to the plants. The Forest Service also questioned the adequacy of survey efforts for this plant, given the abundance of seemingly suitable habitat within the known range of the species.

Service Response: The Service believes that *Astragalus cremnophylax* var. *Cremnophylax* is a taxonomically valid, rare species that meets the criteria for listing as an endangered species. This plant is a unique taxon that is widely separated geographically from its closest relatives, which are found on the opposite side of the Grand Canyon (Warren, in litt.). Two highly regarded plant taxonomists, Dr. Rupert Barneby of the New York Botanical Garden (who described the species and varieties), and Dr. Stanley Welsh of Brigham Young University, have concluded that the two varieties of *A. cremnophylax* are distinct. The Service accepts the conclusion of these two experts, and does not believe that chemical analysis is necessary to determine if the two varieties are distinct. Because *A. cremnophylax* var. *cremnophylax* plants that are relatively protected from trampling continue to exhibit morphological differences compared to the other variety, the Services does not believe that trampling causes the noted morphologic differences between the varieties.

Surveys for this plant have been conducted for many miles in each direction from the single known population and no new populations were discovered. In addition, the potential habitat for this species may be far more restricted than previously believed. Both varieties appear to occur on one specific layer of Kaibab limestone where the limestone forms a minimum-sized bench or "patio." Sentry milk-vetch was not found growing on smaller ledges. All sites had shallow or no soil and occurred in an opening in piñon-juniper woodland. The area long the South Rim where these criteria are all present is much smaller than all exposed Kaibab limestone rim areas.

Cooperative efforts between agencies, although desirable, are not legitimately a reason to defer the listing of a species. The service has been working with the NPS to protect this plant. Rerouting of foot traffic around the population by the NPS has reduced the degree of trampling of the plants. However, because of prior habitat degradation and continued decline of the plants in the single known population, sentry milk-vetch meets the criteria for protection under the Endangered Species Act.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus cremnophylax* var. *cremnophylax* should be classified as an endangered species. Procedures found at 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 were followed. 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 *Astragalus cremnophylax* var. *cremnophylax* Barneby (sentry milk-vetch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The population of sentry milk-vetch occurs at a single site in Grand Canyon National Park. Visitors may reach the area by walking or in vehicles. Previously, many visitors trampled any or all of the vegetation while walking to the rim. The 1988 survey showed that 65 percent of all plants in the population had experienced some degree of trampling. More than half of all plants (51.4 percent) experienced severe trampling. Data from 1989 indicate the percent of trampled plants increased, as did the percent of plants showing the effects of severe trampling. From May 1989 to May 1990, the sub-population in the most visited area experienced 63 percent mortality. Other plots in the area experienced about 19 percent mortality. The high centers of the plants are the first to show the effects of trampling.

Trampling may affect the plants and population stability in a number of ways. Observations indicate that foot traffic has uprooted seedlings and decreased the vigor of mature plants. Repeated foot-falls on individual plants may contribute to decreased productivity and decreased flower and fruit production, which may eventually affect recruitment. Degradation of the habitat by foot traffic is evidenced by the informal trails formed by visitors, the smoothness of the limestone caused by the abrasive action of shoes, and the soil loss in the area. Construction activities in the area probably resulted in the loss of habitat and destruction of plants.

The NPS has rerouted foot traffic to restrict access to this site. This action may increase and improve suitable habitat. However, plant vigor is so low from past trampling that the population is still at high risk. In addition, a few park visitors still trample the plants while walking to the rim.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known. Because of its rarity, *Astragalus cremnophylax* var. *cremnophylax* is of interest to botanists and other rare plant enthusiasts. Therefore, this is a minor but present threat.

C. *Disease or predation.* None apparent.

D. *The inadequacy of existing regulatory mechanisms.* This species is protected by NPS regulations, as are all plant species within the Park.

Sentry milk-vetch is protected by the Arizona Native Plant Law. This law prohibits the collection of this species unless a permit for educational or scientific purposes is granted by the Arizona Commission of Agriculture and Horticulture. However, the law does not provide habitat protection. The Act would provide protection and encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* The number of seedlings produced per year seems to be small and their mortality is high. Seedling numbers may be less than predicted for a number of reasons. Seed production may be limited by hard frosts and freezes during the flowering/fruiting period, a situation that occurred in 1988. Poor seed dispersal may also affect the number of seedlings. The tiny orange seeds are inconspicuous and probably not an attractive food item for birds and mammals. Continuing the annual inventory of the monitoring plots may help determine whether or not natural recruitment levels are sufficient to maintain the population.

Any undue publicity directed toward this species could make it susceptible to collection or increased visitation. Many places in the Park have signs telling visitors the names and natural history of certain plants; this type of publicity may be detrimental to the survival of this rare endemic.

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 *Astragalus cremnophylax* var. *cremnophylax* as endangered. With the only known population in decline, the species is in imminent danger of extinction. Endangered status seems appropriate because of the serious threat of trampling that degraded the habitat and contributed to plant mortality. Although the trampling has been reduced by rerouting of foot traffic, it still occurs at a reduced level. The population was so seriously disturbed that recovery is uncertain. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. No direct attention should be drawn toward the species or its location. Any type of publicity on this species could make it susceptible to increased visitation or collection, which would be detrimental to the survival of this rare endemic (O'Brien 1984). As discussed under Factors A and B in the Summary of Factors Affecting the Species, *Astragalus cremnophylax* var. *cremnophylax* is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of the critical habitat description and map would make *A. cremnophylax* var. *cremnophylax* more vulnerable and increase enforcement problems. The NPS has been notified of the location and importance of protecting this species' habitat, and has already initiated recovery actions. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *A. cremnophylax* var. *cremnophylax*.

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 certain activities involving listed plants 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 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)(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 NPS has jurisdiction over the only known habitat for this species. Federal activities that could impact *Astragalus cremnophylax* var. *cremnophylax* include, but are not limited to, allowing large numbers of visitors to have access to the population, which would increase the threat of trampling, and possible future construction at the site.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade 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 endangered 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 of 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, VA 22201 (703/358-2104).

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

McDougall, W.B. 1964. Grand Canyon wildflowers. The Museum of Northern Arizona, Flagstaff.

O'Brien, S. 1984. Status of *Astragalus cremnophylax* and recommendations to protect it. Unpubl. report to Grand Canyon National Park. 6pp.

Phillips, A.M., III, B.G. Phillips, N. Brian, L.T. Green III, and J. Mazzoni. 1982. Status report, *Astragalus cremnophylax* Barneby. U.S. Fish and Wildlife Service, Albuquerque, NM. 16pp.

Author

The primary author of this final rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, 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; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, 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					
Fabaceae—Pea family:						
*	*	*	*	*	*	
Astragalus: cremnophylax var. *cremnophylax.*	Sentry milk-vetch	U.S.A. (AZ)	E		NA	NA
*	*	*	*	*	*	

Dated: November 1, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-28483 Filed 12-4-90; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 55, No. 234
Wednesday, December 5, 1990

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

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program: Annual Regulatory Action

AGENCY: Food Nutrition Service, USDA.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: This notice is being issued in accordance with the provisions of section 13(g) of the National School Lunch Act which requires that any proposed changes to the Summer Food Service Progam (SFSP) regulations be published by November 1 of each fiscal year. The Department is publishing a separae interim rule which will change the requirements to collect social security numbers and household income information on the applications for free and reduced price meals under this Program. The rule gives the household the discretion to provide only the social security number of the household member who signs the application or that of the parent or guardian who is the primary wage earner. In addition, households will now only be required to provide income information sufficient to enable the determining official to calculate the total household income. These changes are mandated by Public Law 101-147, the Child Nutrition and WIC Reauthorization Act of 1989. With the exception of the above, this notice informs the public that the Department does not intend to publish any other revisions to the current SFSP regulations.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302; (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Background

Section 13(g) of the National School Lunch Act (42 U.S.C. 1761(g)) requires that any proposed changes to the Summer Food Service Program regulations be published by November 1 of each fiscal year. Final regulations must be published by the following January 1.

Public Law 101-147, the Child Nutrition and WIC Reauthorization Act of 1989, which was enacted on November 10, 1989, made major changes to the Summer Food Service Program. It readmitted private nonprofit sponsors which, except for school food authorities and summer camps, had not been allowed to participate in the Program since the enactment of Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, in August 1981. In addition it put a number of conditions on their readmittance including size limitations, restrictions on the areas which they may serve and the sources from which they may obtain Program meals. It also established technical assistance and monitoring requirements relative to their participation. In addition to private sponsors, the legislation also established an entirely new category of Program sites—those which serve primarily homeless children. Finally, it made colleges and universities which participate in the National Youth Sports Program (NYSP) during the academic year eligible for Program participation during the months of October through April. The Department published these regulations on April 10, 1990 (55 FR 13454). In order to give State agencies and program sponsors an additional year experience with these new requirements, as well as the fact that the Department believes that there are no essential changes to the regulations required at this time, the Department has determined that it will not propose any changes, other than those regarding the collection of social security numbers and household income information, to the Program regulations for the summer of 1991.

With regard to the change to the requirements for the collection of social security numbers and household income information on the application for free and reduced price meals, the Department will issue a separate interim rule with a comment period. This interim rule will implement the mandatory changes to these requirements which were made by section 202(b)(2) of the Public Law 101-147. The rule will give the household the option to provide only the social security number of the household member who signs the application or that of the parent or guardian who is the primary wage earner. In addition, households will only be required to provide income information sufficient to enable the determining official to calculate the total household income. The interim rule will provide more detailed information on these changes to the application requirements which are intended to reduce paperwork by simplifying the application requirements, while maintaining program integrity.

Dated: November 27, 1990.

Betty Jo Nelsen,
Administrator.

[FR Doc. 90-28372 Filed 12-4-90; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ASO-19]

Proposed Alteration of VOR Federal Airway; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to alter the description of VOR Federal Airway V-329 located in the vicinity of Eglin Air Force Base (AFB), FL. VOR Federal Airway V-329 was utilized as a departure/arrival route for the Eglin AFB complex. A new description must be used now that the Eglin VOR has been decommissioned. This action would maintain the route alignment.

DATES: Comments must be received on or before January 10, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 90-ASO-19, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located

in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign VOR Federal Airway V-329 located in the vicinity of Eglin AFB, FL. The Eglin VOR was destroyed by a tornado and the Air Force decided not to replace the VOR. The FAA plans to replace the VOR in 1992. VOR Federal Airway V-329 would be realigned in that vicinity and would terminate at the Corky Intersection, which is in proximity of the Eglin VOR site. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-329 [Revised]

From INT Crestview, FL, 091°T(088°M) and Andalusia, AL, 192°T(192°M) radials; Andalusia; INT Andalusia 358°T(358°M) and Montgomery, AL, 188°T(185°M) radials; to Montgomery.

Issued in Washington, DC, on November 20, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90-28510 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-238-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which currently requires modification of the vertical stabilizer forward closure rib by installation of a cover plate and a panel assembly over lightening and access holes. This condition, if not corrected, could result in overpressurization of the vertical stabilizer, which could cause structural failure in the event of a rupture of the fuselage under the dorsal fin. This action would require that the same modification be accomplished on eight additional airplanes that were not modified during production.

DATES: Comments must be received no later than January 29, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-238-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Seattle Aircraft

Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2781. *Mailing address:* FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Line Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: 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 should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 90-NM-238-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On August 21, 1990, the FAA issued AD 90-18-05, Amendment 39-6713 (55 FR 35576, August 31, 1990), to require modification of the vertical stabilizer forward closure rib by installation of a cover plate and a panel assembly over lightening and access holes on Model 767 series airplanes, line numbers 002 through 299. That action was prompted by a finding that these holes provided an air flow path to the vertical stabilizer. In the event of a rapid decompression of the passenger cabin due to a rupture of the fuselage in the area under the dorsal fin, the vertical stabilizer may become overpressurized. This condition, if not correct, could result in structural failure of the vertical stabilizer.

Since issuance of that AD, Boeing has advised the FAA that airplanes line number 300 through 307 were not modified during production. Therefore, these eight airplanes are subject to the same unsafe condition addressed by the existing AD.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-55A0007, Revision 1, dated May 24, 1990, which describes installation of a cover plate and a panel assembly to close the lightening and access holes, and adds additional Model 767 airplanes to the effectivity of the service bulletin.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would supersede AD 90-18-05 with a new airworthiness directive that would also require modification of the vertical stabilizer forward closure rib by installation of a cover plate and a panel assembly over the lightening and access holes on airplanes line number 300 through 307, in accordance with the service bulletin previously described.

There are approximately 306 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 2 additional airplanes of U.S. registry would be affected by this AD, that it would take approximately 28 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,240 for the additional airplanes.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6713 (55 FR 35576, August 31, 1990), AD 90-18-05, with the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line number 002 through 307, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure of the vertical stabilizer from overpressurization in the event of a rupture of the fuselage under the dorsal fin, accomplish the following:

A. Install a cover plate and a panel assembly over the lightening and access holes in the vertical stabilizer forward closure rib, in accordance with Boeing Alert Service Bulletin 767-55A0007, dated June 22, 1989, or Revision 1, dated May 24, 1990, within the following schedule.

1. For airplanes line number 001 through 299: Within the next 18 months after October 9, 1990 (the effective date of Amendment 39-6713, AD 90-18-05).

2. For airplanes line number 300 through 307: Within the next 18 months after the effective date of this amendment.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 26, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-28508 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-254-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which would require repetitive inspections to detect disbonding of the nickel sheath from the leading edge of the propeller blades and repair, if necessary. This proposal is prompted by a report of disbonding of a nickel sheath erosion strip from a propeller blade leading edge. This condition, if not corrected, could result in structural damage to the fuselage and possible injury to personnel on the ground.

DATES: Comments must be received no later than January 29, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-254-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: 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 should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 reponse to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-254-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Model ATP series airplanes. There has been a report of disbonding of a nickel sheath erosion strip from a propeller blade leading edge. This condition, if not corrected, could result in the detachment of the erosion strip from the propeller, which would subsequently lead to structural damage to the fuselage and possible injury to personnel on the ground.

British Aerospace has issued Alert Service Bulletin A-ATP-61-5, dated April 4, 1990, which describes procedures for repetitive inspections to detect disbonding of the nickel sheath from the propeller blades, and repair, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections to detect disbonding of the nickel sheath from the propeller blades, and repair, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

British Aerospace: Applies to ALL Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect disbonding of the nickel sheath from the propeller blades, accomplish the following:

A. Within 125 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 125 hours time-in-service, perform a visual inspection of the propeller blades for disbonding of the leading edge nickel sheath, in accordance with British Aerospace Alert Service Bulletin A-ATP-61-5, dated April 4, 1990.

B. If disbonding is found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 26, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-28509 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds, Transfers by Banks, and Transmittals of Funds by Other Financial Institutions: Extension of Time and Corrections

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period and corrections.

SUMMARY: Notice is hereby given that the Department of the Treasury is extending the comment period on the Notice of Proposed Rulemaking Relating to Amendment of the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers by Banks and Transmittals of Funds by Other Financial Institutions, published in the **Federal Register** on October 15, 1990 [55 FR 41696]. The Department is also making corrections to typographical errors published in the same notice.

DATES: Comments now will be accepted through January 15, 1990.

ADDRESSES: Comments should be addressed to Peter G. Djinis, Deputy Director, Office of Financial Enforcement, Department of the Treasury, room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Linda Noonan, Senior Counsel for Financial Enforcement, Office of the Assistant General Counsel (Enforcement), (202) 566-2941.

SUPPLEMENTARY INFORMATION: In the **Federal Register** (Vol. 55. No. 199) of Monday, October 15, 1990, on page 41703, three typographical errors are corrected to read as follows:

1. On page 41703, in § 103.33, in column 2, in paragraph (e)(1)(iii)(G), 4th line, the sentence beginning "(2)(i)(A)" should be a new paragraph.

2. On page 41703, in § 103.33, in column 3, in paragraph (e)(2)(i)(A), 3rd line, "(f)(1)(i)" should be "(e)(1)(i)".

3. On page 41703, in § 103.33, in column 3, in paragraph (e)(2)(ii)(A)(2), 3rd line, the word "originating" should read "receiving".

Dated: November 29, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90-28482 Filed 12-4-90; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[CGD 90-051]

RIN 2115-AD61

Double Hull Standards for Tank Vessels Carrying Oil

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the Oil Pollution Act of 1990, the Coast Guard is proposing standards for double hulls on tank vessels carrying oil as cargo or cargo residue that are constructed or undergo a major conversion under contracts awarded after June 30, 1990. Additionally, the Coast Guard is proposing these same standards for double hulls on tank vessels carrying oil as cargo or cargo residue that are constructed or undergo a major conversion under earlier contracts. The Act requires these vessels to have double hulls according to a timetable commencing in 1995. This proposed rule provides the shipping and shipbuilding industries with standards in order to meet the double hull requirement. These standards are, to the greatest extent possible, based on existing domestic standards issued pursuant to the Port and Tanker Safety Act (1978) or international standards adopted by the Act to Prevent Pollution from Ships (1980), which implemented the provisions of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78).

DATES: Comments must be received on or before April 1, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 90-051), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

Copies of Navigation and Vessel Inspection Circulars (NVICs) are available from the U.S. Coast Guard Marine Safety Center (G-MSC), 400 Seventh Street SW., Washington, DC 20590-0001, telephone (202) 366-6483.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen M. Shapiro, Merchant Vessel Inspection and Documentation Division (G-MVI-2), telephone (202) 267-1181.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting

comments should include their name and address, identify this rulemaking (CGD 90-051), the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. However, persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" If it is determined that the opportunity to make oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Mr. Stephen M. Shapiro, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Nicholas E. Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

Section 4115 of the Oil Pollution Act of 1990, "the Act," (Pub. L. 101-380) added section 3703a to Title 46 U.S.C. Section 3703a requires a double hull to be fitted on a tank vessel carrying oil as cargo or cargo residue which is constructed or undergoes a major conversion under a contract placed after June 30, 1990 (with certain exceptions). A tank vessel that is constructed or undergoes a major conversion under an earlier contract will be required to have a double hull in accordance with a timetable in section 3703a commencing in 1995.

The definition of a tank vessel in 46 U.S.C. 2101(39) and 33 CFR 157.03(v), which applies to this rulemaking, includes a vessel that carries any amount of oil in bulk as cargo or cargo residue. This definition goes beyond that in 46 CFR 30.10-69. Therefore this rulemaking applies to vessels certificated under 46 CFR subchapter D and to vessels certificated under other subchapters that carry limited quanitities of oil in bulk as cargo under 46 CFR 30.01-5.

This rulemaking does not apply to vessels which are exempted from the provisions of 46 U.S.C. chapter 37 by 46 U.S.C. part 3702. These include certain offshore supply and fishing industry vessels.

The Act does not provide technical standards for a double hull. The purpose of this rulemaking is to provide the shipping and shipbuilding industries with standards in order to meet the double hull requirement.

On September 21, 1990, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) No. 2-90. The NVIC provides policy guidance on double hull dimensions to assist in developing plans for tank vessels that must (as of July 1, 1990) be fitted with double hulls under the Act, prior to the issuance of final rules. Vessels built to plans that are approved in accordance with NVIC 2-90 prior to the effective date of these regulations, as finalized, will be deemed in compliance with the requirement for double hulls in 46 U.S.C. 3703a. Persons may request copies of NVIC 2-90 by contacting the Marine Safety Center at the address under "**ADDRESSES.**"

After the EXXON VALDEZ grounding, the Coast Guard commissioned a study by the National Academy of Sciences' (NAS) Marine Board to evaluate alternative tank vessel designs. The Marine Board established the Committee on Tank Vessel Design to perform this study. The scope of this study includes oceangoing vessels of more than 10,000 deadweight tons. NAS is expected to release the Committee's report by February 1991, and it will be placed in the public docket at that time. Further input is likely to be received at the next meeting of the International Maritime Organization's Marine Environment Protection Committee (MEPC), scheduled for November 1990.

The expiration date of the comment period, April 1, 1991, has been established so as to provide an opportunity to include the committee reports, and related public comment, in the rulemaking docket.

Title 46 U.S.C. 3703a permits the substitution of a double containment system for a double hull on vessels of less than 5,000 gross tons, provided that the double containment system is as effective as a double hull in preventing oil spillage. The NAS Marine Board Committee on Tank Vessel Design is evaluating the viability and effectiveness of alternative protective systems as noted above. Their report may provide guidance on equivalent double containment systems that could be incorporated for tank vessels under 5,000 gross tons. As the Coast Guard is not now aware of any feasible equivalent system, standards for a double containment system in lieu of a double hull are not proposed in this rulemaking. Comments and suggestions for a double containment system meeting the requirements of 46 U.S.C. 3703a are invited. If standards for a double containment system are developed, notification and an opportunity for public comment will be published in the **Federal Register.**

Discussion of Proposed Amendments

The Coast Guard is proposing existing or previously considered standards to the greatest extent possible. These amendments ar proposed for title 33 of the Code of Federal Regulations, part 157 (33 CFR part 157), "Rules for the Protection of the Marine Environment Relating to Tank Vessels Carrying Oil in Bulk" becasue they are closely related to the existing requirements found in that part. Comments and suggestions concerning these proposed standards are encouraged.

A new paragraph (j) is proposed for § 157.08 to apply the standards of new § 157.10d to vessels covered under 46 U.S.C. 3703a. Those are U.S. vessels and foreign flag vessels that operate on the navigable waters of the United States and the United States Exclusive Economic Zone as defined in § 1001 of the Act. The following is a discussion of § 157.10d.

Paragraph (a) further defines the applicability of the new double hull requirement under section 3703a to tank vessels contracted for after June 30, 1990, which must have double hulls to carry oil as cargo as of July 1, 1990, and tank vessels constructed under contracts awarded before July 1, 1990, that will be required to have double hulls in accordance with the timetable in the Act beginning in 1995. For the convenience of the reader, 46 U.S.C. 3703a is reprinted as an appendix at the end of this preamble.

Paragraph (b) implements the requirement in 46 U.S.C. 3703a that these vessels have double hulls. The law does not define "double hull." The Coast Guard interprets "double hull" to mean spaces between a vessel's skin and cargo tanks that provide reasonable protection of the entire cargo block from damage due to grounding or collision, the most likely sources of damage resulting in the loss of cargo. On that basis, this proposed rule provides protection of the cargo block by specifying the minimum clearances between a tank carrying oil and the sides, bottom, bow, and stern of a vessel. Comments regarding these proposed clearances, especially insofar as existing vessels are concerned, are particularly invited.

Calculations required by this section under the procedures in existing appendix C of 33 CFR part 157 must

substitute a value of J=1.00 in lieu of the values prescribed in paragraph 2(a) of appendix C. This will afford protection along the entire bottom and sides of the cargo block, rather than along just a percentage of the bottom and side area. Measurements of the required width and depth of protective spaces prescribed in this section shall be in accordance with existing guidance in NVIC 1-81, which is consistent with appendix 2 to the Unified Interpretation of Annex I of MARPOL 73/78. This guidance was originally developed for vessels of 20,000 deadweight tons and more. An additional clarification is proposed to ensure minimum separation between any part of a cargo tank and the hull.

This proposed rule does not include standards for the location of suction wells or piping within protective spaces. Existing standards for these items are in Regulations 23(3) and 24(6) of Annex I to MARPOL 73/78. In addition, current Coast Guard policy in paragraph B.3.h. of enclosure (2) to NVIC 1-81 permits a suction well within a double bottom if its area is not excessive and if it does not extend down over half the depth of the double bottom.

Paragraph (c) provides a standard for protecting the bottom and sides of the cargo block on vessels of 20,000 deadweight tons or more. This standard incorporates the exisiting international standard for dimensions of protective spaces that are fitted to comply with current requirements in § 157.10(d). The current requirements for protectively located segregated ballast tanks (PL/SBT) in § 157.10(d) were mandated by the Port and Tanker Safety Act of 1978 and the Act to Prevent Pollution by Ships (1980), which adopted the provisions of MARPOL 73/78. Specifications of the dimensions and surface area coverage of PL/SBT were first developed in 1975 for vessels of 70,000 deadweight tons or more, and were incorporated in the 1976 PL/SBT regulations for those vessels in domestic trade (41 FR 1479) under the Ports and Waterways Safety Act (1973). The primary purpose of SBT is to minimize operational pollution by maintaining separate tanks for the carriage of oil and ballast water. Protective location of SBT developed as a secondary purpose. Accordingly, when the specifications for PL/SBT were developed in 1975, there was no intent to require such spaces in excess of the spaces otherwise required for SBT. Those specifications for PL/SBT were later incorporated in Regulation 13E of Annex I to MARPOL 73/78 at the 1978 International Conference on Tanker Safety and Pollution Prevention (TSPP), which produced the 1978 Protocol of MARPOL 73/78. Existing § 157.10(d) and appendix C of this part conform to Regulation 13E.

Existing § 157.10(d) requires crude oil tankers of 20,000 deadweight tons or more, and product tankers of 30,000 deadweight tons or more, to have protective spaces separating a variable percentage of the sides and bottom area of the cargo block and a vessel's skin. Specifications for those spaces, and a procedure to determine the required percentage of the side and bottom cargo tank area that must be protected by such spaces, are provided in appendix C of this part. Substitution of J=1.00 in calculations under appendix C, as required by paragraph (b) as described above, extends such protection to the entire side and bottom area of the cargo block, rather than just the percentages of such areas specified in appendix C.

Existing § 157.10(c), which conforms to Regulation 13, contains the current requirements for SBT capacity to prevent operational pollution.

The SBT capacities required by § 157.10(c) exceed the minimum volumes for PL/SBT now required by § 157.10(d). The SBT capacities required by § 157.10(c) will exceed the minimum volumes for protective spaces required by this new § 157.10(c) for the vast majority of tank vessels over 70,000 deadweight tons. Most tank vessels under 70,000 deadweight tons will have to dedicate more volume to protective spaces under this paragraph than the volume necessary for SBT under § 157.10(c). A standard for locating the additional SBT required by § 157.10(c) for most vessels over 70,000 deadweight tons is not proposed at this time because it is not considered critical to the overall intent of this rulemaking and because more input is needed to develop such a standard. The previously noted study of the NAS Marine Board Committee on Tank Vessel Design and a study sponsored by the Royal Norwegian Council for Scientific and Industrial Research on protectively located spaces, as well as input presented to the MEPC, may address the location of additional ballast. The public is particularly encouraged to submit to this docket data and other comments concerning the best location of such additional ballast. If further standards for locating such additional ballast are developed, notification and an opportunity for public comment will be published in the **Federal Register**.

Paragraph (d) provides a standard for protecting the bottom and sides of the cargo block on oceangoing and Great Lakes vessels of less than 20,000 deadweight tons and inland vessels of between 10,000 and 20,000 deadweight tons. The specifications for protective spaces in Regulation 13E of MARPOL 73/78, Annex I, which are incorporated in paragraph (c), apply only to vessels of 20,000 deadweight tons or more.

A modification of those specifications is proposed for the smaller vessels covered under this paragraph. The width of the minimum required side protection decreases linearly from 2 meters (79 in.), for a vessel of 19,999 deadweight tons (as required by Regulation 13E, without modification, for a crude oil tanker of 20,000 deadweight tons or more), down to 1 meter (39 in.), for a vessel of 10,000 deadweight tons or less. Regulation 13E specifies the minimum depth of double bottoms as a function of vessel breadth. This specification is maintained in this paragraph, with the added proviso that a double bottom shall in no case be less than 1 meter (39 in.) deep.

Paragraph (e) provides a standard for protecting the bottom and sides of the cargo block on inland (as defined in 33 CFR 2.05-20) vessels of less than 10,000 deadweight tons, including inland vessels that are also certificated for limited short protected coastwise routes. These vessels are primarily barges. This standard, and the standards for bow and stern protection found in paragraphs (f) and (g), largely incorporate the regulations proposed by the Coast Guard for tank barges on June 14, 1979 (44 FR 34440). The Coast Guard also published an advance notice of proposed rulemaking on June 14, 1979 (44 Fr 34443), to discuss the removal of certain existing single hull tank barges from oil service to reduce spillage resulting from minor hull damage. Those notices were met with overwhelming opposition from the barge industry. The major issues raised were whether double hulls on tank barges would significantly reduce cargo spillage and, if so, whether single hull tank barges should be phased out. The technical standards for double hulls were not raised as a significant issue.

As a result of the controversy over the 1979 proposals and since the Coast Guard viewed tank barge oil pollution as a national issue, the Maritime Transportation Research Board of the NAS was asked to study that issue and recommend solutions. The Board's report did not recommend double hulls for all tank barges. After reviewing the Board's report and the rulemaking dockets, the Coast Guard withdrew the proposed rule and the advance notice of proposed rulemaking on March 25, 1982 (47 FR 12829) in favor of pursuing other alternatives in an effort to achieve an approach that would minimize the cost

and maximize the net benefit. The Coast Guard noted in the withdrawal notice that a steadily increasing percentage of new tank barges were being built with double hulls. The Coast Guard has encouraged this trend by establishing inspection standards which appropriately recognize the differences between maintenance characteristics of inland tank barges with double hull and single hull construction.

As stated previously, the Act has now mandated double hulls; this rulemaking proposes standards by which to meet that mandate. Paragraph (e) requires a 61 cm. (2 ft.) separation between any part of a cargo tank and the outer skin along the sides and bottom, measured under a procedure similar to that found in appendix C of this part for larger vessels. This is consistent with the rule proposed in 1979, which would have required a 61 cm. (2 ft.) separation between any part of a cargo tank and the outer skin in all areas of a barge (sides, bottom, bow, and stern). This distance is considered to be the minimum distance that permits access for inspection when accounting for framing. In addition to specifying the separation distance, the rule proposed in 1979 would have imposed additional new requirements regarding the stability of a barge as well as access, sounding, venting, and piping for the protective spaces. Although this rulemaking does not propose such requirements, comments and suggestions on those subjects are particularly invited. If further standards regarding those subjects are developed, notification and an opportunity for public comment will be published in the **Federal Register**.

Paragraph (f) provides a standard for protecting the forward end of the cargo block. This standard extends the existing requirements in 33 CFR 155.470, concerning prohibited oil spaces, to all vessels subject to this section. For most types of vessels, particularly self-propelled vessels, collision protection is provided by a collision bulkhead required by Regulation 11.2 of Chapter II–1 of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74/83). Paragraph (f) provides for equivalent protective spaces on tank vessels which do not have collision bulkheads. For an oceangoing vessel, these spaces extend five percent of the vessel's length aft of the forward perpendicular, from a minimum requirement of one meter (39 in.) to a maximum requirement of 10 meters (32.8 ft.). A modification for most inland vessels sets the headlog (or stem at the freeboard deck) as the reference point and proposes a maximum requirement of 7.62 meters (25 ft.). Box and trail barges do not need the same degree of protection, and need to have only a 61 cm. (2 ft.) separation from the headlog. These modifications for inland vessels and box and trail barges reflect existing requirements in 46 CFR 151.15–3(d)(1)(iii).

Paragraph (g) provides a standard for protecting the aft end of the cargo block in the event a tank vessel sustains external damage to its stern. This will primarily affect barges, since the cargo block on ships is generally forward of the engine room due to other design considerations. The separation between the cargo block and the stern is equal to the minimum distance required under this section between cargo tanks and the outer side. For barges of less than 10,000 deadweight tons, this proposal has the same effect as the standard which was proposed in 1979. As a minimum, this proposed rule will provide for a 61 cm. (2 ft.) separation between any part of a cargo tank and the outer hull along the stern.

Regulatory Evaluation

The Coast Guard has determined that this rulemaking is non-major under E.O. 12291, but is significant under the Department of Transportation Policies and Procedures (44 FR 11040, February 26, 1979) because of general and international public interest and because of Congressional interest in mandating the double hull requirement.

Title 46 U.S.C. 3703a will result in few, if any, crude oil tankers in foreign trade to be actually retrofitted or retired earlier than would otherwise be the case since single hull tankers are permitted to lighter more than 60 miles offshore or unload cargo at deepwater ports until 2015. Much existing tonnage is old, and would be replaced prior to 2015 due to maintenance and other considerations. The final date of January 1, 2015 for single hull tank vessels applies to existing vessels under 5,000 gross tons and to larger tank vessels that offload at approved deepwater ports or lighter more than 60 miles offshore. Vessels that are not permitted to operate in their current service as of an earlier date specified by the timetables in section 3703a may remain in operation until 2015 by limiting their U.S. service route to lightering zones and deepwater ports. Therefore, it is likely that sufficient double hull tonnage required to meet the provisions of the Act will become available as new tonnage is built to replace otherwise obsolete vessels; new construction solely to meet the requirements of this law will not generally be necessary.

Our preliminary analysis, based upon a comparison of estimated voyage costs for new single and double hull tankers, indicates that the impact on the average transportation cost of imported crude oil will be approximately 17 cents per barrel, or 0.4 cents per gallon. In 1989, imports of foreign crude oil by tanker were approximately 4.9 million barrels per day, indicating an increased cost for tanker transportation of $833 thousand per day, or approximately $304 million per year, at the current level of crude oil imports. This cost of $304 million represents the incremental construction and capital recovery costs of replacing all existing crude oil tankers with double hull, rather than single hull vessels. A more detailed analysis is being prepared and will be placed in the public docket.

The purpose of this rulemaking is to define standards for double hulls on vessels that are required to have double hulls by 33 U.S.C. 3703a. The requirement to replace existing tonnage with double hull, rather than single hull vessels, is mandated by the Act. The Coast Guard has no discretion on this point under the law. The Coast Guard's discretion is limited to defining the standards for such double hull vessels. The variation between the costs of building tankers to the various double hull standards the Coast Guard could adopt is minimal compared to the additional costs of building tankers with double rather than single hulls. In other words, the difference between the costs of various standards for locating the necessary extra steel for a double hull is minimal compared with the basic costs of fitting that necessary extra steel in any potential location.

Comments concerning the costs of these requirements, particularly for vessels in domestic trade, are encouraged. If warranted by the comments received, the Coast Guard will conduct additional analysis, as appropriate. Any such analysis will be placed in the public docket.

Small Entities

This proposed rule provides standards for double hulls that must be fitted in tank vessels carrying oil in accordance with 46 U.S.C. 3703a. These standards do not impact vessels currently in operation, some of which may be owned or operated by small entities, until 1995. Agencies may delay the completion of the initial regulatory flexibility analysis under section 608(a) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). To assist the Coast Guard in conducting the regulatory flexibility analysis for this rulemaking, we invite comments on the

impact of these rules on small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will place the regulatory flexibility analysis in the public docket when completed and consider any comments received concerning the impact on small entities when this proposed rule is finalized.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This proposed rule requiring double hulls for certain tank vessels will implement section 4115 of the Oil Pollution Act of 1990 and benefit the human environment by mitigating or preventing oil spills resulting from certain groundings and collisions involving tank vessels. No significant adverse environmental impacts are anticipated.

The Coast Guard has no discretion under the Act to determine whether double hulls will be required. However, the Coast Guard does have discretion to determine the dimensions (standards) of protective spaces that will constitute a double hull. The differences between the environmental impacts of various potential double hull standards are small compared with the impact of the basic statutory requirements for double hulls. Government agencies, private industry, and other interested persons are encouraged to submit comments regarding these differences. The ongoing studies and other anticipated input noted in the "Discussion of Proposed Amendments" will also provide information on the environmental impact of this proposal.

The Coast Guard will review this information along with comments received in response to this rulemaking in determining appropriate environmental documentation under the National Environmental Policy Act. Such documentation will be placed in the public docket.

Appendix—Double Hull Requirements (46 U.S.C. 3703a)

46 U.S.C. 3703a, as added by section 4115 of the Oil Pollution Act of 1990 (Pub. L. 101–380), provides that:

(a) Except as otherwise provided in this section, a vessel to which this chapter applies shall be equipped with a double hull—

(1) If it is constructed or adapted to carry, or carries, oil as cargo or cargo residue; and

(2) When operating on the waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone.

(b) This section does not apply to—

(1) A vessel used only to respond to a discharge of oil or a hazardous substance;

(2) A vessel of less than 5,000 gross tons equipped with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil; or

(3) Before January 1, 2015—

(A) A vessel unloading oil in bulk at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.); or

(B) A delivering vessel that is offloading in lightering activities—

(i) Within a lightering zone established under section 3715(b)(5) of this title; and

(ii) More than 60 miles from the baseline from which the territorial sea of the United States is measured.

(c)(1) In this subsection, the age of a vessel is determined from the later of the date on which the vessel is—

(A) Delivered after original construction;

(B) Delivered after completion of a major conversion; or

(C) Qualifed for documentation under section 4136 of the Revised Statutes of the United States (46 U.S.C. App. 14).

(2) A vessel of less than 5,000 gross tons for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statutes of the United States (46 U.S.C. App. 14) before January 1, 1994, may not operate in the navigable waters or Exclusive Economic Zone of the United States unless equipped with a double containment system after January 1, 2015.

(3) A vessel for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel that had its appraised salvage determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statues of the United States (46 U.S.C. App. 14) before January 1, 1994, may not operate in the navigable waters or Exclusive Economic Zone of the United States unless equipped with a double hull—

(A) In the case of a vessel of at least 5,000 gross tons but less than 15,000 gross tons—

(i) After January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 39 years old or older and has a single hull, or is 44 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iv) After January 1, 1998, if the vessel is 37 years old or older and has a single hull, or is 42 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 35 years old or older and has a single hull, or is 40 years old or older and has a double bottom or double sides;

(vii) After January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

(B) In the case of a vessel of at least 15,000 gross tons but less than 30,000 gross tons—

(i) After January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

(iv) After January 1, 1998, if the vessel is 34 years old or older and has a single hull, or is 39 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 32 years old or older and has a single hull, or is 37 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 30 years old or older and has a single hull, or is 35 years old or older and has a double bottom or double sides;

(vii) After January 1, 2001, if the vessel is 29 years old or older and has a single hull, or is 34 years old or older and has a double bottom or double sides;

(viii) After January 1, 2002, if the vessel is 28 years old or older and has a single hull, or is 33 years old or older and has a double bottom or double sides;

(ix) After January 1, 2003, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(x) After January 1, 2004, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

(xi) After January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides; and

(C) In the case of a vessel of at least 30,000 gross tons—

(i) After January 1, 1995, if the vessel is 28 years old or older and has a single hull, or is

33 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

(iv) After January 1, 1998, if the vessel is 25 years old or older and has a single hull, or is 29 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 24 years old or older and has a single hull, or is 29 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 23 years old or older and has a single hull, or is 28 years old or older and has a double bottom or double sides;

(4) Except as provided in subsection (b) of this section—

(A) A vessel that has a single hull may not operate after January 1, 2010; and

(B) A vessel that has a double bottom or double sides may not operate after January 1, 2015.

List of Subjects in 33 CFR 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes amending 33 CFR part 157 as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 is revised to read as follows:

Authority: 33 U.S.C. 1903; Sec. 4115, Pub. L. 101-380; 46 U.S.C. 3703a; 49 CFR 1.46(n) and (hh).

2. Section 157.08 is amended by adding a new paragraph (j) to read as follows:

§ 157.08 Applicability of Subpart B.

* * * * *

(j) Section 157.10d applies to U.S. tank vessels and to foreign tank vessels of any gross tons operating on the navigable waters of the United States or the United States Exclusive Economic Zone, as defined in section 1001 of the Oil Pollution Act of 1990, Pub. L. 101-380, except:

(1) A vessel used only to respond to a discharge of oil or a hazardous substance; or

(2) Before January 1, 2015—

(i) A vessel unloading oil in bulk at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*); or

(ii) A delivering vessel that is offloading in lightering activities—

(A) Within a lightering zone established under 46 U.S.C. 3715(b)(5); and

(B) More than 60 miles from the territorial sea baseline, as defined in 33 CFR 2.05-10.

3. Section 157.10d is added to read as follows:

§ 157.10d Double hulls on tank vessels constructed after June 30, 1990.

(a) With the exceptions stated in § 157.08(j), this section applies to a tank vessel—

(1) For which the building contract is awarded after June 30, 1990;

(2) That is delivered after December 31, 1993;

(3) That undergoes a major conversion for which;

(i) The contract is awarded after June 30, 1990; or

(ii) Conversion is completed after December 31, 1993; or

(4) That is otherwise required to have a double hull by 46 U.S.C. 3703a.

(b) Each tank vessel under this section must be fitted with a double hull in accordance with the requirements of this section.

(1) Calculations in Appendix C of this part that are required by this section must incorporate a value of J=1.00, in lieu of the values in paragraph 2(a) of appendix C.

(2) A vessel must not carry oil as cargo in any tank that has any part, except for suction wells, closer to the inboard side of the vessel's side or bottom shell plating than—

(i) One meter (39 in.); or

(ii) For a vessel of less than 10,000 deadweight tons that is constructed and certificated primarily for service on inland routes, 61 cm. (2 ft.).

(c) A vessel of 20,000 deadweight tons or more must have ballast tanks, voids, or other spaces that do not carry oil distributed within the cargo tank length as determined under the procedure contained in paragraph 2 of Appendix C of this part.

(d) A vessel of less than 20,000 deadweight tons, except a vessel of less than 10,000 deadweight tons that is constructed and certificated primarily for service on inland routes, must have ballast tanks, voids, or other spaces that do not carry oil distributed within the cargo tank length as determined under the procedure contained in paragraph 2 of appendix C of this part, except that—

(1) The minimum width of each wing tank or space under paragraph 2(b)(1) of Appendix C must be [deadweight tonnage/10,000] meters but in no case less than 1 meter (39 in.); and

(2) The minimum vertical depth of each double bottom or space under paragraph 2(b)(2) of Appendix C must be the lesser of B/15 or 2 meters (79 in.) but in no case less than 1 meter (39 in.).

(e) A vessel of less than 10,000 deadweight tons that is constructed and certificated primarily for service on inland routes must have ballast tanks, voids, or other spaces that do not carry oil distributed within the cargo tank length—

(1) A minimum of 61 cm. (2 ft.) from the inboard side of the side shell plate, extending the full depth of the side or from the main deck to the top of the double bottom required by paragraph (e)(2), measured at right angles to the centerline along the entire side in way of cargo tanks; and

(2) A minimum of 61 cm. (2 ft.) from the top of the bottom shell plate, measured vertically upward along the entire bottom in way of cargo tanks.

(f) A vessel must not carry oil in any tank extending forward of:

(1) The collision bulkhead; or

(2) In the absence of a collision bulkhead, the transverse plane perpendicular to the centerline through a point located:

(i) the lesser of 10 meters (32.8 ft.) or 5 percent of the vessel length, but in no case less than 1 meter (39 in.), aft of the forward perpendicular;

(ii) On a vessel of less than 10,000 deadweight tons that is constructed and certificated primarily for service on inland routes, the lesser of 7.62 meters (25 ft.) or 5 percent of the vessel length, but in no case less than 61 cm. (2 ft.), aft of the headlog or stem at the freeboard deck; or

(iii) On a box or trail barge, 61 cm. (2 ft.) aft of the headlog.

(g) A vessel must not carry oil as cargo in any tank that has any part closer to the stern than the minimum distance required under this section between a cargo tank and the vessel's outer side at amidships.

Dated: November 29, 1990.

J. W. Kime,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 90-28465 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73-3a; Notice 8]

Rearview Mirror Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates a rulemaking about Standard No. 111, Rearview Mirror Systems, that proposed requirements for field of view performance, reflectance, adjustment, location, mounting, breakaway characteristics, shatter resistance, distortion, reference framing, and image orientation for all vehicle types. After reviewing the comments, the agency has determined that the benefits from the rulemaking would have been relatively small and would have been substantially outweighed by the costs.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366-5271.

SUPPLEMENTARY INFORMATION: On November 6, 1978, the agency issued a notice proposing extensive revisions to Federal Motor Vehicle Safety Standard 111, Rearview Mirrors, (49 CFR 571.111) including requirements for field of view performance, reflectance, adjustment, location, mounting, breakaway characteristics, shatter resistance, distortion, reference framing, and image orientation for all vehicle types. (43 FR 51657; Docket 71-3a; Notice 4). Concurrent with that rulemaking, the agency issued a notice proposing a new Federal motor vehicle safety standard 128, Fields of Direct View, which proposed limits on the maximum permissible size of obstructions in the driver's field of view and minimum field of view for the driver through the windshield (43 FR 51677, Docket 70-7, Notice 5). On July 16, 1981, the agency terminated the field of view rulemaking, concluding that its potential costs substantially outweighed its uncertain and relatively small safety benefits. (46 FR 36873)

The agency received extensive comments to Docket 71-3a on the notice proposing to amend the requirements for mirror systems. The comments about the proposal were mixed. Although some mirror inventors, safety organizations, and members of the general public favored improving indirect fields of view by amending requirements for mirror systems, most manufacturers and other commenters believed that there were insufficient safety data to justify the amendments and that further research and analysis was needed to assess the proposals. Some commenters criticized the large cost of the proposal relative to its uncertain or nonexistent benefits. Commenters also criticized the effectiveness, objectiveness, and practicability of specific proposals.

Since the 1978 NPRM, the agency amended provisions in Standard No. 111 to permit the use of exterior convex mirrors on the passenger side to meet the standard's field of view requirements. (47 FR 38698, September 2, 1982; 48 FR 38842, August 26, 1983). As for the unresolved proposals raised in the 1978 NPRM, the agency has decided to terminate rulemaking on them. The information provided in response to the NPRM raised questions about the rule's potential benefits and the appropriateness of certain proposed requirements. After reviewing that information, the agency concludes that the benefits from the rulemaking would have been relatively small and would have been substantially outweighed by the costs.

Based on the above considerations, the agency has decided to close Docket No. 71-3a Notice 4 and to terminate the general rulemaking to amend requirements for rearview mirror systems. Notwithstanding this decision to terminate the general rulemaking on mirror systems, the agency will continue to assess specific performance factors with mirrors. For instance, the agency is currently reviewing S11's reflectance requirements in response to a petition from Donnelly Corporation. In addition, the agency is reviewing S9's requirements for convex crossview mirrors on school buses following the soliciting of public comments in an Advance Notice of Proposed Rulemaking. (54 FR 53127, December 27, 1989)

Issued on: November 29, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-28457 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: Mr. Peter N. Gold petitioned NHTSA to conduct rulemaking to improve occupant protection during side impact collisions. NHTSA is denying the petition as moot because NHTSA has already either completed or commenced a number of rulemakings to improve occupant protection during side impact collisions.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION: NHTSA received a petition for rulemaking from Peter N. Gold, dated July 2, 1990. Mr. Gold requested that NHTSA establish additional requirements to protect vehicle occupants during side impact collisions. Specifically, Mr. Gold suggested that:

> All vehicles over the weight of two thousand pounds shall provide integral "means" to absorb, resist, and transfer a side impact energy load within the vehicle structure to provide for reduced incidents of lateral transfer of vehicle occupants at rest within said vehicle to sides of said vehicles as a result of a side impact collision.

Mr. Gold enclosed a patent application for a vehicle safety bar assembly, which he indicated could be used to protect occupants better during side impact collisions. According to Mr. Gold, the vehicle safety bar is mountable within the cavity of a vehicle door or panel. Perhaps unknown to Mr. Gold, NHTSA had already commenced rulemaking to improve side impact protection. Below, NHTSA describes the current requirements concerning side impact protection as well as ongoing rulemaking to establish additional requirements.

NHTSA's current standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214 (49 CFR 571.214). Since it became effective on January 1, 1973, the standard has specified performance requirements for each side door in a passenger car, to mitigate occupant injuries in side impacts by reducing the extent to which the side structure of a car is pushed into the passenger compartment during a side impact. The standard requires each door on a static vehicle to resist crush forces that are applied by a piston pressing as steel cylinder inward against the door's outside surface in a laboratory test. Vehicle manufactures have generally chosen to meet these performance requirements by reinforcing the side doors with metal beams.

NHTSA's analysis of crash data has shown that the strengthening of the side doors with metal beams is effective, but primarily in single car side impacts. The agency's November 1982 study, "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard 214" (DOT HS 806-314), estimated that 480 lives have been saved and 9,500 fewer hospitalizations have occurred per year as a result of the standard. The study

also found that while single vehicle occupant fatalities were reduced by 14 percent, the standard had little effect on reducing fatalities in multi-car collisions.

Because of the large number of fatalities and injuries which continue to result from side impact crashes, the agency initiated a research program to upgrade current standard. This effort focused primarily on thoracic protection, since data indicate that contact between the thorax and the side interior is a major source of serious injuries and fatalities.

Based on that research, on January 27, 1988, NHTSA published in the **Federal Register** (53 FR 2240), a notice of proposed rulemaking (NPRM) proposing to upgrade the standard. NHTSA analyzed comments on the proposal and published a final rule on October 30, 1990 (55 FR 45722). The final rule establishes a test procedure which simulates a two-vehicle side crash representative of an injurious side crash. The test uses a moving deformable barrier (MDB), weighing approximately 3,000 pounds, to represent a vehicle which is traveling at 30 mph and strikes the side of another vehicle which is traveling at 15 mph. The agency adopted specifications for the MDB in a separate notice (55 FR 45770) published at the same time as the October 30, final rule. To measure the magnitude of the threat of injury resulting from the side impact collision, the agency decided to use a specially developed side impact dummy (SID). NHTSA decided to use two of these dummies in a test, with one being placed on the front outboard seat and the other on the rear outboard seat, on the struck side of the car. The agency adopted specifications for the SID in a separate notice (55 FR 45757) published at the same time as the October 30, 1990 final rule.

NHTSA stated in the final rule that its new side impact requirements complement the long-standing requirements, which are primarily effective in single vehicle side impact accidents, by providing additional protection in multi-vehicle side impacts. In the final rule, the agency established specific performance crtieria which must be met to reduce the possibility of thoracic side impact injuries without increasing harm to the pelvis. The final rule requires passenger cars not to exceed specified performance limits for the thorax and the pelvis. For the thorax, the performance limit uses an injury criterion known as the Thoracic Trauma Index (dummy) or TTI(d). This injury criterion represents the average of peak acceleration values measured on the lower spine and the greater of the acceleration of values of the upper and lower ribs of the test dummy. The final rule establishes a TTI(d) limit of 85 g's for four-door cars and 90 g's for two-door cars (where "g" is defined as the acceleration due to gravity). In addition, the final rule sets a limit of 130 g's on the peak acceleration that the pelvis can experience during the impact. Finally, to reduce the possibility of occupant ejection, the agency requires that each door in a struck vehicle, except a door struck by the MOB, remain closed during the crash test.

In addition to issuing the October 30, 1990 final rule to improve thoracic protection in passenger car side impacts, NHTSA has also, during the past several years, been involved in several other efforts to improve side impact protection. These efforts cover both passenger cars and light trucks, vans and mutipurpose passenger vehicles (MPV's).

On August 19, 1988, the agency published in the **Federal Register** (53 FR 31712) an advance notice of proposed rulemaking (ANPRM) concerning requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and in other crashes where the side protection of the vehicle is a relevant factor. The ANPRM also sought comments on whether additional requirements should be considered to address side impacts with poles and trees.

NHTSA's efforts to improve side impact protection for light trucks, vans and MPV's (collectively referred to as "LTV's") largely correspond to its efforts for passenger cars. On August 19, 1988, the agency published in the **Federal Register** (53 FR 31716) an ANPRM regarding possible requirements for LTV's in each of the areas where requirements have been established, or are under consideration, for passenger cars. In summary, the ANPRM addressed: (1) Extension to LTV's of Standard No. 214's then-existing requirements, i.e., measuring performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door, (2) developing dynamic test procedures and performance requirements for LTV's, corresponding to those proposed in the January 1988 NPRM for passenger cars, and (3) developing requirements for LTV's intended to reduce the risk of head and neck injuries and ejections, corresponding to those addressed in the August 1988 ANPRM for passenger cars.

On December 22, 1989, NHTSA published in the **Federal Register** (54 FR 52826) an NPRM proposing to extend the then-existing requirements of Standard No. 214 to LTV's. Of the various potential side impact requirements for LTV's that were addressed in the ANPRM, the agency was the furthest advanced in analyzing the extension of Standard No. 214's then-existing requirements to those vehicles. NHTSA decided to go forward with rulemaking on that issue separately, since addressing all of the potential requirements together could result in unnecessary delays. NHTSA has reviewed comments on the proposed rule. NHTSA anticipates that a decision concerning the final rule will be made soon.

In view of these completed and ongoing rulemakings concerning side impact protection, NHTSA has decided to deny Mr. Gold's petition as moot. NHTSA has already completed or commenced the rulemakings requested by Mr. Gold. NHTSA will include Mr. Gold's petition in the docket for the side impact rulemaking and, as appropriate, consider the information presented by Mr. Gold during the ongoing rulemakings.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

Issued on November 29, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-28456 Filed 12-4-90; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 901197-0297]

Atlantic Swordfish Fishery

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

ACTION: Proposed rule.

SUMMARY: NOAA proposes to amend the regulations implementing the Fishery Management Plan for Atlantic Swordfish (FMP) to (1) Establish as a condition for the renewal of an annual vessel permit in the Atlantic swordfish fishery that all fishing vessel reports required for that vessel must have been submitted, and (2) add to the swordfish regulations a reference regarding the marine mammal exemption program under the Marine Mammal Protection Act as it applies to vessels and persons in the longline and gillnet fisheries for swordfish. The intended effects of this

action are to ensure compliance with and facilitate enforcement of the existing vessel reporting requirements and to advise vessel owners and operators of additional Federal regulatory requirements that may apply to them.

DATES: Written comments must be received by December 20, 1991.

ADDRESSES: Comments should be sent to Rodney C. Dalton, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the FMP and its implementing regulations at 50 CFR part 630, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The regulations at 50 CFR 630.5(a) require an owner or operator of a permitted vessel that is selected by the NMFS Science and Research Director to ensure that a daily fishing record is maintained on available forms. The forms must be submitted on a monthly basis to the appropriate NMFS Science and Research Director. Information from the daily fishing records provides effort data and numbers of fish caught per set (i.e., catch per unit of fishing effort) and catch locations. This information is necessary for assessment and monitoring of the resource. When a selected, permitted vessel does not fish during a month, a simple report of this inactivity is required for the month. These reports of no fishing activity facilitate NMF's determination of the receipt of all required reports and provide data on the swordfishing fleet in general.

Compliance with the fishing vessel reporting requirements has not been uniformly satisfactory. The owners/operators of a number of selected, permitted vessels have not submitted the required forms. NOAA believes that the annual fishing permit required by 50 CFR 630.4 for such a vessel should not be renewed until all required reports have been submitted. Accordingly, NOAA proposes to condition the reissuance of a fishing permit on compliance with all applicable reporting requirements of 50 CFR 630.5(a) for the 12 months immediately preceding the renewal application. The owner/operator of a vessel for which all required reports have not been submitted would be notified of that deficiency when he applies for an annual permit and would have an opportunity to correct the deficiency.

Regulations issued under the Marine Mammal Protection Act of 1972 (the Act), as amended (16 U.S.C. 1384), establish a 5-year exemption program (until October 1, 1993) from the Act's general prohibition on the taking of marine mammals for certain incidental takings of marine mammals in the course of commercial fishing (see 50 CFR part 229). Under that interim exemption program, the longline and gillnet fisheries for swordfish in the Atlantic Ocean (including the Gulf of Mexico and Caribbean Sea) have been identified as commercial fisheries in which there is an incidental taking of marine mammals. Accordingly, requirements pertaining to registration, exemption certificates, decals, and reports, as contained in 50 CFR part 229, apply to vessels, owners, and operators in those swordfish fisheries. To ensure that swordfish longline and gillnet fishermen are aware of the requirements of the interim exemption program under the Act, section 630.3 of the swordfish regulations ("Relation to other laws") would be revised to reference 50 CFR part 229.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that this proposed rule is necessary for the conservation and management of the swordfish fishery and that it is consistent with the Magnuson Act and other applicable Federal law.

The Assistant Administrator has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effect 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.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The primary effect of this proposed rule would be to enhance compliance with and facilitate enforcement of the existing vessel reporting requirements. The regulatory and economic impacts of the reporting requirements were fully evaluated when they were implemented (51 FR 20297, June 4, 1986). This proposed rule will not change those previously assessed impacts.

This proposed rule does not change any of the factors considered in the environmental impact statement prepared for the FMP; accordingly, this action is categorically excluded from the requirement of NOAA Directive 02-10 to prepare an environmental assessment.

In the final rule implementing the FMP (51 FR 20297, June 4, 1986) NOAA concluded that, to the maximum extent practicable, the FMP is consistent with the approved coastal zone management programs of all the affected states. Since this proposed rule, if adopted, does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and the initial consistency determination, a new consistency determination under the Coastal Zone Management Act is not required.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 29, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

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

2. Section 630.3 is revised to read as follows:

§ 630.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in a longline or gillnet swordfish fishery in the Atlantic Ocean (including the Gulf of Mexico and Carribbean Sea) unless the vessel owner or authorized representative has complied with the

requirements pertaining to registration, exemption certificates, decals, and reports as contained in 50 CFR part 229.

3. In § 630.4, paragraph (c) is revised to read as follows:

§ 630.4 Vessel permits.

* * * * *

(c) *Issuance.* (1) The Regional Director will issue a vessel permit at any time during the fishing year to an applicant if:

(i) The application is complete; and

(ii) The applicant has complied with all applicable reporting requirements of § 630.5(a) for the 12 months immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 630.5(a) for the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

* * * * *

[FR Doc. 90-28525 Filed 12-4-90; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 234
Wednesday, December 5, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 29, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Office, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

- Agricultural Marketing Service
  Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping
  Recordkeeping
  Businesses or other for-profit; 1,926 hours; not applicable under 3504(h)
  F. Tracy Schonrock (202) 447-3171

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 90-28438 Filed 12-4-90; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket No. 90-229]

Scrapie Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The purpose of this notice is to announce the seventh and eighth meetings in a series of sessions of the Scrapie Negotiated Rulemaking Advisory Committee.

PLACE, DATES, AND TIME OF MEETINGS: The seventh meeting will be held on December 13 and 14, 1990, from 9 a.m. to 5 p.m. each day. The seventh meeting will be held at the offices of the Conservation Foundation, 1250 24th Street NW., Washington, DC 20037. The eighth meeting will be held on January 20, 1991, from 9 a.m. to 5 p.m. at the Ramada Inn Long Beach, 5325 East Pacific Coast Highway, Long Beach, California 90804.

FOR FURTHER INFORMATION CONTACT: David Galbreath, Planning and Risk Analysis Systems, PPD, APHIS, USDA, room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8017.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published on February 26, 1990 (55 FR 6662-6663, Docket No. 89-139), we announced our intent to establish a Scrapie Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92-463). The Committee is developing alternatives to the current regulatory program designed to control scrapie in sheep and goats. The first meeting of the Committee was held on May 8 and 9, 1990, with five subsequent meetings in July, August, September, October, and November, 1990. This notice announces the seventh and eighth meetings in a series of sessions of the Committee.

The purpose of the meetings is to bring together members of the Animal and Plant Health Inspection Service, representatives of the sheep industry, and representatives of other parties with a definable stake in scrapie issues to frame a recommended rulemaking proposal as an alternative to the current regulatory program for the control of scrapie.

The tentative agendas for the seventh and eighth meetings of the Committee are as follows:

Seventh Meeting

First Day

Morning session—9 a.m.
- Review of minutes of last meeting
- Discussion of "Scrapie Uniform Methods and Rules" document

Afternoon session—1 p.m.
- Discussion of "Scrapie Certification Proposed Rule" document
- Public comments

Second Day

Morning session—9 a.m.
- Discussion of "Scrapie Indemnity Proposed Rule" document

Afternoon session—1 p.m.
- Committee administrative issues
- Discussion of future Committee meeting agendas
- Public comments

Eighth Meeting

Morning session—9 a.m.
- Final review of Committee products

Afternoon session—1 p.m.
- Discussion of future Committee activities
- Public comments

The meetings will be open to the public. Public participation at the meetings will be allowed during periods announced at each meeting for this purpose. Anyone who wants to file a written statement with the Committee may do so before, at the time of the meetings, or after the meetings by sending the statement on or before February 8, 1991, to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to the Scrapie Negotiated Rulemaking Advisory Committee.

Due to administrative error, less than 15 days notice is being given.

This notice of meetings is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. 92-463).

Done in Washington, DC, this 29th day of November 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-28487 Filed 12-4-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: National Oceanic and Atmospheric Administration.

Title: Capital Construction Fund—Deposit/Withdrawal Report.

Form Number: NOAA Form 34-82; OMB—0648-0041.

Type of Request: Request for extension of the expiration date of a currently approved collection without any change in the substance or method of the collection.

Burden: 2000 respondents; 825 reporting hours; average hours per response—.33 hours.

Needs and Uses: Respondents are fishermen holding CCF Agreements. Information is used in checking for respondents' compliance with the program requirements and for inconsistencies in their reporting to NOAA and the IRS of program-related adjustments to their income. Deposit and withdrawal information is also required, by statute, to Treasury Department.

Affected Public: Businesses or other for-profit, small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 29, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-28461 Filed 12-4-90; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: International Trade Administration, Commerce.

Title: Product Characteristics—Design Check-Off List.

Form Numbers: Agency—ITA-426P, OMB—0625-0035.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,900 respondents; 950 reporting hours.

Average Hours per Response: one-half hour.

Needs and Uses: The International Trade Administration (ITA) sponsors up to 100 overseas trade fair events each fiscal year. In addition, there is a Matchmaker Program of approximately 11 events annually, which is a combination of multi-stop trade missions and small equipment presentations. This collection seeks from participating U.S. firms information on the physical nature, power (utility), and graphic requirements of the products and services to be displayed in a U.S. pavilion or Matchmaker event, e.g. electrical voltage, dimension/weight of equipment to be exhibited, compressed air/gas, noise level, raw materials used for production during the exhibition, special anchorage (against vibration) photographs/wall graphics to be used, and company brochure to be forwarded. Without this information, ITA would be unable to provide a pavilion facility that would effectively support the sales/marketing and presentation objectives of the U.S. participants.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 29, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-28462 Filed 12-4-90; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Managment and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: International Trade Administration, Commerce.

Title: Application for an Export Trade Certificate of Review.

Form Numbers: Agency—ITA-4093P, OMB—0625-0125.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 30 respondents; 960 reporting hours.

Average Hours per Response: 32 hours.

Needs and Uses: The Export Trading Company Act of 1982 required the Department of Commerce to establish a program to evaluate applications for antitrust Export Trade Certificates of Review, and with concurrence of the Department of Justice, issue such certificates in appropriate cases. The information contained in the application and issue an Export Trade Certificate of Review. A certificate provides its holder and members named in the certificate with virtual immunity from Government actions under State and Federal Antitrust laws for the export conduct specified in the certificate. It also provides disincentive for frivolous private actions to actual damages. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities—especially those involving joint action by domestic competitors. This antitrust uncertainty was cited as one of the major impediments to increased U.S. exports.

Affected Public: State or local governments, businesses or other for profit; small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: November 29, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-28463 Filed 12-4-90; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[Application No. 90-A0005]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the California Kiwifruit Commission. Notice of issuance of the Certificate was published in the **Federal Register** on August 17, 1990 (FR 33740).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CCFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 90-00005 was issued to the California Kiwifruit Commission ("CKC") on August 10, 1990. Notice of issuance of the Certificate was published in the **Federal Register** on August 17, 1990 (55 FR 33740).

CKC sought to amend its Certificate by adding California Kiwifruit Exporters Association ("CKEA") as a "Member" (55 FR 41871). We amended the Certificate to add CKEA as a "co-certificate holder" rather than a "Member". The protection provided CKEA as a "co-certificate holder" is equivalent to adding it as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)).

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

EFFECTIVE DATE: October 5, 1990.

Dated: November 29, 1990.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-28464 Filed 12-4-90; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Review: Certain Manganese Steel Plate

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain manganese steel plate.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 348 net tons of various sizes of certain managanese steel plate under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products.

SHORT-SUPPLY REVIEW NUMBER: 33.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain manganese steel plate. On November 29, 1990, the Secretary received an adequate petition from U.S. Metalsource requesting a short-supply allowance for 348 net tons of this product under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products.

The requested material meets the following specifications:

Thickness: ¼ to ¾ inch
Width: 60 inches to 96 inches
Length: 144 inches to 240 inches
Tolerances: as per ASTM—A6
Chemistry: Mn, 11 to 14%; C, 1.15%; Si, <0.06%; P, <0.04%; S, <0.06%; Cr, <5%
Hardness: BHN 200 in delivery condition (work hardens under impact to BHN 500-600)
Yield Strength: 50 KSI
Tensile Strength: 125 KSI
Elongation: 30%

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary has granted short supply for this product during each of the two immediately preceding years. Therefore, in accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Procedures, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than December 4, 1990.

Comments: Interested parties wishing to comment upon this review must send written comments not later than December 13, 1990 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S.

Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-0165 or (202) 377-0159.

Dated: November 30, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28631 Filed 12-4-90; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 901102-0302]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Publication of 1990 NVLAP second quarterly supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the publication of the 1990 NVLAP Second Quarterly Supplement listing of laboratories accredited and de-accredited through September 30, 1990. To obtain a copy, write to the National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology, Building 411, Room A124, Gaithersburg, MD 20899. Please include a self-addressed mailing label.

FOR FURTHER INFORMATION CONTACT: Nancy M. Trahey, Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975-4016.

SUPPLEMENTARY INFORMATION: The Directory of NVLAP Accredited Laboratories (NISTIR 90-4290) is published annually pursuant to § 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (title 15, part 7 of the Code of Federal Regulations). The supplements to the Directory are published quarterly. Previous supplements are superseded with this notice.

John W. Lyons,

Director.

[FR Doc. 90-28480 Filed 12-4-90; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on the Directed Energy Weapons for Delay & Denial Security Systems will meet on 20-21 December 1990, from 8 a.m. to 5 p.m. at ANSER, 1215 Jefferson Davis Highway, Arlington, Virginia.

The purpose of this meeting is to review the task, obtain program briefings, and develop a roadmap for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-28429 Filed 12-4-90; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Armed Forces Epidemiological Board, DOD; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Committee Name: Armed Forces Epidemiological Board, DOD.

Date: December 17, 1990.

Time: 0900-1700.

Place: Naval Medical Research Institute, Bethesda, Maryland.

Proposed Agenda: Review of Overseas Laboratories.

This meeting will be open to the public but very limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline, Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

FOR FURTHER INFORMATION CONTACT: For further information contact CAPT W.M. Parsons, (703) 756-8013.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 90-28430 Filed 12-4-90; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2,) notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Defense Subpanel Task Force will meet December 20, 1990 from 9 a.m. to 5 p.m., in the CNO's Conference Room, Pentagon 4E630, Washington, DC. This session will be closed to the public.

The purpose of this meeting is to discuss policy and budgetary matters of immediate Navy interest. The entire agency for the meeting will consist of discussions of key issues regarding national security, maritime defense needs, defense policy, planning, and budgetary matters of immediate Navy interest. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requries that all sessions of the meeting be closed to the public because they will be concerned with matters listed in sections 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO

Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 3, 1990.

C.B. Roberts,

LTCOL, USMC Register Liason Officer.

[FR Doc. 90-28686 Filed 12-4-90; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 12, 1990 beginning at 1 p.m. in the Goddard Conference Room of its offices at 25 State Police Drive, West Trenton, New Jersey.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at 11 a.m. at the same location and will include discussions of the upper Delaware ice jam project; middle and upper Delaware water quality protection briefings and hearing process and Delaware Estuary water quality standards proposed upgrades.

The subjects of the hearing will be as follows:

Amendment of Project Review Filing Fee Schedule. Notice was given in the October 15, 1990 Federal Register, Vol. 55, No. 199, page 41745, that the Commission would hold a public hearing on December 12, 1990 to receive comments on proposed amendments to its schedule of project review filing fees for review of water resources projects. The revisions would make the project review program more self-sustaining and would: Require filing fees for project review pursuant to § 3.8 and Article 10 of the Delaware River Basin Compact; no longer exempt government agencies from such filing fees; and establish a new fee schedule, increasing the minimum fee to $1,000 for any project requiring Commission action. In addition, each substantial project modification following Commission action would require an additional filing fee.

Amendments to the Administrative Manual—Rules of Practice and Procedure. Notice was given in the October 18, 1990 Federal Register, Vol. 55, No. 202, page 42207, that the Commission would hold a public hearing on December 12, 1990 to receive comments on proposed amendments to its Rules of Practice and Procedure in relation to Commission review of landfill projects. The proposal would reaffirm the policies established in Resolution No. 69-7 concerning the review of sanitary landfill projects by the Commission and incorporate those policies in the Rules of Practice and Procedure for the first time.

A Proposal To Adopt the 1990 Water Resources Program. A proposal that the 1990 Water Resources Program and the activities, programs, initiatives, concerns, projections, and proposals identified and set forth therein be accepted and adopted, in accordance with the requirements of § 13.2 of the Delaware River Basin Compact.

Application for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or § 3.8 of the Compact

1. *City of Allentown, PA D-73-177 CP (Revised).* An application for a change of ownership (from the Allentown Authority to City of Allentown, PA) and an expansion of service area for the applicant's existing 40.0 million gallons per day (mgd) sewage treatment plant (STP). The applicant's expanded service area will include portions of the Townships of Hanover, Weisenberg; and Lowhill. The STP is located in the City of Allentown and discharges directly to the Lehigh River. The STP and the project service area are entirely within Lehigh County, Pennsylvania.

2. *Deptford Township Municipal Utilities Authority D-82-7 CP Renewal.* An application for the renewal of a ground water withdrawal project to supply up to 30 million gallons (mg)/30 days of water to the applicant's distribution system from Well No. 7. Commission approval on October 30, 1985 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 123 mg/30 days. The project is located in Deptford Township, Gloucester County, New Jersey.

3. *E. I. duPont de NeMours and Company, Inc. D-88-85.* An application to upgrade the Chambers Works Wastewater Treatment Plant located in Carneys Point Township, Salem County, New Jersey. The applicant seeks approval for the construction of secondary clarification facilities and a powdered activated carbon treatment system. The existing treatment plant was approved on January 24, 1974 by Docket No. D-69-194-2 to process 102 mgd of industrial wastewater, sludge, landfill leachate, recovered ground water, and some stormwater runoff. Treatment plant effluent will continue to be discharged through the existing outfall to the Delaware River in Water Quality Zone 5. The applicant also seeks approval to expand the service area of the treatment plant to process additional off-sit wastes from sources other than the applicant's, including those from sources outside of the Delaware River Basin.

4. *New York Department of Transportation (Lordville Bridge) D-90-4 CP.* An application for approval to construct a highway bridge over the Delaware River between Lordville, New York and Equinunk, Pennsylvania, within the Upper Delaware Scenic and Recreational River. The three-span steel structure will replace a bridge that was removed in 1986, and reestablish the connection of N.Y. Rt. 97 (Delaware County) and Pa. Rt. 191 (Wayne County).

5. *Evansburg Water Company D-90-5 CP.* An application for approval of a ground water withdrawal project to supply up to 5.6 mg/30 days of water of the applicant's distribution systems from new Well Nos. 103, 203 and 204, and to limit the withdrawal from all wells to 8.1 mg/30 days. The project is located in Lower Providence and Perkiomen Townships, Montgomery County, and is in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Hazleton City Authority D-90-10 CP.* An application for the withdrawal of surface water and for the diversion of water out of the Delaware River Basin. The proposed project will supply the applicant's existing Hazleton Division service area comprised of the City of Hazleton, the Boroughs of West Hazleton and Beaver Meadows, and parts of Hazle Township. The applicant had requested the right to withdraw 6.0 mgd of surface water from the Lehigh River and the Pennsylvania Department of Environmental Resources has approved the project for up to 2.5 mgd, for which the applicant now seeks DRBC approval. The proposed intake is on the Lehigh River at its confluence with Buck Mountain Creek, near the Town of Rockport, Lehigh Township, Carbon County, Pennsylvania. Disposal of wastewater resulting from the proposed withdrawal will be to the Hazleton Joint Sewer Authority Wastewater Treatment Plant which discharges to Black Creek in the Susquehanna River Basin. The applicant also plans construction of a new water treatment facility next to Roan Reservoir in the City of Hazleton, Luzerne County, Pennsylvania.

7. *New Jersey Department of Corrections D-90-11 CP.* An application for approval of a ground water

withdrawal project to supply up to 20 mg/30 days of water of the applicant's Bayside State Prison from existing Well Nos. 1, 2, 3 and 4, and to limit the withdrawal from all wells to 20 mg/30 days. The project is located in Maurice River Township, Cumberland County, New Jersey.

8. *Warrington Township Municipal Authority D-90-19 CP.* An application for approval of a ground water withdrawal project to supply up to 2.94 mg/30 days of water to the applicant's distribution system from new Well No. 11, and for the renewal of a ground water withdrawal project to supply up to 6.78 mg/30 days of water from Well No. 5. Commission approval of Docket No. D-80-50 CP (Revised) Renewal on December 18, 1985 was limited to five years and will expire unless renewed. The project is located in Warrington Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Berks County D-90-36 CP.* A sewage treatment project to serve the Berks County Welfare Tract, the Blue Marsh Recreation Area and various county facilities in the surrounding area. The existing 0.15 mgd sewage treatment plant (STP) will be replaced with a new STP designed to provide 0.50 mgd of treatment capacity but will operate at 0.30 mgd until the Pennsylvania 537 Plan approval for the higher rating is obtained. Treated effluent will be discharged to Plum Creek just upstream of its confluence with the Tulpehocken Creek in Bern Township, Berks County, Pennsylvania.

10. *Horsham Township Authority D-90-44 CP.* An application for approval of a ground water withdrawal project to supply up to 19.44 mg/30 days of water to the applicant's distribution system from new Well No. 21, and to increase the existing withdrawal limit of 82.8 mg/30 days from all wells to 83.36 mg/30 days. The project is located in Horsham Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

11. *Auburn Municipal Authority D-90-52 CP.* A surface water withdrawal project to serve the applicant's public water supply system in the Borough of Auburn and portions of South Manheim Township in Schuylkill County. The applicant proposes to increase its combined withdrawal from Stony Creek and an unnamed tributary to Stony Creek from 0.075 mgd to 0.125 mgd, with the withdrawal from each source not to exceed 0.125 mgd, all on an average monthly basis. The project withdrawals are both located in Tilden Township, Berks County, Pennsylvania, near the Schuylkill County line.

12. *Township of Medford D-90-57 CP.* An application for approval of a ground water withdrawal project to supply up to 6.48 mg/30 days of water to the applicant's distribution system from each Well Nos. 9 and 10, and increase of the existing withdrawal limit of 46.6 mg/30 days from all wells to 68.7 mg/30 days. The project is located in Medford Township, Burlington County, New Jersey.

13. *Kiamesha Artesian Spring Water Company, Inc. D-90-68 CP.* An application for approval of a ground water withdrawal project to supply up to 2.9 mg/30 days of water to the applicant's distribution system from the new Fraser Road Well No. 1, and to increase the existing withdrawal limit of 6.9 mg/30 days from all wells to 9.8 mg/30 days. The project is located in the Town of Thompson, Sullivan County, New York.

14. *Lehigh County Authority D-90-69 CP.* An application for approval of a ground water withdrawal project to supply up to 4.3 mg/30 days of water to the applicant's Western Lehigh Service Area from existing Well No. 20, and to retain the existing withdrawal limit from all wells of 188 mg/30 days. The project is located in Lower Macungie Township, Lehigh County, Pennsylvania.

15. *Amity Township Municipal Authority D-90-78 CP.* A sewage treatment plant (STP) upgrade and expansion project which will provide 1.6 mgd of advanced secondary treatment capacity to the existing 0.8 mgd plant. The STP will continue to serve Amity Township and the treated effluent will discharge to the Schuylkill River via the existing outfall. The STP is located in the southeast corner of the Township of Amity, just east of the Schuylkill River, in Berks County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related inquiries.

Persons wishing to testify at this hearing are requesting to register with the Secretary prior to the hearing and may be asked to limit their remarks to five minutes, to enable all who wish to speak to do so.

Dated: November 27, 1990.

Susan M. Weisman,

Secretary.

[FR Doc. 90-28499 Filed 12-4-90; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.165]

Magnet Schools Assistance Program; New Awards

AGENCY: Department of Education.

ACTION: Notice extending the closing date for new awards under the Magnet Schools Assistance Program for fiscal year (FY) 1991.

SUMMARY: On October 25, 1990, the Department of Education published in the **Federal Register** a notice inviting applications under the Magnet Schools Assistance Program for FY 1991. The purpose of this notice is to extend the closing date for transmittal of applications from December 12, 1990 to December 28, 1990, to provide applicants additional time to submit applications. Applicants that have already submitted applications will be able to supplement or revise their applications up to December 28, 1990. Three copies of any supplementary materials or of a revised application must be received by the Application Control Center by December 28, 1990. The Intergovernmental Review date is also extended from February 11, 1991 to March 5, 1991.

Applicants are reminded that a local educational agency that is implementing a plan required by a court, State agency or official of competent jurisdiction must have approval for any modification of its desegration plan from the court, agency, or official that originally approved the plan. The deadline for transmittal of proof of approval of modifications by the appropriate court, agency, or official is extended from January 15, 1991 to February 4, 1991.

FOR APPLICATIONS OR INFORMATION CONTACT: Annie R. Mack, U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, FOB #6, Washington, DC 20202-6439. Telephone (202) 401-0358.

Authority: 20 U.S.C. 3021-3032.

Dated: November 28, 1990.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 90-28436 Filed 12-4-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Awards to the State of Washington

AGENCY: Department of Energy, Richland Operations Office.

ACTION: Notice of intent to make noncompetitive financial assistance awards.

SUMMARY: The Department of Energy, Richland Operations Office (DOE-RL), in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award noncompetitive grants to State of Washington agencies.

Under the terms of the awards, State agencies will conduct environmental oversight programs to include environmental monitoring and emergency preparedness activities in support of DOE's activities at the Hanford Site. The awards provide support for activities agreed to earlier under an Agreement in Principle signed by the parties regarding remedial work at the site and the "Hanford Federal Facility Agreement and Consent Order" between the Environmental Protection Agency, the Washington State Department of Ecology, and the Department of Energy signed May 15, 1989.

DOE has determined that awards on a noncompetitive basis are appropriate because each recipient is a unit of government and the activities to be supported are related to the performance of governmental functions within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

DOE and State of Washington agencies are currently negotiating funding levels for the current year's activities. The levels of funding are renegotiated on a case-by-case basis and cannot be anticipated in advance due to the uncertain nature of activities to be performed. Funding will be on an annual basis subject to the availability of funds for such purposes and contingent upon submission of current applications from State of Washington agencies. It is anticipated that the awards will be issued by January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Marcia N. Roske, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376-7265.

Robert D. Larson,

Director, Procurement Division, Richland Operations.

[FR Doc. 90-28515 Filed 12-4-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Cooperative Agreement): Washington State University

AGENCY: Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE Richland Operations Office, in accordance with 10 CFR 600.7(b)(2) gives notice of its plan to renew a noncompetitive financial assistance cooperative agreement to Washington State University, which operates a branch university campus at Richland, Washington.

SCOPE: The award will help support an educational program of course work leading to MS and PhD degrees in the physical and biological sciences, in engineering, and in business.

The DOE has determined that the award on a noncompetitive basis is appropriate for the following reasons:

The activity to be supported is a continuation of an existing advanced degree program which DOE has previously supported. It is currently being conducted at the Washington State University Tri-Cities Branch campus, which, by action of the state legislature, is charged with delivery of graduate education programs in the Tri-Cities. Through Washington State University, the State of Washington provides the facilities for the program and will provide approximately 84% of the cost of operating the program, currently estimated at approximately $2,575,000 per year. DOE wishes to provide continuing assistance, though at a lower level than in the past, to insure that the graduate degree program will continue to be available in this area in order to continue to attract and retain qualified employees at the Hanford site. It is anticipated that the University will fund the entire program in the near future.

This activity is being conducted by the applicant using its own resources; DOE support for the activity will enhance the public benefit to be derived. In addition, Washington State University is the only educational institution through which advanced degrees in the sciences and engineering are available within commuting distance of Hanford.

FOR FURTHER INFORMATION CONTACT: Marji W. Parker, U.S. Department of Energy, Richland Operations Office, Procurement Division, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376-2029.

Dated: November 20, 1990.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 90-28516 Filed 12-4-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-59-NG]

Northern Minnesota Utilities; Order Granting Authorization To Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern Minnesota Utilities authorization to import up to 10,000 Mcf per day of Canadian natural gas over a term beginning on the date of issuance of this order, and ending May 1, 2001.

A copy of the order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4478. 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, on November 29, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-28517 Filed 12-4-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-82-NG]

Poco Petroleum, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Poco Petroleum, Inc. (Poco) blanket authorization to export from the United States to Canada up to 70 Bcf of natural gas over a two-year period commencing with 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, on November 29, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-28518 Filed 12-4-90; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Inventory of Current DOE Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Department of Energy's inventory of energy information collections, including reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) herein publishes an inventory of energy information collections (including reporting and record-keeping requirements) which had Office of Management and Budget (OMB) approval on October 1, 1990. The inventory is published for the use of respondents and other interested parties. Management and procurement collections are the responsibility of DOE's Office of Administration and Human Resource Management and are not included in these notices.

The listing that follows this notice includes DOE energy information collections that had OMB approval as of October 1, 1990. For each information collection utilizing a structured form, Part I lists the current DOE control or form number, the title of the requirement, the OMB control number, and the OMB approval expiration date. Part II lists those information collections which do not utilize structured forms and the corresponding citations from the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Jay Casselberry, Energy Information Administration (EI-73), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2171. Information on the availability of single, blank copies of those information collections utilizing structured forms can be obtained by contacting the National Energy Information Center (EI-231), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8300.

SUPPLEMENTARY INFORMATION: As DOE's energy information collections are submitted for review and approval to OMB during the fiscal year, Federal Register notices will be published informing the public to that effect. Such notices not only provide an opportunity for the public to review and comment on the collections but also notify the public of proposed changes to the inventory.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC November 28, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

October 1, 1990 Inventory

PART I.—DOE ACTIVE INFORMATION COLLECTIONS

[Utilizing structured forms]

DOE No.	Title	OMB Control No.	Expiration date
	Civilian Radioactive Waste Management		
NWPA-830R-A-G	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste (R—Contract is on standby; A-F—Annual report is on standby; G—Quarterly Report-Standard Remittance Advice is active).	19010260	02/28/93
RW-859	Nuclear Fuel Data	19010287	12/31/90
	Conservation and Renewable Energy		
CE-63A/B	Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module Cell Manufacturers Survey	19010292	12/31/92
	Economic Regulatory Administration		
ERA-424D	Tertiary Incentive Program Annual Report of Prepaid Expenses	19030069	03/31/93
	Energy Information Administration		
EIA-1	Weekly Coal Monitoring Report—General Industries and Blast Furnaces (Standby)	19050167	03/31/92
EIA-3	Quarterly Coal Consumption Report—Manufacturing Plants	19050167	03/31/92
EIA-4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	03/31/92
EIA-5	Coke Plant Report—Quarterly	19050167	03/31/92
EIA-6	Coal Distribution Report	19050167	03/31/92
EIA-7A	Coal Production Report	19050167	03/31/92
EIA-14	Refiners' Monthly Cost Report	19050174	12/31/90
EIA-20	Weekly Telephone Survey of Coal Burning Utilities (Standby Form)	19050167	03/31/92
EIA-23	Annual Survey of Domestic Oil and Gas Reserves	19050057	12/31/91
EIA-23P	Oil and Gas Well Operator List Update Report	19050057	12/31/91
EIA-28	Financial Reporting System	19050149	09/30/93
EIA-64A	Annual Report of the Origin of Natural Gas Liquids Production	19050057	12/31/91
EIA-176	Annual Report of Natural and Supplemental Gas Supply and Disposition	19050175	12/31/90
EIA-182	Domestic Crude Oil First Purchase Report	19050174	12/31/90
EIA-191	Underground Natural Gas Storage Report	19050175	12/31/90
EIA-254	Semiannual Report on Status of Reactor Construction	19050160	06/30/91
EIA-412	Annual Report of Public Electric Utilities	19050129	12/31/92
EIA-457A/G	Residential Energy Consumption Survey	19050092	05/31/93
EIA-627	Annual Quantity and Value of Natural Gas Report	19050175	12/31/90
EIA-714	Annual Electric Power System Report	19050161	12/31/90
EIA-759	Monthly Power Plant Report	19050129	12/31/92
EIA-782A	Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report	19050174	12/31/90
EIA-782B	Reseller/Retailer's Monthly Petroleum Product Sales Report	19050174	12/31/90
EIA-782C	Monthly Report of Petroleum Products Sold into States for Consumption	19050174	12/31/90

PART I.—DOE ACTIVE INFORMATION COLLECTIONS—Continued

[Utilizing structured forms]

DOE No.	Title	OMB Control No.	Expiration date
EIA-800	Weekly Refinery Report	19050165	04/30/92
EIA-801	Weekly Bulk Terminal Report	19050165	04/30/92
EIA-802	Weekly Product Pipeline Report	19050165	04/30/92
EIA-803	Weekly Crude Oil Stocks Report	19050165	04/30/92
EIA-804	Weekly Imports Report	19050165	04/30/92
EIA-806	Weekly Crude Watch Report	19050165	04/30/92
EIA-807	Propane Telephone Survey	19050165	04/30/92
EIA-810	Monthly Refinery Report	19050165	04/30/92
EIA-811	Monthly Bulk Terminal Report	19050165	04/30/92
EIA-812	Monthly Product Pipeline Report	19050165	04/30/92
EIA-813	Monthly Crude Oil Report	19050165	04/30/92
EIA-814	Monthly Imports Report	19050165	04/30/92
EIA-816	Monthly Natural Gas Liquids Report	19050165	04/30/92
EIA-817	Monthly Tanker and Barge Movement Report	19050165	04/30/92
EIA-818	International Energy Agency Imports/Stocks-at-Sea Report	19050165	04/30/92
EIA-820	Annual Refinery Report	19050165	04/30/92
EIA-821	Annual Fuel Oil and Kerosene Sales Report	19050165	04/30/92
EIA-825	Petroleum Facility Operator Identification Survey	19050174	12/31/90
EIA-826	Monthly Electric Utility Sales and Revenue Report with State Distributions	19050165	04/30/92
EIA-846A/D	Manufacturing Energy Consumption Survey	19050129	12/31/92
EIA-851	Domestic Uranium Mining Production Report	19050169	04/30/91
EIA-856	Monthly Foreign Crude Oil Acquisition Report	19050160	06/30/91
EIA-857	DOE Monthly Report of Natural Gas Purchases and Deliveries to Consumers	19050174	12/31/90
EIA-858	Uranium Industry Annual Survey	19050175	12/31/90
EIA-860	Annual Electric Generator Report	19050160	06/30/91
EIA-861	Annual Electric Utility Report	19050129	12/31/92
EIA-863	Petroleum Product Sales Identification Survey	19050129	12/31/92
EIA-867	Annual Nonutility Power Producer Report	19050174	12/31/90
EIA-871A/F	Commercial Buildings Energy Consumption Survey	19050177	11/30/90
EIA-876A/E	Residential Transportation Energy Consumption Survey	19050145	05/31/92
EIA-877	Winter Heating Fuels Telephone Survey	19050068	09/30/93
EIA-878	Daily Motor Gasoline Price Survey	19050180	03/31/91
		19050181	11/16/90
	Environment, Safety and Health		
EIA-767(2)	Steam Electric Plant Operation and Design Report	19010267	12/31/92
	Federal Energy Regulatory Commission		
EIA-714(1)	Annual Electric Power System Report	19020140	12/31/90
EIA-767(1)	Steam-Electric Plant Operation and Design Report	19020034	12/31/92
FERC-1	Annual Report of Major Electric Utilities, Licensees and Others	19020021	09/30/91
FERC-1-F	Annual Report of Nonmajor Public Utilities and Licensees	19020029	09/30/91
FERC-2	Annual Report for Major Natural Gas Companies	19020028	08/31/93
FERC-2A	Annual Report of Nonmajor Natural Gas Companies	19020030	08/31/93
FERC-6	Annual Report of Oil Pipeline Companies	19020022	08/31/93
FERC-8	Underground Gas Storage Report	19020026	06/30/92
FERC-11	Natural Gas Pipeline Company Monthly Statement	19020032	05/31/93
FERC-15	Interstate Pipeline's Annual Report of Gas Supply	19020037	08/31/93
FERC-16	Report of Gas Supply and Requirements	19020025	09/30/92
FERC-73	Service Life Data	19020019	10/31/92
FERC-80	Licensed Hydropower Development Recreation Report	19020106	11/30/92
FERC-121	Application for Determination of the Maximum Lawful Price Under the Natural Gas Policy Act of 1978	19020038	12/31/92
FERC-423	Monthly Report of Cost and Quality of Fuels for Electric Plants	19020024	09/30/93
FERC-561	Annual Report of Interlocking Positions	19020099	07/31/92
FERC-580	Fuel Purchase Practices	19020137	03/31/92
FERC-595	Survey of Pipeline Responses to Extraordinary Demands of December 1989	19020159	10/31/90
FPC-14	Annual Report for Importers and Exporters of Natural Gas	19020027	09/30/92
	Fossil Energy		
EIA-767(3)	Steam Electric Plant Operation and Design Report	19010298	12/31/92
FE-166	Public Utility Regulatory Policies Act (PURPA) Annual Report on Electric and Gas Utilities	19010293	04/30/91
FE-748	Enhanced Oil Recovery Annual Report	19010291	06/30/92
FE-781R	Annual Report of International Electrical Export/Import Data	19010296	08/31/92
	International Affairs and Energy Emergencies		
IE-417R	Major Electric Power System Emergency Report	19010288	05/31/92

OCTOBER 1, 1990 INVENTORY

PART II.—DOE ACTIVE INFORMATION COLLECTIONS

[Not utilizing structured forms]

DOE No.	Title	OMB Control No.	Expiration date	CFR citation
	Economic Regulatory Administration			
ERA-766R	Recordkeeping Requirements of DOE's General Allocation and Price Rules.	19030073	09/30/93	10 CFR 210.1
	Federal Energy Regulatory Commission			
FERC-16A	Monitoring (Omnibus) Report (stand-by authority)	19020105	12/31/92	By FERC Order.
FERC-16AT	Interstate Pipeline Curtailment (Telephone) Survey	19020139	11/30/90	By FERC Order.
FERC-314A	Application For Small Producer Exemption	19020006	12/31/92	18 CFR 250.10.
FERC-500	Application For License for Hydropower Projects Greater Than 5MW.	19020058	07/31/91	18 CFR 4.38, 4.39, 4.40, 4.41, 4.50, 4.51, 4.200-.202.
FERC-505	Application for License for Water Projects 5MW or Less	19020115	07/31/91	18 CFR 4.61, 4.71, 4.92, 4.93, 4.107, 4.108, 4.112, 4.13, 4.201-.202.
FERC-510	Application for Surrender of Electric License	19020068	11/30/91	18 CFR 6.1, 6.3.
FERC-511	Application for Transfer of Electric License	19020069	10/31/91	18 CFR 9.1, 9.2, 9.10.
FERC-512	Application for Preliminary Permit	19020073	07/31/91	18 CFR 4.31, 4.32, 4.33, 4.81, 4.82.
FERC-515	Hydropower License—Declaration of Intention	19020079	07/31/91	18 CFR 24.1.
FERC-516	Electric Rate Schedule Filings	19020096	04/30/92	18 CFR 35, Subpart A, 35.12-.16, 35.26, 35.30, 35.31, 292, 301.
FERC-519	Disposition of Facilities, Mergers, and Acquisitions of Securities.	19020082	01/31/93	18 CFR 33.
FERC-520	Application for Authority to Hold Interlocking Directorate Positions.	19020083	01/31/93	18 CFR 45.
FERC-521	Headwater Benefits	19020087	07/31/92	18 CFR 11.16.
FERC-523	Application for Authorization of The Issuance of Securities or the Assumption of Liabilities.	19020043	10/31/92	18 CFR 34.
FERC-525	Finalcial Audits	19020092	03/31/92	18 CFR 101, 201.
FERC-530	Gas Producer Certificate: Abandonment/Termination	19020051	12/31/92	18 CFR 2.64 157.30, 250.7.
FERC-531	Gas Producer Certificates: New Service/Amendments	19020052	12/31/92	18 CFR 2.75, 154.91-154.111, 157.23-157.28, 157.40, 250.5, 250.10.
FERC-532	Gas Producer Rate: Filing	19020055	12/31/92	18 CFR 2.56(A), 154.91-.110, 157.301, 250.8-.9, 250.5, 250.14.
FERC-534	Gas Producer Rates: Application for Production-Related Costs.	19020057	12/31/92	18 CFR 154.94(K), 270, 271.1100-271.1101, 271.1103-271.1105.
FERC-537	Gas Pipeline Certificates: Construction, Acquisition & Abandonment.	19020060	04/30/92	18 CFR 2.79, 157.5-21, .100, .201-.218, 159.1, 284.107, .127, .221.
FERC-538	Gas Pipeline Certificate: Initial Service	19020061	12/31/90	18 CFR 156.3, 156.4, 156.5.
FERC-539	Gas Pipeline Certificate: Import/Export Related	19020062	03/31/91	18 CFR 153.
FERC-541	Gas Pipeline Certificate: Curtailment Plan	19020066	03/31/91	18 CFR 2.78, 281.
FERC-542	Gas Pipeline Rates: Initial Rates, Rate Change, and PGA Tracking.	19020070	01/31/91	18 CFR 154.38, 154.61-154.67.
FERC-542A	Tracking and Recovery of Alaska Natural Gas Transportation System.	19020129	12/31/90	18 CFR 154.201-154.213.
FERC-543	Gas Pipeline Rates: Purchased Gas Adjustment Tracking.	19020152	01/31/91	18 CFR 154.38.
FERC-544	Gas Pipeline Rates: Rate Change (Formal)	19020153	02/28/91	18 CFR 154.63-154.67.
FERC-545	Gas Pipeline Rates: Rate Change (Non-Formal)	19020154	07/31/93	18 CFR 154.63-154.67.
FERC-546	Gas Pipeline Rates: Certificated Rate Filings	19020155	02/28/91	18 CFR 154.62-154.67.
FERC-517	Gas Pipeline Rates: Refund Obligations	19020084	03/31/91	18 CFR 154.38(5)(V)(H), 270.101, 273.301, 273.302.
FERC-548	Staff Adjustment Under Natural Gas Policy Act Section 502(c).	19020085	12/31/92	18 CFR 270-277, 281, 282, 284, 385, Subpart K.
FERC-549	Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions.	19020086	06/30/91	18 CFR 284 Sub. A/D/E/H, 284.7-.11, .102, .105, .106, .122, and others.
FERC-549(A)	Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions (Interim Rule Emergency Clearance).	19020160	11/30/90	18 CFR 284 Sub. A/D/E-H, 284.7-.11, .102, .105, .106, .122, and others.
FERC-550	Oil Pipeline Rates: Tariff Filings	19020089	08/31/92	18 CFR 340-345, 347.
FERC-555	Records Retention Requirements	19020093	05/31/92	18 CFR 125, 158, 160.1, 225, 276.108, 277.210, 356.
FERC-556	Cogeneration and Small Power Production	19020075	10/31/91	18 CFR 292.
FERC-557	PURPA Section 133: Cost of Service Data	19020042	11/30/92	18 CFR 290.
FERC-558	Format of Contract Summary for Applications for Certificates of Public Convenience and Necessity.	19020109	12/31/92	18 CFR 250.5.
FERC-559	Independent Producer Rate Change or Initial Billing Statement.	19020036	12/31/92	18 CFR 250.14.
FERC-566	Report of Utility's Twenty Largest Purchasers	19020114	02/29/92	18 CFR 46.3.
FERC-567	Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity.	19020005	09/30/93	18 CFR 260.8, 284.12.
FERC-568	Well Category Determination	19020112	12/31/92	18 CFR 271.703, 274, 275.
FERC-569	Establishment of Deadlines for 1st Sellers to Make and Report Refunds Refund Obligation (producers).	19020111	12/31/92	18 CFR 273.
FERC-570	Recordkeeping Requirements for Certain Sales of Natural Gas.	19020124	12/31/92	18 CFR 271.503, 271.603, 271.903.
FERC-574	Gas Pipeline Certificates—Hinshaw Exemption	19020116	11/30/92	18 CFR 152.
FERC-576	Report by Certain Natural Gas Companies on Service Interruptions.	19020004	06/30/92	18 CFR 260.9.
FERC-577	Gas Pipeline Certificates: Environmental Impact Statement.	19020128	07/31/92	18 CFR 2.80, 2.82, 157.14

PART II.—DOE ACTIVE INFORMATION COLLECTIONS—Continued

[Not utilizing structured forms]

DOE No.	Title	OMB Control No.	Expiration date	CFR citation
FERC-577(A)	Gas Pipeline Certificates: Environmental Impact Statement (Interim Rule).	19020161	11/30/90	18 CFR 2.80, 2.82, 157.14.
FERC-581	Management and Procurement Reporting and Recordkeeping Requirements.	19020130	05/31/93	48 CFR Subtitle A, Chapter 9.
FERC-582	Oil, Gas, and Electric Fees and Annual Charges	19020132	07/31/93	18 CFR 381.106, 382.105(A), 382.201(B)(4).
FERC-583	Hydroelectric Fees and Annual Charges	19020136	06/30/93	18 CFR 11.1, 11.3, 11.4, 11.6.
FERC-585	Reports on Electric Energy Shortages & Contingency Plans Under PURA 206.	19020138	09/30/93	18 CFR 294.
FERC-588	Emergency Natural Gas Sale, Transportation and Exchange Transactions.	19020144	06/30/91	18 CFR 284, Subpart I.
FERC-590	Wellhead Pricing: Pricing Investigations	19020147	12/31/92	
FERC-592	Marketing Affiliates of Interstate Pipelines	19020157	03/31/91	18 CFR 161.250.
	Fossil Energy			
FE-329R	Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, and 504.	19010297	03/31/92	10 CFR 500, 501, 503, 504, 505, 508, 515.
FE-746R	Import and Export of Natural Gas	19010294	01/31/93	10 CFR 205, 590.
FE-750R	Annual Compilation of Proposed and Final List of Utilities Covered by Public Utility Regulatory Policies Act and National Energy Conservation Policy Act.	19010295	04/30/91	10 CFR 463.

[FR Doc. 90-28519 Filed 12-4-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-122-000, et al.]

Wisconsin Electric Power 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. Wisconsin Electric Power Co.

[Docket No. ER91-122-000]

November 27, 1990.

Take notice that on November 15, 1990, Wisconsin Electric Power Company (WEPCO) tendered for filing a supplemental service specification for total requirements—conjunctive billing service for the Cities of Jefferson, Lake Mills, and Oconomowoc.

Comment date: December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy—Western Area Power Administrator (Salt Lake City Area Integrated Projects)

[Docket No. EF90-5171-000]

November 27, 1990.

Take notice that on November 16, 1990, the Western Area Power Administration ("WAPA") of the United States Department of Energy tendered its response to a deficiency letter issued by the Acting Director of the Office of Electric Power Regulation in connection with the rate filing in this docket.

Comment date: January 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Missouri Public Service Co.

[Docket No. ER91-124-000]

November 27, 1990.

Take notice that on November 19, 1990, Missouri Public Service Company (Missouri) tendered for filing proposed changes in its FERC Electric Service Tariffs for wholesale firm power to supersede and replace those rate provisions of contract rate schedules presently in effect and on file with the Commission which relate to eight wholesale customers located in the state of Missouri as follows:

Wholesale customers	Superseding and replacing
City of El Dorodo Springs.	Supplement No. 2 to Rate Schedule FERC No. 48.
City of Galt	Supplement No. 15 to Rate Schedule FERC No. 38.
City of Gilman City	Supplement No. 6 to Rate Schedule FERC No. 46.
City of Harrisonville	Supplement No. 15 to Rate Schedule FERC No. 39.
City of Liberal	Supplement No. 15 to Rate Schedule FERC No. 36.
City of Odessa	Supplement No. 6 to Rate Schedule FERC No. 47.
City of Pleasant Hill	Supplement No. 15 to Rate Schedule FERC No. 34.
City of Rich Hill	Supplement No. 4 to Rate Schedule FERC No. 49.

The proposed changes would increase revenues from jurisdictional sales and service by $829,824 based on the adjusted twelve-month period ended June 30, 1990. The purposes of filing the proposed Municipalities-Resale Rate Schedule are:

1. To cover the increased cost of service including increased plant investment, labor, materials, purchased power capacity charges, cost of money, taxes and environmental requirements.

2. To increase revenues to produce a rate of return of 10.99 percent on MPS's investment with the proposed increase applied to the eight locations subject to unilateral rate filings. Missouri earned 6.32 percent rate of return from the Municipalities-Resale customers for Period I for the adjusted test year ending June 30, 1990.

3. To encourage municipalities to improve their load factor in a manner that will help improve MPS's load factors thus tending to lower the system cost per KWH. A summer-winter differential has been retailed for this specific purpose.

Copies of the filing were served upon the eight Municipalities-Resale customers whose rates and charges would be affected thereby, and upon the Public Service Commission of Missouri.

Comment date: December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Co.

[Docket No. ER90-525-003]

November 27, 1990.

Take notice that on October 5, 1990, New England Power Company tendered for filing its compliance in this docket

pursuant to the Commission's order issued on September 28, 1990.

Comment date: December 4, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Co.

[Docket No. EL90-24-001]

November 27, 1990.

Take notice that on November 19, 1990, Florida Power & Light Company tendered for filing its Refund Report in compliance with the Commission's order issued on October 4, 1990 in this docket.

Comment date: December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Union Electric Company

[Docket No. ER91-125-000]

November 27, 1990.

Take notice that on November 19, 1990 Union Electric Company (UE) tendered for filing a revision in appendix C to the Interconnection Agreement dated February 18, 1972 between Central Illinois Public Service Company, Illinois Power Company, and UE reflecting the addition of a new circuit.

Comment date: December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. John P. Frazee, Jr.

[Docket No. ID-2514-000]

November 27, 1990.

Take notice that on November 16, 1990, John P. Frazee, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Chairman, and Chief Executive Officer.	Centel Corporation.
Director	Harris Bankcorp, Inc.
Director	Harris Trust and Savings Bank.

Comment date: December 14, 1990, in accordance with Standard Paragraph E end of this notice.

8. Arkansas Power & Light Co.

[Docket No. ER88-313-003]

November 27, 1990.

Take notice that on November 16, 1990, Arkansas Power & Light Company (AP&L) tendered for filing its compliance filing pursuant to the Commission's order issued on October 12, 1988.

Comment date: December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Montaup Electric Co.

[Docket No. ER91-126-000]

November 27, 1990.

Take notice that on November 19, 1990, Montaup Electric Company (Montaup) filed a rate schedule for the sale by Montaup to Newport Electric Corporation (Newport) of power needed to meet a 15 megawatt shortfall in Newport's ability to meet its capacity requirement in the period beginning November 1, 1990 and ending when the Ocean State Power No. 1 Unit, in which Newport has an entitlement, enters service. The power to be sold to Newport consists of percentage entitlements to the capacity and associated energy in two gas turbine units in which Montaup has purchased entitlements from Northeast Utilities under the slice-of-system agreement accepted for filing in Docket Nos. ER89-586-000, ER89-629-000 and ER89-631-000.

Unit	Entitlement	Megawatt
Midletown	3.6380	14.55
Montville	0.1093	.45

The capacity in these units will be sold to Newport at a demand charge of $4.35 per kilowatt per month, which is derived from the forecast amount that Northeast Utilities expects to charge Montaup for the same capacity under the formula rates accepted in Docket Nos. ER89-586-000, ER89-629-000 and ER89-631.

The sale of gas turbine capacity to Newport will benefit it by enabling it to buy peaking capacity needed to meet its load. The sale is not expected to have any effect on the demand or energy sales charged by Montaup for contract demand and all requirements service.

Comment date: December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Gulf States Utilities Co.

[Docket No. ES91-8-000]

November 27, 1990.

Take notice that on November 23, 1990, Gulf States Utilities Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to section 204 of the Federal Power Act, for authority to issue up to $400 million of secured and/or unsecured short-term notes with a final maturity date of no later than December 31, 1993, and to issue up to a like amount of principal of first mortgage bonds and/or subordinated lien bonds in one or more series as security for the Notes and, with respect to issuance of bonds, under § 34.2(b)(2) for exemption from competitive bidding requirements pursant to § 34.2(a)(1)(iv) and for exemption from the requirements of § 34.2(b)(2)(i)(B).

Comment date: December 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. PSI Energy, Inc.

[Docket No. ER91-127-000]

November 27, 1990.

Take notice that PSI Energy, Inc. (PSI) on November 20, 1990, tendered for filing changes to the rates for certain of its services pursuant to the Interconnection Agreement between PSI and Indiana & Michigan Electric Company (I&ME), dated February 21, 1964.

The filed changes modify the rates for services provided by PSI under the following Service Schedules of the Interconnection Agreement:

(1.) Service Schedule A—Emergency Service
(2.) Service Schedule C—Interchange Power
(3.) Service Schedule D—Short Term Power
(4.) Service Schedule G—Limited Term Power

Copies of the filing were served on Indiana & Michigan Electric Company, American Electric Power Services Corporation, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

PSI has requested a waiver of the Commission's Rules and Regulations to permit the proposed rates for services to become effective November 26, 1990.

Comment date: December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

12. Vermont Electric Power Co., Inc.

[Docket No. ER90-591-000]

November 28, 1990.

Take notice that on November 21, 1990, Vermont Electric Power Company, Inc. (VELCO), was joined as a party to the above-captioned docket, and tendered for filing a proposed contract with three utilities—Citizens Utilities Company, Franklin Electric Light Company, Inc. and Green Mountain Power Corporation—that jointly owned a dedicated, metallic-neutral return conductor (the "DMNRC"), used to provide a neutral-return path as part of a direct-current transmission interconnection between Hydro-Quebec and utilities that are participants in the New England Power Pool (the "Quebec-New England Interconnection"). When

accepted the contract will provide operating management services to the three utilities for the DMNRC.

The contract filed with this Commission for approval is the Phase II Vermont DMNRC Operating and Management Agreement dated January 1, 1988. Under the contract VELCO operates the facility consistently with the terms of the Phase II Vermont DMNRC Support Agreement, earlier noticed in this docket. Under the terms of the Phase II Vermont DMNRC Support Agreement, the DMNRC facility will be used by New England Hydro-Transmission Corporation, an affiliate of New England Electric System. By these agreements VELCO receives no ownership interest in the DMNRC and no profit. Copies of the filing were served on Citizens Utilities Company, Green Mountain Power Corporation and Franklin Electric Light Company, Inc. and the Vermont Public Service Board and Vermont Department of Public Service and are on file at VELCO's main office.

Comment date: December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Co.

[Docket No. ER91-128-000]

November 28, 1990.

Take notice that on November 20, 1990, Tampa Electric Company (Tampa) tendered for filing Service Schedule J providing for negotiated interchange Service between Tampa Electric and the Kissimmee Utility Authority (Kissimmee). Tampa Electric states that Service Schedule J is submitted for inclusion as a supplement under the existing agreement for interchange service between Tampa Electric and Kissimmee, designated as Tampa Electric Rate Schedule FERC No. 16.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule J, a Letter of Commitment providing for the sale by Tampa Electric to Kissimmee of capacity and energy at an initial hourly delivery rate of 10 megawatts.

Tampa Electric proposes an effective date of January 1, 1991, for the Service Schedule J and Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Kissimmee and the Florida Public Service Commission.

Comment date: December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

14. Tampa Electric Co.

[Docket No. ER91-129-000]

November 28, 1990.

Take notice that on November 20, 1990, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the Reedy Creek Improvement District (RCID) of 10 megawatts of capacity and energy from Tampa Electric's generating resources. The Letter of Commitment is submitted as a supplement to Service Schedule D under Tampa Electric's contract for interchange service with RCID, designated as Tampa Electric Rate Schedule FERC No. 31.

Tampa Electric proposes an effective date of January 1, 1991, for the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on RCID and the Florida Public Service Commission.

Comment date: December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

15. Tampa Electric Co.

[Docket No. ER91-130-000]

November 28, 1990.

Take notice that on November 21, 1990, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna Beach) of 15 megawatts of capacity and energy from Tampa Electric's generating resources. The Letter of Commitment is submitted as a supplement to Service Schedule D under Tampa Electric's agreement for interchange service with New Smyrna Beach, designated as Tampa Electric Rate Schedule FERC No. 13.

Tampa Electric proposes an effective date of December 1, 1990, the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on New Smyrna Beach and the Florida Public Service Commission.

Comment date: December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service Corp.

[Docket No. ER91-131-000]

November 28, 1990.

Take notice that Central Vermont Public Service Corporation (CVPS) on November 21, 1991, tendered for filing a tariff providing for the sale of short-term power. CVPS states that the tariff provides for the parties to negotiate the charges for sales under the tariff. Rates under the tariff are capped at the lower of the purchaser's avoided costs or 150% of the Company's average system costs.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become available as of November 1, 1990.

Comment date: December 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. Central Vermont Public Service Corp.

[Docket No. ER91-132-000]

November 28, 1990.

Take notice that on November 21, 1990 Central Vermont Public Service Corporation (CVPS) tendered for filing a contract under which CVPS has agreed to sell 2 MW of capacity and related energy of the Vermont Yankee nuclear generating unit to the Village of Stowe Water & Light Department (Stowe) for a period of six months. CVPS states that the price for the transaction was negotiated by CVPS and Stowe and reflects less than CVPS' fully allocated cost for Vermont Yankee.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of November 1, 1990.

Comment date: December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

18. Central Vermont Public Service Corp.

[Docket No. ER91-133-000]

November 28, 1990.

Take notice that on November 21, 1990 Central Vermont Public Service Corporation (CVPS) tendered for filing a contract under which CVPS has agreed to sell to the Village of New Orleans Electric Department 800 kW of Hydro Quebec capacity and energy and 600 kW of capacity and energy from the Rutland 5 gas turbine for a period of six months. CVPS states that the price for the Rutland sale was negotiated by CVPS and Orleans and that the Hydro Quebec sale will be at CVPS' costs.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of November 1, 1990.

Comment date: December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

19. Central Vermont Public Service Corp.

[Docket No. ER91-134-000]

November 28, 1990.

Take notice that on November 21, 1990 Central Vermont Public Service Corporation (CVPS) tendered for filing a contract under which CVPS has agreed to sell 5 MW of capacity and related energy of the Vermont Yankee nuclear generating unit to Green Mountain Power Corporation for a period of six months. CVPS states that the price of the transaction was negotiated by CVPS and Green Mountain and reflects less than CVPS' fully allocated cost for Vermont Yankee.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of November 1, 1990.

Comment date: December 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

20. Central Vermont Public Service Corp.

[Docket No. ER91-135-000]

November 28, 1990.

Take notice that on November 21, 1990 Central Vermont Public Service Corporation (CVPS) tendered for filing contracts under which CVPS has agreed to sell 330 kW of Hydro Quebec capacity and energy to Barton Village, Inc. and 700 kW of Hydro Quebec capacity and energy to the Village of Enosburg Falls Water and light Department for a period of six months. CVPS states that the contracts reflect its cost of purchasing the Hydro Quebec power and energy.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of November 1, 1990.

Comment date: December 12, 1990, 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. 90-28444 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PL89-2-005]

Interstate Natural Gas Pipeline Rate Design; Public Conference With Respect to the Designing of Interstate Natural Gas Pipeline Rates

November 28, 1990.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is convening a conference to afford an opportunity for the natural gas industry and the public to discuss with the Commission issues with respect to the designing of interstate natural gas pipeline rates. The conference will be held in the Commission's Hearing Room No. 1, 810 First Street, NE, Washington, DC, on January 8, 1991, at 10:00 a.m.

II. Background

In 1985, the Commission adopted Order No. 436 [1] to institute open-access transportation in furtherance of the Congressional objective to permit a competitive wellhead market.[2] The Commission codified the new open-access transportation program in part 284 of the Commission's regulations. In part 284, the Commission set forth regulations with respect to open access service governing matters such as the establishment of rates,[3] the non-discriminatory nature of service,[4] and the firm sales customers' conversion rights to firm transportation service.[5]

On May 30, 1989, the Commission issued a policy statement providing guidance with respect to the designing of pipeline transportation rates and the transportation component of pipeline sales rates.[6] In large measure, the policy statement was issued to ensure that pipeline transportation rates comply with the rate design objectives of section 284.7(c) of the Commission's regulations that "[r]ates for service during peak periods should ration capacity" and "[r]ates for firm service during off-peak periods and for interruptible service during all periods should maximize throughput." [7] In addition, the rehearing order described the policy statement as follows:

> The policy statement stated that rates designed in light of those objectives promote economic efficiency in an allocative and productive sense. However, the policy statement also stated that while economic efficiency is a necessary objective, it is not the only objective in the fashioning of just and reasonable, and not unduly discriminatory rates for all customers. In addition, the policy statement stated that there should be no cross-subsidization between sales and transportation services and that rates for different services should reflect differences in the quality of the services. Simply put, "a lower quality service should have a lower rate."
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> * * * * *
>
> Throughout the policy statement, the Commission emphasized that rates must be charged on a non-discriminatory basis and that transactions between affiliates will be carefully scrutinized to ensure equality of opportunity for all similarly situated shippers.[8]

The policy statement, however, did not endorse any particular methodologies nor did it mandate a particular end result apart from methods and results in line with the Commission's goals as set forth in the policy statement. The policy statement recognized the existence of goals other than those set forth in the policy statement, including the possible need for pragmatic adjustments in the event a particular method is theoretically consistent with the Commission's objectives but leads to undesirable or inequitable results. The Commission directed the presiding administrative law judges to

> Consider and articulate the impacts (benefits and detriments) of, the various rate design proposals on the participants, on the various segments of the industry, and on classes of customers [and] * * * to explicitly articulate equitable factors considered in

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[1] Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol, 50 FR 42,408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982-1985 ¶ 30,665 (1985), *vacated and remanded, Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (DC Cir. 1987), *readopted on an interim basis*, Order No. 500, 52 FR 30,334 (Aug. 14, 1987), FERC Stats. & Regs. ¶ 30,761 (1987), *remanded, American Gas Association* v. *FERC, 888 F.2d 136 (DC Cir. 1989), readopted*, Order No. 500-H, 54 FR 52,244 (Dec. 31, 1989), FERC Stats. & Regs. ¶ 30,880 (1990), *aff'd in part and remanded in part, American Gas Association* v. *FERC*, 912 F.2d 1496 (DC Cir. 1990).

[2] The intent of the Natural Gas Policy Act was for market forces to play a "more significant role in determining the supply, the demand, and the price of natural gas." *Transcontinental Gas Pipe Line Corp.* v. *State Oil and Gas Board of Miss.*, 474 U.S. 409, 422 (1986).

[3] 18 CFR 284.7(c)(1) and (2) (1990).

[4] 18 CFR 284.8 and 9.

[5] 18 CFR 284.10.

[6] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 *order on reh'g*, 48 FERC ¶ 61,122 (1989).

[7] 18 CFR 284.7(c)(1) and (2) (1990).

[8] 48 FERC ¶ 61,122 at p. 61,442. (Footnotes omitted).

designing the rates, for example, whether rate design changes should be phased-in.[9]

In addition to the above matters, the policy statement discussed and provided guidance with respect to specific rate design and related issues. Those issues were: (1) Annual versus seasonal rates, (2) the classifying of costs between the demand and commodity charges, (3) capacity adjustments in connection with peak rate increases, (4) discounted rates and maximum interruptible rates, and (5) particular transportation rate issues (e.gs., mileage-sensitive rates and backhauls and exchanges). Last, the policy statement stated (1) the Commission's preference that a pipeline offer its storage and production area services as separate services with separately charged rates and (2) that "the pipelines and the participants should explore, in addition to traditional service, the pipeline separately selling gas (the commodity) without the transportation service, with the customer using its right to capacity to move the gas." [10]

III. The Need for a Conference

Since the issuance of the policy statement on May 30, 1989, the Commission and the participants in the natural gas industry have gained considerable experience with respect to transportation rate issues. The parties to rate proceedings have developed records and written briefs with respect to those issues. The Commission has ruled on a number of settlements with respect to whether a pipeline's rates comport with the policy statement.[11]

The Commission believes that a public conference should be convened in order to air in an open forum the views of the entire natural gas industry on rate design as they have evolved in light of the experience acquired since May 30, 1989. In addition, the Commission is aware that certain matters not explicitly discussed in the policy statement have become important to the natural gas industry. Examples are issues with respect to the designing of rates for open-access contract storage services, for incremental facilities of existing pipelines, and for new pipelines. In addition, the Commission is concerned that its rate designs not result in an unlevel playing field.[12] In addition, certain procedural recommendations have been suggested by various groups. An example is whether it is appropriate for rate design cases to be consolidated with other proceedings where the terms and conditions for pipeline services are at issue, such as GIC proceedings so that a pipeline's rates for its services and the terms and conditions for those services may be considered by the parties at the same time.

To conclude, a public conference will enable the Commission to gain overall insight into into how matters are going with respect to rate design and to determine what issues are of current importance to the industry. The Commission will be able to assess the progress made to date under the policy statement and to determine whether further refinement of the rate principles of Order No. 436 is warranted. In addition, the Commission will be able to determine whether to stay the course with individualized rate designs or to, in whole or in part, consider rate design in a generic fashion. This conference, however, should not be construed by anyone involved in an on going proceeding to mean that the Commission is not committed to pursuit of the goals of the policy statement or that progress in individual cases should be delayed.

IV. Procedures

The Commission will not set forth particular topics for comment. That choice should be made by persons applying to make an oral presentation. However, oral presentations should not touch on case specific topics.

Persons desiring to make an oral presentation must file a request to speak. Persons with common points of view are urged to appoint a single spokesperson for oral presentations. The request to speak should be filed with the Secretary on or before December 28, 1990. Requests to speak should identify the name of the speaker and the group represented and the topics upon which it is desired to make a presentation. The requests should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. PL89-2-005. The Commission invites, but does not require, written comments on the subject of rate design policy issues from persons who will make an oral presentation at the conference and any other interested party. The written comments should be filed with the Secretary on or before January 4, 1991. The written comments should be no longer than 20 pages, double spaced typing, although attachments may be used as appropriate.

By direction of the Commission. Commissioner Trabandt concurs with a separate statement to be issued at a later date.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28443 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

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[9] 47 FERC ¶ 61,295 at p. 62,054. See also at p. 62,059.

[10] *Id.* at p. 62,059.

[11] *E.g.*, Blue Dolphin Pipe Line Co., 52 FERC ¶ 61,155 (1990), Black Marlin Pipeline Co., 51 FERC ¶ 61,290 (1990), and Midwestern Gas Transmission Corp., 50 FERC ¶ 61,084 (1990).

[12] *See* Opinion No. 357, Iroquois Gas Transmission System, L.P., *et al.*, 53 FERC ¶ 61,194 (1990), *slip op* at 61 n. 91, where the Commission stated:

We advise the parties that any domestic interstate pipeline which desires to modify its existing rate design may file an application with the Commission under section 4 of the NGA to do so. Moreover, regarding the redesigning of the rate structure of domestic pipelines, the Commission has issued a policy statement initiating a process whereby our rate design process and policies are being examined in-depth in the context of individual rate proceedings before the Commission. Those proceedings are the appropriate forums within our jurisdiction for addressing the concerns voiced by IPAA. If IPAA or others raise the issue of a potential anticompetitive preference for Canadian versus domestic gas supply in those proceedings, all interested parties and the ALJ's shall thoroughly examine the issue and devise and consider appropriate and effective solutions. Together with the other objectives in the Rate Design Policy Statement, those solutions will ensure that both sales and transportation of Canadian and U.S. domestic gas are treated in a fair and nondiscriminatory manner. Tennessee Gas Pipeline Company, 51 FERC ¶ 61,113 (1990) (NIPPS II).

[Docket Nos. CP91-493-000, et al.]

Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP91-493-00]

Take notice that on November 20, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-493-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Sonat Marketing Company, a marketer, under the blanket certificate issued in Docket No. CP87-115-000 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.

Tennessee states that, pursuant to an agreement dated October 26, 1988, as amended, it proposes to transport up to 40,000 dekatherms (Dth) per day equivalent of natural gas. Tennessee indicates that the gas would be transported from offshore Louisiana, Louisiana, Texas, and Alabama, and would be redelivered in Louisiana

Mississippi, Tennessee, and Alabama. Tennessee further indicates that it would transport 40,000 Dth on an average day and 14,600,000 Dth annually.

Tennessee explains that this transportation service replaces the former Natural Gas Policy Act of 1978 (NGPA) section 311 terminated services, which are set out more fully in the application, and retains the scheduling priority that existed under the October 26, 1988, agreement for service under section 31 of the NGPA. Tennessee states that such terminated services were for Southern Natural Gas Company and SNG Intrastate Pipeline, Inc., as reported in Docket Nos. ST89-1078-000 and ST90-472-000, respectively.

Tennessee advises that service under § 284.223(a) commenced October 12, 1990, as reported in Docket No. ST91-3143-000.

Comment date: January 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Williston Basin Interstate Pipeline Co., Columbia Gas Transmission Corp. Equitrans, Inc., Viking Gas Transmission Co.

[Docket Nos. CP91-460-000, CP91-487-000, CP91-502-000, CP91-503-000]

November 27, 1990.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: January 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual Dth	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket start up date
CP91-460-000 (11-19-90)	Western Gas Processors, Ltd. (Producer).	60,860 0 22,213,900	ND, WY, MT	ND	10-5-90, IT-1, Interruptible.	ST91-2840-000, 10-5-90.
CP91-487-000 (11-20-90)	Meridian Marketing and Transmission Corp. (Marketer).	780MMBtu 624MMBtu 284,700MMBtu	Various	PA, MD	6-20-90, ITS, Interruptible.	ST90-4296-000, 7-1-90.
CP91-502-000 (11-23-90)	Transport Gas Corporation	726MMBtu 700MMBtu 255,500MMBtu	WV	PA	10-25-90, ITS, Interruptible.	ST91-3561-000, 11-1-90.
CP91-503-000 (11-23-90)	Minnegasco, Inc. (Local Distribution Company).	111,000 111,000 40,515,000	WI, MN, ND	MN	10-1-90, IT-2, Interruptible.	ST91-2356-000, 10-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Applicant's address	Blanket docket
Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, WV 25314	CP86-240-000
Equitrans, Inc., 3500 Park Lane, Pittsburgh, PA 15275	CP86-553-000
Viking Gas Transmission Company, P.O. Box 2511, Houston, TX 77252	CP90-273-000
Williston Basin Interstate Pipeline Company, Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501	CP89-1118-000

3. Transwestern Pipeline Co.

[Docket No. CP91-494-000]

November 27, 1990.

Take notice that on November 21, 1990, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-494-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for NGC Transportation, Inc. (NGC), a marketer, under the blanket certificate issued in Docket No. CP88-133-000 and, related thereto, to utilize certain facilities originally installed for the delivery of Natural Gas Policy Act of 1978 (NGPA) section 311 transportation gas under the blanket certificate issued in Docket No. CP82-534-000, 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.

Transwestern states that, pursuant to an agreement with NGC dated November 2, 1990, under its Rate Schedule ITS-1, it proposes to transport up to 100,000 dekatherms (Dth) per day equivalent of natural gas. Transwestern indicates that the receipt points would include all receipt points listed in Transwestern's Transportation Point Catalog, and the gas would be redelivered in Texas and New Mexico. Transwestern further indicates that it would transport 100,000 Dth on an average day and 36,500,000 Dth annually.

Transwestern also proposes to operate and maintain nine related existing interconnect facilities as jurisdictional delivery points, previously installed and operated by Transwestern pursuant to § 284.3(c) of the Commission's Regulations for service pursuant to NGPA section 311(a). Transwestern advises that the gas delivered to NGC at these existing delivery points would be used for system supply. The delivery points are shown in the attached appendix.

Comment date: January 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

Name of delivery point	Delivery point location	Quantity (Mcf)			Prior dockets section 311
		Peak day	Avg day	Annual	
Adobe Gas Pipeline	Randall County, Texas	10,000	10,000	3,650,000	ST90-1450-000
Gas Company of New Mexico (Western Gas)	Lea County, New Mexico	10,000	10,000	3,650,000	ST87-1630-000
(Chaves)	Chaves County, New Mexico	5,000	5,000	1,825,000	ST90-700-000 ST85-682-000 ST88-5406-000
(Rio Puerco)	Valencia County, New Mexico	39,000	39,000	14,235,000	ST89-4617-000 ST87-1630-000 ST88-5406-000
Llano (Rattlesnake)	Lea County, New Mexico	30,000	30,000	10,950,000	ST90-700-000
West Texas Gas	Winkler County, Texas	1,500	1,500	547,500	ST87-1476-000
Do	Randall County, Texas	1,500	1,500	547,500	ST87-437-000
Do	Parmer County, Texas	1,500	1,500	547,500	ST87-437-000
Do	Deaf Smith County, Texas	1,500	1,500	547,500	ST87-437-000

4. Kerr-McGee Corp. (Successor-in-Interest to Flag-Redfern Oil Co.)

[Docket No. CI90-129-000]

November 27, 1990.

Take notice that on June 25, 1990, as supplemented on August 10, 1990, Kerr-McGee Corporation (Kerr-McGee) of P.O. Box 25861, Oklahoma City, Oklahoma 73125, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to Flag-Redfern Oil Company (Flag-Redfern) for authorization to continue the sales previously made by Flag-Redfern under the contracts listed in the appendix hereto and requested that the Commission accept such contracts as Kerr-McGee's related rate schedules, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective June 30, 1989, Flag-Redfern merged into Kerr-McGee with Kerr-McGee continuing as the surviving corporation. Prior to the merger, Flag-Redfern made sales under its small producer authorization issued in Docket No. CS67-66 and under the contracts listed in the appendix hereto.

Comment date: December 17, 1990, in accordance with Standard Paragraph J at the end of this notice.

Contract date	Contract name	Purchaser and location
July 9, 1976	Kirtley #1	Mississippi River Transmission Corporation, New Liberty, SW Field, Beckham County, Oklahoma.
June 21, 1978	Drake 1-10	Northern Natural Gas Company, Southeast Salon Field, Ellis County, Oklahoma.
September 2, 1975	Corless D 1-9/2-9	Northern Natural Gas Company, South May Field, Ellis County, Oklahoma.
May 28, 1975	Hardy 1-15	Northern Natural Gas Company, S.E. Catesby Field, Ellis County, Oklahoma.
July 5, 1973	Marker 1-23	Northern Natural Gas Company, Mocane Laverne Field, Beaver County, Oklahoma.
April 27, 1967	Wilson 1-T	Northern Natural Gas Company, Camerick Field, Beaver County, Oklahoma.
October 28, 1975	Stanley 1-27	Northern Natural Gas Company, Laverne Field, Harper County, Oklahoma.
September 24, 1976	Sarkeys 1-26	Northern Natural Gas Company, Mocane Laverne Field, Beaver County, Oklahoma.
November 20, 1968	Blaine 1-12	ANR Pipeline Company, Lenora Field, Dewey County, Oklahoma.
December 11, 1972	Kelso 26/Sell 22	ANR Pipeline Company, Quinlan NW Field, Woodward County, Oklahoma.
February 1, 1968	Morey 1-3/2-3	ANR Pipeline Company, Laverne Field, Ellis County, Oklahoma.
September 21, 1976	Sahhahnin 1-31	ANR Pipeline Company, East Binger Field, Caddo County, Oklahoma.
July 24, 1972	San Juan 28-5 Units	El Paso Natural Gas Company, San Juan Field, Rio Arriba County, New Mexico.
October 15, 1975	San Juan 27-5 Units	El Paso Natural Gas Company, San Juan Field, Rio Arriba County, New Mexico.
November 21, 1975	Mitchell 1-14	Northern Natural Gas Company, Catesby Field, Ellis County, Oklahoma.
February 18, 1952	Paddock 1-1	Northern Natural Gas Company, Tubb-Blinebry Field, Lea County, New Mexico.
December 1, 1955	Gentle 1, 2, 3, 4	El Paso Natural Gas Company, Fulcher-Kutz Field, San Juan County, New Mexico.

4. Meridian Oil Production Inc. (Successor-in-interest to El Paso Exploration Co.)

[Docket No. CI61-1461-000, et al.]

November 27, 1990.

Take notice that on July 25, 1990, Meridian Oil Production Inc. (Meridian) of 2919 Allen Parkway, suite 900, Houston, Texas 77019, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to El Paso Exploration Company (El Paso Exploration) for authorization to continue the sales previously made by El Paso Exploration under the certificates listed in the appendix hereto and requested that the related rate schedules listed in the appendix hereto be redesignated as those of Meridian, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By Certificate of Amendment of Certificate of Incorporation executed January 23, 1985, effective March 4, 1985, El Paso Exploration changed its name to Meridian Oil Inc. By Certificate of Amendment of Certificate of Incorporation executed March 12, 1985, effective March 20, 1985, Meridian Oil Inc. changed its name to Meridian Oil Production Inc.

Comment date: December 17, 1990, in accordance with Standard Paragraph J at the end of this notice.

APPENDIX

El Paso Exploration Co., FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser and location
34	CI61-1461	Colorado Interstate Gas Co., Patrick Draw Field, Sweetwater County, Wyoming.
35	CI61-1461	Colorado Interstate Gas Co., E. Rock Springs Field, Sweetwater County, Wyoming.
39	CI67-1365	Northern Natural Gas Co., S. Chaney and NE Catesby Fields, Ellis County, Oklahoma.
41	CI76-453	Colorado Interstate Gas Co., Higgins Field, Sweetwater County, Wyoming.
44	CI65-426	Williams Natural Gas Co., Bishop Field, Ellis County, Oklahoma.
45	CI66-338	Williams Natural Gas Co., Bishop Field, Ellis County, Oklahoma.

5. Pacific Gas Transmission Co.

[Docket No. CP91-457-000]

November 27, 1990.

Take notice that on November 19, 1990, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP91-457-000 a request pursuant to Section 157.205(b) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a sales tap, to reassign a portion of the volumes of gas currently authorized for delivery at various existing sales taps for delivery to the new tap as well as to increase the service at various other existing taps, and to abandon service to Northwest Pipeline Corporation (Northwest) at the Crescent, Oregon sales tap, under the blanket certificate issued in Docket No. CP82-530-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

PGT states that PGT currently delivers up to 151,731 Mcf per day of natural gas to Northwest at various points in Idaho, Washington and Oregon. PGT requests authority to construct the new sales tap and reassign a portion of the volumes from the existing delivery points to enable Northwest to provide enhanced service to Cascade Natural Gas Corporation, a local distribution company, which in turn will provide gas service to the town of LaPine, Oregon. PGT indicates that the new meter station would be known as the LaPine Meter Station. PGT requests authority to reassign to the new tap 285 MMBtu per day of the natural gas presently authorized for delivery to Northwest at existing sales taps. PGT also requests authority to reassign 6,061 MMBtu per day from the existing sales taps at Schweitzer and Athol, Idaho; Spokane, Washington; and Kosmos Farms, Madras, Prineville, Redmond, Bend, Gilchrist, Crescent, Chemult, and Diamond Junction, Oregon to the new sales tap at LaPine and to the existing sales taps at Bonner's Ferry, Sandpoint and Rathdrum, Idaho; Mica, Spangle, Rosalia, St. John and Lacrosse, Washington; and Stanfield, Stearns, and Klamath Falls, Oregon. PGT also requests authority to abandon service to Northwest at the existing Crescent, Oregon sales tap. PGT states that there will be no increase in the total quantity of gas which PGT is authorized to transport for Northwest.

Comment date: January 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. High Island Offshore System

[Docket Nos. CP91-462-000 [2], CP91-463-000, CP91-464-000, CP91-465-000]

November 28, 1990.

Take notice that on November 19, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in the above referenced dockets, requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of various shippers under the blanket certificate authority issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms, and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the contract number, the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by HIOS and is included in the attached appendix.

HIOS also states that it would provide the service for each shipper under an executed transportation agreement and that HIOS would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket number (contract No.)	Applicant	Shipper name	Peak day [1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule service type	Related [2] dockets
CP91-462-000 (0186/0187)	HIOS	Entrade Corporation	300,000 300,000 109,500,000	Off. TX and LA	Off. TX and LA	9-19-90, IT, Interruptible.	ST91-59-000
CP91-463-000 (0220)	HIOS	Meridan Oil Trading, Inc.	21,265 21,265 7,761,725	Off. TX	Off. LA	10-1-90, IT, Interruptible.	ST91-859-000
CP91-464-000 (0151/0152)	HIOS	Mobil Natural Gas, Inc.	157,200 157,200 57,378,000	Off. TX and LA	Off. TX and LA	9-22-90, IT, Interruptible.	ST91-64-000
CP91-465-000 (0243/0244)	HIOS	Brooklyn Union Gas Company.	100,000 100,000 36,500,000	Off. TX and LA	Off. TX and LA	9-18-90, IT, Interruptible.	ST91-60-000

[1] Quantities are shown in Mcf

[2] The ST docket indicates that a 120-day transportation service was reported in it.

7. James A. Brown and EJE Brown Co., et al. (James A. Brown), et al.

[Docket Nos. CS76-807-001, et al.] [3]

November 28, 1990.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Comment date: December 17, 1990, in accordance with Standard Paragraph J at the end of this notice.

[3] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS76-807-001	[1] [2] 11-8-90	James A. Brown and EJE Brown Company (James A. Brown) c/o Mr. J. Scott Hall Miller, Stratvert, Torgerson & Schlenker, P.A., 125 Lincoln Avenue, Suite 303, P.O. Box 1986, Santa Fe, NM 87504-1986.
CS86-24-001	[3] [4] 11-15-90	Ultramar Oil and Gas Limited and Ultramar Production Company (Ultramar Oil and Gas Limited), 16825 Northchase, Suite 1200, Houston, TX 77060.
CS90-33-000	[2] 10-2-90	Tenison Oil Company, 601 One Glen Lakes, 8140 Walnut Hill Lane, Dallas, TX 75231.
CS91-1-000	[2] 11-16-90	Holcomb Oil & Gas, Inc., P.O. Box 2058, Farmington, NM 87499.

[1] By letter dated April 11, 1990, Applicant requests that the small producer certificate in Docket No. CS76-807-001 be amended to include EJE Brown Company.

[2] While the initial application was received on an earlier date, pursuant to § 381.103(b)(2)(iii) of the Commission's regulations, the filing date is the date on which the Commission receives the appropriate fee.

[3] By letter dated November 2, 1990, Applicant requests that the small producer certificate in Docket No. CS86-24-001 be amended to include its affiliate, Ultramar Production Company.

[4] The application, to the extent that Applicant is proposing to make sales from gas reserves acquired in place from a large producer, is being considered as a certification filed pursuant to § 157.40(b)(6) of the Commission's regulations. Such sales are subject to the large producer rate limitations.

8. ONEOK, Inc., OkTex Pipeline Co. and ONEOK Services, Inc.

[Docket No. CP90-2286-000]

November 28, 1990.

Take notice that on November 16, 1990, ONEOK Inc. (ONEOK), OkTex Pipeline Company (OkTex), and ONEOK Services, Inc. (Services), 100 West Fifth Street, P.O. Box 871, Tulsa, Oklahoma 74102, collectively referred to as Applicants, filed in Docket No. CP90-2286-000 a joint application pursuant to sections 7(c) and 7(b) of the Commission's Regulations under the Natural Gas Act for (1) permission and approval to abandon certain interstate facilities which ONEOK has agreed to purchase from Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star) [4] by transfer of such facilities from ONEOK to its wholly owned subsidiary, Services and to OkTex; (2) permission and approval for the abandonment of certain producer contracts for the sale of natural gas in interstate commerce so that such gas, if any, may be sold in intrastate commerce; (3) permission and approval to abandon a transportation service for Coastal by assignment of the service to Services and OkTex; (4) permission and approval to abandon an exchange service for Arkla to be assumed by Services; (5) certificate authorization for OkTex to acquire and operate certain facilities in interstate commerce; (6) authorization granting OkTex an Order No. 436/500 blanket certificate; and (7) authorization granting Services a limited jurisdictional certificate to continue the exchange service for Arkla, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ONEOK [5] states that the interstate facilities which it is purchasing from Lone Star include nine river crossings which connect facilities owned by Lone Star in Texas with the facilities which ONEOK is purchasing from Lone Star in Oklahoma. ONEOK proposes to transfer seven of these river crossings to OkTex, who will continue to operate such facilities in interstate commerce, and to abandon two of the river crossings, located south of Durant, Oklahoma, because they were washed out in the 1990 spring flooding along the Red River.

OkTex requests authorization to acquire and operate the seven river crossings in interstate commerce and also requests that it be granted an Order No. 436/500 blanket certificate under which it would provide firm and interruptible transportation services pursuant to proposed Rate Schedules FTS and ITS, respectively. OkTex states that Rate Schedule FTS would have a monthly demand charge per MMBtu of maximum daily contract demand of $0.1983 and a commodity charge of $0.0067 and that Rate Schedule ITS would have a commodity charge of $0.0132; further, each of these rates would have a maximum and minimum rate.

ONEOK requests to abandon the interstate facilities in Oklahoma, other than the river crossings, by transferring the facilities to Services which will become an intrastate pipeline and

[4] On September 25, 1990, as supplemented on October 30, 1990, Lone Star, ONEOK and Arkla Energy Resources (Arkla) filed in Docket No. CP90-2286-000 a joint application for: (1) Permission and approval for the abandonment by sale by Lone Star of certain facilities utilized in the transportation of natural gas in interstate commerce; (2) permission and approval for the abandonment of the transportation service performed on the aforesaid facilities by Lone Star for Coastal States Gas Transmission Company (Coastal); (3) permission and approval to abandon an exchange currently performed on the facilities by Lone Star with Arkla; (4) permission and approval to abandon an exchange previously performed on the facilities by Lone Star with Arkla; and (5) authorization for ONEOK to acquire and operate the subject facilities from Lone Star and to perform the transportation and exchange services formerly performed on the facilities by Lone Star.

[5] ONEOK is not currently a "natural gas company" within the meaning of the Natural Gas Act (see footnote 1). ONEOK's natural gas pipeline business is exclusively intrastate and its divisions and subsidiaries own and operate transmission lines, gathering lines, distribution systems, etc. through which they transport gas in intrastate commerce within the State of Oklahoma. Divisions and subsidiaries include: Oklahoma Natural Gas Company, a local distribution company (LDC); and ONG Transmission Company (ONG Transmission, ONG Western, Inc. ONG Red Oak Transmission Company and ONG Sayre Storage Company, intrastate pipelines. OkTex and Servides are newly formed interstate and intrastate pipelines, respectively.

operate the facilities on an intrastate basis subject to the jurisdiction of the Oklahoma Corporation Commission (OCC) except to the extent that the facilities would be used to transport gas under Section 311 of the NGPA.

ONEOK explains that upon approval of the abandonment of service for Coastal, OkTex would continue transportation for Coastal through its interstate facilities under the balanket certificate requested herein and that Services would continue transportation for Coastal by leasing or selling undivided capacity rights in Services' intrastate facilities to Coastal so that Coastal may continue to perform such rights and obligations for the term of the existing contract pursuant to section 311(a)(2) of the NGPA.

ONEOK also proposed to abandon an exchange arrangement with Arkla [6] by transfer to Services who would continue the exchange with Arkla on its intrastate system in accordance with the existing contract and certificate, subject to the rules and regulations of the Commission, provided that the Commission declares in its order granting the requests herein that the assumption of such service obligation by Services does not affect Services' non-jurisdictional status as an intrastate pipeline with respect to the facilities described herein and declares that Services can operate as an intrastate pipeline under the NGPA of 1978. Notwithstanding its status as a natural gas company for this limited section 7(c) service, Services requests that with respect to its remaining operations that the Commission determine that it is not subject to the provisions of the Natural Gas Act and the rules and regulations thereunder, that Services is not required to file reports required of natural gas pipeline companies by the Commission's Regulations and that it is not required to maintain its accounts pursuant to the Commission's Regulations.

ONEOK states that Lone Star has assigned to ONEOK Lone Star's obligation to purchase gas from Oklahoma producers and explains that once the proposed transfer of interstate facilities from ONEOK to Services takes place, the sales would be made for consumption within Oklahoma and the gas would be dedicated to intrastate commerce serving the same customers it was dedicated to serve in the first instance. Accordingly, on behalf of the various Oklahoma producers, ONEOK requests permission and approval for the abandonment of the producers' certificated obligations in order that each may continue to make such sales under their contracts in intrastate commerce, subject, where applicable, to the provisions of the NGPA of 1978. ONEOK states that it has notified each producer of the application and asked that each producer consent to this abandonment request and to execute a "Form of Contract Summary for Abandonment Applications" and further advised each producer that if it did not respond by a date certain, then it would be assumed that it consented to such abandonment.

Comment date: December 19, 1990, 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 filing 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 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 therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

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. 90-28445 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

[6] ONEOK agreed to undertake as part of its acquisition of Lone Star's facilities an exchange arrangement with Lone Star had with Arkla, originally certificated on October 27, 1978, 5 FERC ¶61,079. (See footnote 1)

[Docket No. TQ91-4-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 29, 1990.

Take notice that on November 26, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Twelfth Revised Sheet No. 8
Substitute Twelfth Revised Sheet No. 9

Carnegie states that pursuant to section 154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483-A, it is filing an Out-of-Cycle PGA to reflect significant rate

changes in the sales rates of its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as filed by Texas Eastern on November 20, 1990. The revised rates are proposed to become effective December 1, 1990, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ91-2-63-000: a $0.440 per Dth increase in the commodity component of its LVWS and CDS rate schedules; a $0.4877 per Dth increase in the commodity component of its LVIS rate schedule; a $4.2747 per Dth increase in the D1 component of its LVWS and CDS rate schedules; a $.0187 per Dth decrease in the D2 component of its LVWS and CDS rate schedules; and a $0.1398 per Dth increase in the DCA component. Carnegie does not propose a Standby Charge Adjustment in this filing.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such pleadings should be filed on or before December 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28446 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

November 29, 1990.

Take notice that Equitrans, Inc. (Equitrans) on November 27, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective December 1, 1990.

Twenty-First Revised Sheet No. 10
Twelfth Revised Sheet No. 34
Alternate Twenty-First Revised Sheet No. 10
Alternate Twelfth Revised Sheet No. 34

The primary tariff sheets contained in this filing implements an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect an increase in Equitrans' pipeline supplier rates to be effective December 1, 1990, under Texas Eastern Transmission Corporation's (TETCO) Rate Schedule CD-1 filed in Docket Nos. TQ91-2-17-000 on November 20, 1990 and Tennessee Gas Pipeline Company's Compliance filing in response to Order No. 528 on November 16, 1990. The filing is necessary in order to have the rates charged to Equitrans' jurisdictional customers more closely reflect the experienced cost of gas being incurred by the Applicant.

In the event TETCO is granted a waiver in TQ91-2-17, Equitrans requests that it also be granted a waiver in order that the effective date of this filing coincide with TETCO's December 1, 1990 effective date.

Equitrans also submitted alternate tariff sheets to reflect an adjustment to Equitrans' non-gas cost base rates which Equitrans requested to become effective on December 1, 1990 in an abbreviated Section 4(e) filing it made on October 31, 1990 in Docket No. RP90-13-000. By that filing, Equitrans tendered tariff sheets to reflect the actual costs of transmission and compression of gas by others that are recorded in Equitrans' FERC Account No. 858.

Equitrans requested that the Commission accept for filing and make effective on December 1, 1990 Alternate Twenty-First Revised Sheet No. 10 and Alternate Twelfth Sheet No. 34 if the RP91-13 filing is made effective on December 1, 1990 as was requested by Equitrans in that proceeding, or that the Commission accept for filing and made effective on December 1, 1990 the primary tariff sheets if the RP91-13 filing is not made effective on December 1, 1990.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the demand cost of $0.0007 per dekatherm (Dth) and an increase in the commodity cost of $0.1043 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.1043 per Dth.

Pursuant to § 154.51 of the Commission's regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on December 1, 1990.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28447 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-4-000]

Hill Transportation Co., Inc.; Petition for Rate Approval

November 28, 1990.

Take notice that on November 19, 1990, Hill Transportation Company, Inc. filed pursuant to § 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 rate of 21 cents per Mcf for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Hill Transportation's petition states that it owns and operates a 12.98 mile intrastate pipeline located in Iberville and West Baton Rouge Parishes, Louisiana. The primary purpose of this pipeline is to gather and transport gas from various fields for redelivery into Louisiana Intrastate Gas Corporation and Florida Gas Transmission Company. Hill Transportation's previous maximum interruptible transportation rate of 11 cents per Mcf for section 311(a)(2) service was approved by the Commission May 1, 1989 in Docket No. ST88-677-000.

Pursuant to § 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 §§ 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 December 13, 1990. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28448 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-78-019]

Natural Gas Pipeline Co. of America, Report of Refunds

November 29, 1990.

Take notice that Natural Gas Pipeline Company of America (Natural) on September 28, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Distribution of Refunds, paid to jurisdictional customers. Natural states that the refund under Docket No. RP78-78 covers the final payment of amounts due in compliance with the provisions of Article XX of Natural's Stipulation and Agreement approved by Commission order dated October 4, 1979.

Natural states that it has previously made a refund under Article XX on April 24, 1987, as reported to the Commission on May 22, 1987, at Docket No. RP78-78-018. That report was approved by Commission letter order issued December 9, 1988. The prior report indicated Natural was withholding $673,370.45 of interest due pending resolution of a dispute with the IRS regarding the calculation of interest. That dispute was resolved on July 5, 1990 and Natural refunded the additional amount to its jurisdictional customers on August 31, 1990. Natural states that the refund was allocated based on the ratio of each customer's prior refund to the total refund distributed on April 24, 1987.

Natural notes that a copy of this report has been mailed to each of Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1990)). All such protests should be filed on or before December 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28449 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-62-009]

Pacific Gas Transmission Co.; Report of Refunds

November 29, 1990.

Take notice that on October 3, 1990, Pacific Gas Transmission Company (PGT), a California corporation, whose mailing address is 160 Spear Street, San Francisco, California 94105-1570, tendered for filing in compliance with ordering paragraph (C) of the Federal Energy Regulatory Commission's (Commission) order issued January 24, 1990, at Docket Nos. RP87-62-000, *et al.*, its Report of Refunds made in July and September to its interstate system jurisdictional sales and transportation customers entitled thereto for the period July 1, 1987 through the date of refund. Such refund resulted from decreased rates attributable to the offer of settlement approved by the Commission's order dated January 24, 1990 at Docket Nos. RP87-62-000, *et al.*

PGT states that it distributed to its interstate system firm customers entitled thereto refunds aggregating $27,429,826.87 and to its interruptible shippers entitled thereto refunds aggregating $166,698.32, inclusive of applicable interest calculated in accordance with § 154.67(c)(2)(iii) of the Commission's Regulations.

PGT states that copies of the report were served upon the interstate pipeline system sales customers and shippers of PGT receiving refunds associated with Docket Nos. RP87-62-000, *et al.*, and upon all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such protests should be filed on or before December 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28450 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-29-001]

Tennessee Gas Pipeline Co.; Tariff Filing

November 28, 1990.

Take notice that on November 21, 1990, Tennessee Gas Pipeline Company (Tennessee) tendered revised tariff sheets, and an alternate set of tariff sheets, to its Third Revised Volume No. 1 and Original Volume No. 2 to its FERC Gas Tariff to be effective December 16, 1990.

Tennessee states that this filing is made to correct several typographical and computational errors in its filing made in Docket No. RP91-29-000. It requests that these corrected tariff sheets be substituted for the tariff sheets filed in Docket No. RP91-29-000.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28451 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-018]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to Lennox Industries

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-018) granting Lennox Industries, Inc. a waiver for its G20 and G20R series atmospheric furnaces from existing DOE test procedures.

FOR FURTHER INFORMATION CONTACT:

Carl E. Adams, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE-43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Lennox Industries has been granted a waiver for its G20 and G20R series atmospheric furnaces permitting the company to use an alternate test method. Today's alternate test method is a modified version of the test method requested by Lennox and produces furnace efficiencies slightly lower than the Lennox requested method.

Issued in Washington, DC, November 30, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendment of 1988 (NAECA 1988), Public Law 100-357, and requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 to create the waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inadequate comparative data. Waivers general remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions, added by the 1986 amendment, allows the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, and may be extended for an additional 180 days, if necessary.

Pursuant to § 430.27(g), the Assistant Secretary shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

Background

On August 1, 1989, Lennox Industries (Lennox) filed a "Petition for Waiver" and an "Application for Interim Waiver" regarding (a) Blower time delay and (b) determination of the off-cycle draft factor, D_F, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** the Lennox petition and solicited comments, data, and information respecting the petition and granted the requested Interim Waiver in its entirety. 54 FR 50525 (December 7, 1989).

Comments were received from the American Gas Association (AGA), Energen Corporation (Energen), Southern Gas Association (SGA), Oklahoma Natural Gas Company (Oklahoma), Laclede Gas Company (Laclede), Lone Star Gas Company (Lone Star), Entex, and Michigan Furnace Company (Michigan) all of whom supported the waiver in its entirety. Comments were received from Amana, Snyder General Corporation (Snyder General), Natural Resources Defense Council (NRDC), Heil-Quaker Corporation (Heil-Quaker), Carrier Corporation (Carrier), Rheem Manufacturing Company (Rheem), and the California Energy Commission (CEC), all of whom opposed the waiver regarding the determination of D_F. All comments received were sent to Lennox for its rebuttal. DOE consulted with the Federal Trade Commission on September 20, 1990, concerning the Lennox petition.

Assertions and Determinations

Blower delay. Lennox seeks a waiver from the DOE test provisions that require 1.5 minute delay between the ignition of the burner and the starting of the circulating air blower. Instead, Lennox requests the allowance to test using a 45 second blower time delay when testing its G20 and G20R series gas furnaces. Lennox states that since the 45 second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.7 percent, the waiver should be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to the Coleman Company, 50 FR 2710, January 18, 1985; the Magic Chef Company, 50 FR 41553, October 11, 1985; the Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; the Trane Company, 54 FR 19226, May 4, 1989; DMO Industries, 55 FR 4004, February 6, 1990; the Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; the Carrier Corporation, 55 FR 13182, April 9, 1990; and the Rheem Manufacturing Company, 55 FR 37521, September 12, 1990.

Since DOE did not receive any negative comments on this issue, the Lennox petition has provided the basis

for DOE's review of the blower delay procedure. Based on the information provided by the Petitioner and DOE's review, DOE concluded that the existing test procedure does not give comparable results for the Lennox G20 and G20R series gas furnaces and therefore DOE is granting Lennox's request for an alternate blower delay test procedure.

Determination of D_F. Lennox also seeks a waiver from the DOE test procedure that requires the use of an assigned theoretical value of 1.0 for the D_F of an atmospheric furnace. Lennox states that the G20 and G20R series of atmospheric furnaces incorporate an electro-mechanical burner box damper system that greatly restricts the flow through the heat exchanger when the damper is closed during the off-cycle and that the damper restriction is similar to that caused by a power burner during the off-cycle. Thus, Lennox claims it should be allowed to test to determine the D_F value, as allowed for power burners. A resulting lower D_F value will result in a higher Annual Fuel Utilization Efficiency (AFUE).

Lennox states that the current test method does not give credit for the energy savings due to the reduced flow and, as a result, provides materially inaccurate comparative data. To be able to take credit for the energy savings resulting from the reduced flow, Lennox requests a waiver from the furnace test procedure to allow D_F to be determined by tracer gas test measurements and to use the calculations set forth in the test procedures for power burners. Lennox claims that this results in an AFUE for its G20 furnace which averages at least 4.0 percent higher than when tested under the current method of test for atmospheric furnaces using the specified value of 1.0 for D_F.

All of the comments in favor of this portion of Lennox's petition essentially state that allowing atmospheric furnaces with burner box dampers to use a tracer gas test to measure D_F would result in higher AFUE's and thereby meet the 1992 NAECA standard. If this occurs, it would result in lower cost equipment basically for reasons of simplicity, i.e., no power burner or spark ignition, and therefore result in the elimination of the power burner as the anticipated basic model. Oklahoma and Lone Star both stated that because of draft dilution associated with atmospheric furnaces, the units would also be more compatible with existing vent systems than power burners are, which also means lower costs for many retrofit installations. However, the draft dilution associated with atmospheric furnaces was a major issue raised by all of the comments opposed to this portion of the Lennox waiver.

Those comments essentially state that most of these furnaces will be installed indoors, as opposed to installed as isolated combustion systems as they are rated. The draft dilution becomes a large infiltration loss when installed indoors that is not recognized by the test procedure and is not incurred by similarly rated power burner units. Thus, the Lennox unit would operate at a lower efficiency than its rated efficiency whereas a similarly rated power burner unit would operate at a higher efficiency when installed indoors. These comments further claim that if the waiver is granted, the majority of consumers who install these atmospheric furnaces indoors will be misled by the labeled efficiency; that the comparison of this furnace to a power burner unit will be unfair; and that the result will be an increase in energy usage. There were also several comments stating that this waiver is contracy to their understanding of NAECA in that the furnace standard was set to a level so as to effectively preclude atmospheric furnaces.

After review of the comments, DOE agrees that some furnaces with low off-period losses which utilize unrestricted draft dilution will operate at lower efficiencies when installed indoors as compared to when installed as an isolated combustion system. Lennox points out in its rebuttal that there are also some furnaces with power burners that had indoor ratings higher, as measured by the earlier 1988 test procedure, than their current ICS ratings. While this result, for the Lennox furnace and others, may be contrary to the intent of NAECA, DOE has determined that such result is not germane to the decision at hand. NAECA clearly states that AFUE is to be determined assuming an isolated combustion system installation and this Decision and Order is based on the technical aspects of the test procedure to produce accurate and comparable results for the Lennox G20 series furnace when tested as an isolated combustion system. However, DOE is concerned about the possible degradation of performance of furnaces with draft dilution when installed indoors relative to their ICS rated performance, especially in the absence of stack dampers which no longer receive performance credit, and, as a result, DOE will explore the possibility of having the legislated definition of AFUE changed to an indoor rating.

AGA, Energen, SGA, and Entex all commented that the tracer gas test to determine D_F is allowed for other types of furnaces including power burners and vented heaters, and supported its use in this instance. However, Amana, Heil-Quaker, Carrier, and CEC question the accuracy of the tracer gas test for Lennox's burner box damper design with Heil-Quaker and Carrier conducting tracer gas tests on some of their atmospheric units to which they had fitted burner box dampers. Heil-Quaker and Carrier both claimed that the tracer gas tests with the burner box damper open yielded D_F values of less than 1.0 and that they could only duplicate Lennox's low D_F with the burner box damper closed by sealing the draft diverter. They maintain that Lennox should not be allowed to test with the draft diverter sealed because it will always be open in the field. They maintain that the open draft diverter allows the possibility of draft relief air from the draft diverter entering the heat exchanger which would lower the effect of the burner box damper.

Because of the questions raised by the potential precedental effect on industry product design and manufacturing in the event the waiver should be granted, DOE decided that more testing was necessary. Accordingly, DOE contracted with the National Institute for Standards and Technology (NIST) to conduct efficiency tests of a Lennox furnace using tracer gas tests to determine D_F. As stated above, Lennox claimed in its Petition for Waiver that its G20 Furnace, when tested using tracer gas tests to determine D_F, would perform with an AFUE improvement which would average at least 4.0 percent. Additionally, Lennox had rated the G20 furnace tested by NIST at an AFUE of 78.0 percent when tested using the test procedure required by Lennox. The result of the NIST test, using the Lennox procedure, was a somewhat lower AFUE of 77.3 percent. This result showed that the Lennox furnace design did increase ICS performance, which the current test procedure did not measure, although not by as much as Lennox claimed. However, the NIST test also showed that the tracer gas test did yield a D_F of less than 1.0 with the burner box open as Heil-Quaker and Carrier claimed. This would automatically result in an increase in the AFUE, caused solely by utilizing testing to obtain D_F and not by the Lennox design feature.

Further, the test showed that the entry and recirculation of draft diverter air into the heat exchanger did occur as Heil-Quaker and Carrier claimed. NIST also found that with the draft diverter open, the tracer gas test is difficult, if not impossible, to perform when the

tracer gas is injected into the burner box.

Based on the above results, DOE has determined that a waiver is warranted but that the waiver should be a modified version of the Interim Waiver previously granted. The test procedure the today's Decision and Order reflects these findings.

DOE believes that the waiver should account only for the effect of the burner box damper and should not allow any improvement of D_F (and resulting AFUE) due to the allowance of testing for D_F. Therefore, today's Decision and Order requires that the tracer gas test for D_F be performed with the burner box damper open and closed—thus only the relative improvement in the D_F value is allowed.

The NIST test also found that the entry and recirculation of draft relief air in the heat exchanger with the draft diverter open did occur but that it made little difference in the AFUE of the Lennox furnace. However, because DOE believes that other manufacturers may introduce similar designs in which an open draft diverter might make a greater difference and because the draft diverter is always open in the field, today's Decision and Order requires the tracer gas test be performed with the draft diverter open.

During its testing, NIST found the tracer gas test difficult to perform and, therefore, today's Decision and Order contains some other modifications from the Interim Waiver to simplify the test. Today's Decision and Order requires the tracer gas to be injected and sampled in the stack as opposed to in the heat exchanger. Today's Decision and Order also requires the ratio of $Q_{S.OFF}$, measured with the damper closed, to $Q_{S.OFF}$, measured with the damper open, (where $Q_{S.OFF}$ is the integrated value of the off-cycle sensible heat loss over a one minute period between the minutes 5 and 6 into the cool-down period), to be used as the effective D_F. The losses, $Q_{S.OFF}$ with damper open and closed, are measured over a one minute period instead of using the off-cycle sensible heat losses measured and integrated over the whole off-cycle period of 13.3 minutes because the latter proved difficult to measure using current tracer gas techniques.

The net result of all these changes from the Interim Waiver was an AFUE of 76.8 percent which is 0.5 AFUE points lower than NIST obtained using the Interim Waiver procedure and 1.2 AFUE points lower than Lennox currently rates the unit. Because of the complexities in the flue gas measurements and to validate the integrity of the test procedure which is the subject to today's Decision and Order, the Lennox furnace tested by NIST was shipped to an independent testing laboratory, ETL Testing Laboratories, to test using today's test procedure. The results of the ETL conducted test was an AFUE of 76.6 which DOE considers to be in reasonably good agreement with the NIST results.

Conclusion

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Lennox Industries (F–018) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraph (3), (4) and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Lennox Industries shall be permitted to test its G20 and G20R series gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with the modifications set forth below:

(i) Section 9.3.1 in ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following paragraph:

Gas- and oil-fueled central furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 ($T_{F.ON(1)}$) and 2.5 ($T_{F.ON(2)}$) minutes after the main burner(s) come on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within #0.01 in. of water gauge of the manufacturer's recommended on-period draft.

(ii)(1) The title of section 8.9 in ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following title:

8.9 Methods for Determining Draft Factors D_P, D_F, and D_S and Off-Cycle Loss Factor K_L.

(2) Section 8.9.2 in ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following:

8.9.2 Optional Methods for Determining Draft Factors D_P, D_F, and D_S for Systems Equipped with Power Burners or Draft Inducers, and Method for Determining Off-Cycle Loss Factor K_L for Atmospheric Systems with an Integral Draft Diverter and with an Electro-mechanical Device at the burner air inlet that Restricts the Flow Through the Heat Exchanger in the Off-Cycle. Draft factors D_P, D_F, and D_S are to be determined as described in 9.4 and loss factor K_L are to be determined as described in 9.6. The tracer gas chosen for task should have a density which is less or approximately equal to the density of air. Use a gas that is of a different chemical species or different concentration from the flue gas to be measured and unreactive with the environment to be encountered.

(3) Add the following section 8.9.2.3 in ANSI/ASHRAE Standard 103–1982:

8.9.2.3 On atmospheric systems with an integral draft diverter and an electro-mechanical device at the burner air inlet that restricts the flow through the heat exchanger in the off-Cycle, determine K_L (the ratio of off-cycle sensible heat loss tested with the electro-mechanical device closed during the off-cycle to the off-cycle sensible heat loss tested with the electro-mechanical device held open during the off-cycle) during two additional 10-minute duration cool-down tests. Conduct these two additional cool-down tests after the cool-down and heat-up tests described in 9.2 and 9.3 are completed. During a short burner off period, before the two additional cool-down tests but after the completion of the heat-up tests described in 9.3, remove the blocking over the draft relief opening and the restriction over the test stack outlet but keep the insulation over the rest of the draft diverter surface on (see 9.1.1.6). Conduct the first additional cool-down test by first running the unit until steady-state conditions are reached, (see 9.1) and then shutting the unit off with the electro-mechanical device adjusted or bypassed so that the device is held open during the resulting cool-down period. After the cool-down period, conduct the second additional cool-down test by again running the unit until steady-state conditions are reached, and then shutting the unit off but with the electro-mechanical device operating as designed during the resulting cool-down period. Measure the stack gas mass flow rate ($m_{S.OFF}$) and the stack gas temperature during the two additional cool-down periods described above starting at five minutes into the cool-down period using the procedure described in 9.6.5, and compute (as described in 11.4.4) the off-cycle sensible heat losses over the one minute interval between five and six minutes into the cool-down period using 9.6.

(4) Section 9.2.1.1 in ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following:

9.2.1.1 Turn off the main burner after steady-state testing is completed, and measure the flue gas temperature by means of the thermocouple grid described in 7.5 at 1.5 ($T_{F,\ OFF}$ (t_3)) and 9.0 minutes ($T_{F,\ OFF}$ (t_4)) after burner shut off. Bypass the damper control in units employing stack dampers and integral draft diverter or draft hood so that the damper remains open during the cool-down test. On atmospheric systems with an integral draft diverter and equipped with an electro-mechanical device at the burner air inlet that restricts the flow through the heat exchanger in the off-cycle, bypass or adjust the control for the device electrically or mechanically so that the device remains open during the cool-down test.

(5) Add the following sections 9.6, and 9.6.1. to 9.6.8 ANSI/ASHRAE Standard 103–1982:

9.6 Tracer Gas Test Procedures for Determining Off-Cycle Loss Factor K_L for Atmospheric Systems with Intergral Draft Diverter and Equipped with an Electro-Mechanical Device at the Burner Air Inlet that Restricts the Flow Through the Heat Exchanger in the Off-Cycle.

9.6.1 As described in 9.4.1.

9.6.2 After the completion of the heat-up test in 9.3, turn the burner off and remove the blocking over the draft diverter and the restriction in the test stack that are installed during the steady-state test in 9.1.1.6. Do not remove the insulation covering the draft diverter surfaces (see 9.1.1.6). In the meantime, sample and feed the ambient air to the tracer gas analyzer and record the background concentration C_B of the tracer gas to be used for the test (one data point is generally enough).

9.6.3 Turn the burner on until steady-state conditions are again achieved as specified in 9.1.1.1. Turn the burner off for a 10-minute cool-down period. Adjust or bypass the electro-mechanical device so that it remains open during the cool-down period. Within one minute after the unit is shut off to start the cool-down test, begin feeding a tracer gas with a known and certified concentraction C_{TM} at a constant flow rate V_T into the lower part of the test stack just above the test plane where the stack thermocouple grid is located (see 8.2.1.5.1). Periodically measure the value of V_T with an instantaneously reading flow meter having an accuracy of ± 3 percent of the quantity measured and maintain that value of tracer gas flow rate at less than one percent of the air flow rate through the test stack.

9.6.4 Within one minute after the tracer gas flow is started, connect the tracer gas sampling line to the sampling probe located at a plane inside and near the top exit of the test stack. Measure the transport delay time which is equal to the time between the connecting of the sampling line and the initial response of the tracer gas analyzer. Add to this transport time the time required for the analyser to reach 90% of its steady-state value as specified in the analyzer's operation manual. The sum of these two values is the tracer gas delay time t_{DELAY}, needed to match the concentration measurement to the temperature measurement in the off-period loss calculation. Make sure that a well mixed sample is collected by using a multi-hole sampling probe as recommended in appendix D, section B.

9.6.5 At five minutes after the unit is shut off to start the cool-down test, measure and record the percent volumetric concentration of tracer gas present in the stack gas sample, C_T, at the location specified in 9.6.4. At the same time, measure the stack gas temperature, $T_{S,\ OFF}$, using the thermocouple grid in the test plan (see 8.2.1.5.1). The data measurement and recording should be done at a time interval, Δt, of five second for the next two to three minutes. The exact length of time required for the data measurement is equal to the tracer gas sample delay time (see 9.6.4) plus one minute. (Even though only one minute of data is required for the computation of the off-cycle loss, the longer time is needed to take into account the time delay between the concentration data and the temperature data). Stop the tracer gas injection and sampling after the required data are measured and recorded. Disconnect the tracer gas sampling line from the sample probe and sample the ambient air to clean the line.

9.6.7 At the end of the 10-minute cool-down period, turn on the burner until steady-state conditions are again achieve as specified in 9.1.1.1. Turn the burner off for another 10-minute cool-down period. Let the electro-mechanical device close the way it is designed to. Repeat the test steps of 9.6.3 through 9.6.6 except that the electro-mechanical device is to remain closed. Note that the tracer gas feeding rate, V_T, may have to be adjusted to a lower rate to keep the sample concentration within the range of the gas analyzer used.

9.6.8 The rate of the stack gas flow through the stack, the off-cycle sensible loss rate, and the loss factor K_L are calculated by the equations in 11.4.4.

(6) Add the following section 11.4.4 in ANSI/ASHRAE Standard 103–1982:

11.4.4 Tracer gas procedure for determining the off-cycle loss factor K_L for atmospheric furnaces with integral draft diverter and equipped with an electro-mechanical device at the burner air inlet that restricts the flow through the heat exchanger during the off-cycle. Calculate the off-cycle loss factor, K_L, defined as the ratio of the off-cycle sensible heat loss with the electro-mechanical device closed during the off-cycle to the off-cycle sensible heat loss with the electro-mechanical device held open during the off-cycle.

K_L=($Q_{s,off}$ with device closed)/($Q_{s,off}$ with device open)

where

$Q_{s,off} = \Sigma\ (q_{s,off}) * [\Delta t/60]$

= One minute sum-total of the measured $q_{s,off} * \Delta t$ [Δt = timestep in seconds when data are recorded) over a one minute interval starting at five minutes into the cool-down period

Δt = time interval between measurements as defined in 9.6.5, seconds

60 = unit conversion factor to convert time in seconds to minutes

and where

$q_{S,OFF} = C_P * M_{S,OFF} * (T_{S,OFF} - T_{RA})$

$q_{S,OFF}$ = off-cycle sensible loss rate, Btu/min

C_P = specific heat capacity of the stack gas, Btu/lb_m *°F

$T_{S,OFF}$ = measured stack temperature at time t as defined in 9.6.5, °F.

T_{RA} = room ambient temperature as defined in 11.2.4, °F

$m_{S,OFF} = [C_{Tm} - C_T)/(C_T - C_B)] * p_F * V_T$

$m_{S,OFF}$ = mass flow rate at time t of the stack gas during the off-cycle, lb_m/min

C_{Tm} = concentration of measurable tracer gas in a certified standard tracer gas mixture, percent

C_T = concentration by volume of tracer gas present in the stack gas sample, measured at time t + t_{DELAY}, in accordance with 8.9, percent

t_{DELAY} = tracer gas sample delay time as defined in 9.6.4, seconds

C_B = room background concentration by volume of the tracer gas used as defined in 9.6.2, percent

V_T = flow rate of tracer gas through the stack measured in accordance with 8.9, ft^3/min

p_F = density of the stack gas as defined in 11.4.1, lb_m/ft^3

(7) Add the following section in ANSI/ASHRAE Standard 103–1982: 11.7 Additional Requirements for Atmospheric Furnaces with Integral Draft Diverter and Equipped with an Electro-Mechanical Device at the Burner Air Inlet that Restricts the Flow Through the Heat Exchanger in the Off-Cycle.

For furnaces with an integral draft diverter and equipped with an electro-mechanical device at the burner air inlet and installed as an isolated combustion system (ICS), the System Number and the draft factor D_F are defined as:

System Number=10

$D_F = K_L$

where

K_L=off-cycle loss factor, as defined in 11.4.4

(iii) With the exception of the modification set forth in subparagraph (i) and (ii) above, Lennox Industries shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The waiver shall remain in effect until the Department of Energy prescribes final test procedures appropriate to the G20 and G20R series furnace manufactured by Lennox – Industries.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) This Waiver supersedes the Interim Waiver granted to Lennox Industries on November 30, 1989 (54 FR 50525, Dec. 7, 1989) and extended on July 12, 1990 (55 FR 30265, July 25, 1990).

Issued in Washington, DC., November 30, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 90-28514 Filed 11-30-90; 2:25 pm]

BILLING CODE 6450-01-M

Office of Energy Research

[Notice 91-3]

Special Research Grants; Computer Hardware, Advanced Mathematics and Model Physics (CHAMMP) Program

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Department of Energy (DOE) hereby announces its interest in receiving applications for Special Research Grants to support the development of advanced climate models in conjunction with the Atmospheric and Climate Research Division's (ACRD) Computer Hardware, Advanced Mathematics and Model Physics (CHAMMP) Program. This notice requests applications for grants to support research in the following areas:

(1) The theoretical limits to the prediction of climate and climate change on decade to century time scales and regional (100–1000 km) spatial scales using climate models, e.g. general circulation models (GCMs) of the atmosphere, ocean, and coupled atmosphere-ocean system.

(2) The development of new mathematical techniques, algorithms and computer software to efficiently use highly parallel computers, i.e. those that typically have 50–1000 processors, for climate models.

(3) The use of the current and next generations of supercomputing systems to dramatically increase the throughput of climate simulations.

(4) The development of improved representations of key climate processes (surface processes, convective transport, etc.) within climate models that properly scale with model resolution.

Applicants may apply for any combination or all of (1), (2), (3), and (4) above. Collaborative proposals among several investigators and/or organizations that cover two or more of the above areas are encouraged. It is anticipated that up to 20 grants will be awarded. Allocation among (1), (2), (3), and (4) above will depend on the number and quality of the proposals received. Grant awards will generally be for a 3 year period beginning in the spring of 1991.

DATES: Applications should be sent to the address below by 4:30 p.m., February 12, 1991. The project description portion of the application should not exceed 25 double spaced pages. Lengthy appendices are discouraged.

ADDRESSES: Completed applications referencing 91-3, as well as requests for the application and guide for the Special Research Grant Program 10 CFR part 605, should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, ER-64, Mail Stop G-236, Washington, DC 20585. Telephone requests for application kits may be made by calling (301) 353-3281.

FOR FURTHER INFORMATION CONTACT: Dr. Ari Patrinos, Atmospheric and Climate Research Division, Office of Health and Environmental Research, ER-76, Washington, DC 20585, (301) 353-4375.

SUPPLEMENTARY INFORMATION: One of the major scientific objectives of the Atmospheric and Climate Research Division is to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. This directly supports the National Energy Strategy and the U.S. Global Change Research Program.

The CHAMMP research program is a multi-year program to accelerate and improve climate prediction on global and regional scales. Its emphasis is on the integration of improved modeling methods with state-of-the-science and next generation high performance computing systems to increase both the throughput and accuracy of computer climate model predictions.

Successful applicants for grants in support of (1) above will conduct research into the capability of climate models for permforming decade to century scale climate predictions for regions encompassing 10^4–10^9 km^2. These applicants must demonstrate the role of their research in defining the limits of predictability for advanced climate models, because these models will be used to determine the role of various factors, both natural and anthropogenic, in climate change. These studies may include, but are not limited to, both theoretical and modeling investigations of internal climate variability.

Successful applicants for grants in support of (2) above will conduct research for the development of new mathematical techniques and numerical algorithms that can be incorporated into climate models running on highly parallel computer systems of the type envisioned to be the next generation of supercomputers. These algorithms may deal with any or all of the climate system process representations that will comprise advanced climate models. These processes include, but are not limited to, atmospheric and oceanic dynamics and transport; surface energy and mass exchange; and atmospheric radiative transfer.

Successful applicants for grants in support of (3) above will conduct research into integrating state-of-the-science climate models with the current and next generations of state-of-the-science supercomputers to dramatically improve the throughput of model simulations on these systems.

Successful applicants for grants in support of (4) above will conduct research to improve the representations of climate system processes for inclusion into advanced climate models. These studies will explore methods for incorporating the results of the U.S. Global Climate Change Research Program's experimental and observational programs into modules that describe these processes correctly through a range of scales within advanced climate models.

To ensure that the program meets the broadest needs of the research community and the specific needs of the ACRD, the successful applicants will participate as members of the CHAMMP Science Team along with selected scientists from other ACRD programs

that relate to the CHAMMP program. Costs for participation in the Science Team meetings and workshops should be included in the respondent's application. Yearly estimates for Science Team travel should be based on two trips of one week to Washington, DC and two trips of three days to Chicago, IL.

Approximately 1 million dollars is available in FY 1991 to fund these efforts, allocated evenly among activities (1), (2), (3), and (4) above. However, the actual allocation to (1), (2), (3), and (4) will depend on the number and quality of the proposals received and their relation to the goals of the overall CHAMMP program. Grant awards will generally be 3 years in duration. It is anticipated that the funding for the above described activities could reach 3 million dollars per year at some time during the 10 year program. All awards are subject to the availability of appropriated funds.

Available from ACRD (see address section above) to assist applicants is a copy of the draft plan for CHAMMP—Computer Hardware, Advanced Mathematics and Model Physics—A Department of Energy Initiative in Global Climate Change, October, 1990.

Information about submissions of applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures may be found in the OER Application and Guide for the Special Research Grants Program, 10 CFR part 605. This document is available from the same office listed under the "Address" section of this notice. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, D.C., on November 19, 1990

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 90-28520 Filed 12-4-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-100081; FRL-3840-4]

Acurex Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Acurex Corporation has been awarded a contract to perform work for the EPA Office of Pesticide Programs, Health Effects Division and will require access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed as confidential business information (CBI) by submitters. This information will be transferred to Acurex Corporation as authorized by 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively. This transfer will enable Acurex Corporation to fulfill the terms of the contract, and this notice serves to notify affected persons.

DATES: Acurex Corporation will be given access to this information no sooner than December 12, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-D0-0142, Acurex Corporation will assist the Dietary Exposure Branch of the Health Effects Division in the reregistration of pesticides and shall review and evaluate data relative to the product chemistry of pesticides on Reregistration Lists A, B, C, and D.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), Acurex Corporation shall not use the information for any purpose other than the purposes specified in the contract; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. No information will be provided to Acurex Corporation until the above requirements have been fully satisfied. In addition, Acurex Corporation will submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. Records of information provided to Acurex Corporation will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Acurex Corporation by EPA for use in connection with the contract will be returned to EPA when Acurex Corporation has completed its work.

Dated: November 19, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-28154 Filed 12-4-90, 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 29, 1990.

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 Commision's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. 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) 395-3785.

OMB Number: 3060-0075.

Title: Application for Transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit, for an FM or TV Translator Station, or a Low Power Television Station.

Form Number: FCC Form 345.

Action: Revision.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 380 responses; 10.166 hours average burden per response; 3,863 hours total annual burden.

Needs and Uses: FCC 345 is required when applying for authority for assignment of license or permit, or for consent to transfer of control for a low power television station, or FM or TV translator station. The data is used by FCC staff to determine if applicant

meets basic statutory requirements to operate the station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-28474 Filed 12-4-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted To OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to MOB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently proved collection without any change in the method or substance of collection.

Title: Public Disclosure by Banks.

Form number: None.

OMB number: 3064-0090.

Expiration date of OMB clearance: January 31, 1991.

Frequency of Response: Annually.

Respondents: FDIC-insured state nonmember banks and state-licensed branches of foreign banks.

Number of respondents: 7,848.

Number of responses per respondent: 1.

Total annual responses: 7,848.

Average number of hours per response: 0.5.

Total annual burden hours: 3,924.

OMB reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project (3064-0090), Washington, DC 20503.

FDIC contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted before February 4, 1991.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: This collection, contained in 12 CFR part 350, requires FDIC-insured state nonmember banks and FDIC-insured state licensed branches of foreign banks to notify the general public, and in some cases shareholders, that annual disclosure statements are available on request. Required annual disclosure statements consist of financial reports for the current and preceding year. Also, on a case-by-case basis, the FDIC may require that descriptions of enforcement actions be included in disclosure statements. The regulation allows, but does not require, the inclusion of management discussions and analysis.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-28479 Filed 12-4-90; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-882-DR]

Republic of Palau (Trust Territory of the Pacific Islands); Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Republic of Palau (FEMA-882-DR), dated November 28, 1990, and related determinations.

DATES: November 28, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated November 28, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the Republic of Palau, resulting from Super Typhoon Mike on November 10-11, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Republic of Palau.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the affected areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be cost shared. The final terms of all cost sharing arrangements can include per capita cost sharing and will be determined by FEMA at a later date.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Frank L. Kishton of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Republic of Palau to have been affected adversely by this declared major disaster:

The Republic of Palau for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 90-28492 Filed 12-4-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-883-DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA-883-DR), dated November 26, 1990, and related determinations.

DATED: November 26, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated November 26, 1990, the President declared a major disaster

under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Washington, resulting from severe storms and flooding beginning on November 9, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency "Assistance Act (the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added, if warranted, and a proper commitment is obtained. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster:

The counties of Skagit, Snohomish, and Whatcom for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 90-28493 Filed 12-4-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-883-DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA-883-DR), dated November 26, 1990, and related determinations.

DATED: November 27, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Washington, dated November 26, 1990, is hereby amended to include the Public Assistance program in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 26, 1990:

The counties of Skagit, Snohomish, and Whatcom for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-28494 Filed 12-4-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-883-DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA-883-DR), dated November 26, 1990, and related determinations.

DATED: November 28, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Washington, dated November 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 26, 1990:

King County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-28495 Filed 12-4-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Report on Laws, Rules, Regulations, Policies and Practices of the Republic of Korea Affecting Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission advises the public that it has ordered certain ocean carriers in the United States/Korea trade to report to the Commission, pursuant to section 10002(d) of the Foreign Shipping Practices Act of 1988, and section 15 of the Shipping Act of 1984, on whether and how laws and practices of the Republic of Korea result in the existence of unfavorable or adverse conditions affecting the operations of U.S.-flag carriers. The Commission now also solicits comments from interested persons who are able to provide information relevant to the requests made of the carriers. The information is sought to provide the Commission a basis for determining whether to initiate an investigation under section 10002(c) of the Foreign Shipping Practices Act or section 19(1)(b) of the Merchant Marine Act, 1920.

DATES: Comments due January 28, 1991.

ADDRESS: Comments (original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: Section 10002(b) of the Foreign Shipping Practices Act of 1988 ("FSPA"), 46 U.S.C. app. 1710a(b), authorizes and directs the Federal Maritime Commission ("Commission") to investigate whether any laws, rules, regulations, policies, or practices of foreign governments result in the existence of conditions that adversely affect the operations of United States carriers in the U.S. oceanborne trade, which conditions do not exist for foreign carriers of that

country in the United States. Section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) authorizes and directs the Commission to make rules and regulations to adjust or meet general or special conditions unfavorable to shipping in the foreign trade arising from foreign laws, rules or regulations. Section 10002(d) of the FSPA empowers the Commission to require any person, including ocean common carriers, to respond to information requests which the Commission considers necessary or appropriate to further the objectives of that statute. Similarly, section 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714 ("1984 Act") authorizes the Commission to require common carriers to file special reports appertaining to the business of those common carriers.

To this end, the Commission has directed U.S.—and Korean-flag ocean common carriers in the United States/Korea trade ("Trade") to report on the existence and effects of doing-business restrictions and practices of the Republic of Korea ("ROK" or "Korea") on the Trade.

The Commission has on previous occasion inquired into ROK laws, regulations and policies pursuant to the reporting mechanisms of the 1984 Act. Commercial and governmental negotiations to resolve complaints by U.S.-flag carriers in the Trade have been ongoing for some time, and the Commission has been closely monitoring these efforts and the mixed success with which they have met. Recent U.S.-Korea maritime consultations resulted in only partial progress on several key issues, and a resolution of remaining issues does not appear imminent. The Commission has accordingly required U.S.-flag carriers American President Lines, Ltd. and Sea-Land Service, Inc. ("U.S. Carriers") and Korean-flag carriers Hanjin Container Lines and Hyundai Merchant Marine Co. ("Korean Carriers") to report on the following issues.

1. Trucking

The Commission is concerned that U.S. Carriers in the Trade are impeded by the ROK from operating trucking services in Korea on an equal basis as Korean Carriers can and do operate in both the United States and in Korea.

2. Branch Offices

U.S. Carriers had previously complained of inability to apply for and receive branch office licenses in Korea. This issue appears to have been resolved by ROK legislative and administrative action brought about via diplomatic and commercial discussions. A status report on this issue is sought, however.

3. Rail Service Access

U.S. Carriers in the Trade have reported an inability to contract directly with railroads in Korea, and that such access to railroads is granted only to forwarders. There are no apparent impediments to Korean Carriers' contracting for railroad services in the United States. The Commission is unaware of whether Korean Carriers are allowed more direct access to rail service contracting in Korea than are U.S. Carriers.

4. Container Terminal Ownership and Operations

U.S. Carriers in the Trade have reported that they are unfairly precluded from owning or operating container terminal facilities in Korea. Discussions between U.S. Carriers and the ROK on U.S. Carrier participation in development at the Port of Pusan have apparently not been fruitful, and the ROK has reportedly offered only vague assurances of participation in the Port of Kwangyang, an alternative which U.S. Carriers have suggested may not be comparable or acceptable.

5. Terminal Equipment Ownership

The Commission is also concerned that U.S. Carriers may be discriminatorily precluded by the ROK from owning terminal equipment, such as container cranes, in Korea. Such restrictions may vary according to whether the equipment is in public berths or in the carriers' private berths.

6. Discriminatory Port Charges

It has been alleged that U.S. Carriers in Korea are charged higher port service fees, including telephone charges, pilotage fees, obligatory pilotage, terminal tariff rates at the Port of Pusan, and charges for miscellaneous port services, than are Korean Carriers. Also, it has been claimed that the ROK tonnage measurement system favors Korean-flag carriers over foreign car carriers.

The four named U.S. and Korean Carriers have been directed to comment on each of these issues, and on any additional conditions in the Trade not enumerated, including efforts by U.S. Carriers to obtain permission to perform these services or functions or to correct the alleged discriminatory conditions, and the ROK response to such efforts; the existence and effect of any disadvantage or adversity suffered by U.S. Carriers resulting from said ROK practices and policies; and the existence of any comparable restrictions on Korean Carriers in the United States. The Commission has also directly solicited information and reports of further relevant ROK-U.S. communications from the U.S. Department of Transportation and Department of State.

By this Notice, the Commission invites all other interested parties to file information conditions created by practices and policies adverse or unfavorable conditions created by practices and policies of the ROK. Information received in response to this Notice and the accompanying Order will be used to form the basis for a determination whether further action, including the initiation of a formal investigation under section 10002(c) of the FSPA, or a proceeding under section 19(1)(b) of the Merchant Marine Act, 1920, may be warranted. Any interested party may submit such information, views or comments on or before January 28, 1991, by addressing them to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 in an original and fifteen (15) copies.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-28437 Filed 12-4-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Arneson Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 26, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Arneson Bancshares, Inc., Clear Lake, Iowa; to become a bank holding company by acquiring 65.8 percent of the voting shares of Clear Lake Bank and Trust Company, Clear Lake, Iowa.

2. First Channahon Bancorp, Inc., Naperville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Channahon, Channahon, Illinois, a *de novo* bank.

3. Worthington Bancorporation, Farley, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Worthington, Worthington, Iowa.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First McKinley Corporation, Evanston, Wyoming; to acquire 100 percent of the voting shares of Wyoming National Bank-Kemmerer, Kemmerer, Wyoming.

2. Plainview Holding Co., Plainview, Nebraska; to acquire 100 percent of the voting shares of Cones State Bank, Cones, Nebraska.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Ford Bank Group, Inc., Lubbock, Texas; to acquire 100 percent of the voting shares of MBank Waco, N.A., Waco, Texas.

2. T.I.B. Delaware, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Gulf Shores Bank, Crystal Beach, Texas; Bank of the West, Galveston, Texas; First State Bank of Hitchcock, Hitchcock, Texas; and Gulf National Bank of Texas City, Texas City, Texas.

Board of Governors of the Federal Reserve System, November 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28472 Filed 12-4-90; 8:45 am]

BILLING CODE 6210-01-M

Cleo L. Craig Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 18, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Cleo L. Craig Trust, to acquire 16.34 percent; and Cleo L. Craig Grandchildren Trust, to acquire 83.18 percent of the voting shares of Lawton Security Bancshares, Inc., Lawton, Oklahoma, and thereby indirectly acquire The Security Bank and Trust Company, Lawton, Oklahoma.

2. French E. Hickman, Midwest City, Oklahoma; to acquire an additional 3.0 percent of the voting shares of Nichols Hills Bancorporation, Oklahoma City, Oklahoma, for a total of 16.0 percent, and thereby indirectly acquire Nichols Hills Bank & Trust Company, Oklahoma City, Oklahoma.

3. Larry M. Keating, Prague, Nebraska; to acquire an additional 10.22 percent for a total of 34.91 percent, and Judy A. Keating, Prague, Nebraska, to acquire an additional 10.22 percent of the voting shares of Prague Company, Omaha, Nebraska, and thereby indirectly acquire Bank of Prague, Prague, Nebraska.

Board of Governors of the Federal Reserve System, November 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28473 Filed 12-4-90; 8:45 am]

BILLING CODE 6210-01-M

1st Source Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. 1st Source Corporation, South Bend, Indiana; to acquire 29.87 percent of the voting shares of Mortgage Acquisition Company, South Bend, Indiana, and thereby engage in making, acquiring, and servicing loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28471 Filed 12-4-90; 8:45 am]

BILLING CODE 6210-01-M

Union National Financial Corporation, et al.; 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 26, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Union National Financial Corporation, Mount Joy, Pennsylvania; to engage *de novo* in certain community development activities, through the parent company, by making a 20% equity investment as a limited partner in the Sassafras Terrace Limited Partnership which will provide equity financing for low income housing units, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. Security Bank Holding Company, Coos Bay, Oregon; to engage *de novo* through its subsidiary, Security Data Processing Company, Coos Bay, Oregon, in the sale of data processing, consulting, and sale of hardware and software pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. Security Bank Holding Company, Coos Bay, Oregon; to engage *de novo* in Security Mortgage Company, Coos Bay, Oregon, in the making, selling, acquiring or servicing of loans or other extensions of credit for the subsidiary account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28470 Filed 12-4-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90P-0292]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice that published in the **Federal Register** of October 23, 1990 (55 FR 42777), announcing that a temporary permit had been issued to Marigold Foods, Inc., for the market testing of a product designated as "lite eggnog" that deviated from the U.S. standard of identity for eggnog (21 CFR 131.170). The notice incorrectly stated, " * * *, and will be distributed in Minnesota and Wisconsin." " * * *, and will be distributed in Illinois, Iowa, Michigan, Minnesota, and Wisconsin." This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In FR Doc. 90-25044, appearing at page 42777 in the **Federal Register** of Tuesday, October 23, 1990, the following correction is made: On the same page, in the third column, in the second paragraph, in the last line, "Minnesota and Wisconsin" is corrected to read "Illinois, Iowa, Michigan, Minnesota, and Wisconsin".

Dated: November 21, 1990.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-28427 Filed 12-4-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0387]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Weeks Dairy Foods, Inc., to market test a product designated as "lite eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 5, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-485-0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Weeks Dairy Foods, Inc., 330 North State Street, Concord, NH 03301.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the

U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer consumers a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "lite eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 10,800 gallons (40,880 liters) of the test product. The product will be manufactured at Weeks Dairy Foods, Inc., Plant No. 33-08, 330 North State Street, Concord, NH 03301, and distributed in Massachusetts, New Hampshire, and Vermont.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 5, 1991.

Dated: November 27, 1990.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-28466 Filed 12-4-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0388]

Eggnog Deviating From Identity Standard: Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Jackson Ice Cream Co., Inc., to market test a product designated as "Light Egg Nog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 5, 1991.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-485-0349.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Jackson Ice Cream Co., Inc., 2600 East 4th Ave., Hutchinson, KS 67501.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "Light Egg Nog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requiremetns in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition lableing in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 160,000 quarts (151,408 liters) of the test product. The product will be manufactured at Jackson Ice Cream Co., Inc., 2600 East 4th Ave., Hutchinson, KS 67501, and distributed in Kansas.

Each of the ingredients used the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 5, 1991.

Dated: November 27, 1990.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-28467 Filed 12-4-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions and Delegations of Authority

Part F. of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol 55, No. 100, pg. 21254, dated, Wednesday, May 23, 1990) is amended to reflect a change within the Medicaid Bureau. The specific change will subdivide the Division of Payment and Coverage Policy within the Office of Medicaid Policy into two separate divisions, each having two branches. The two divisions will be titled the Division of Payment Policy and the Division of Coverage Policy.

The specific amendments to part F. are described below:

- Section FM.20.F.1. Division of Payment and Coverage Policy (FME1), is deleted in its entirety.
- Section FM.20.F.2, Division of Medicaid Eligibility Policy (FME2), has been elevated to replace FM.20.F.1. The new citation will be Section FM.20.F.1., Division of Medicaid Eligibility Policy (FME2).
- A new Section FM.20.F.2., Division of Payment Policy (FME3), will be added to reflect the subdivision of the previous Division of Payment Coverage Policy. The new functional statement for the Division of Payment Policy (FME3) reads as follows:

2. Division of Payment Policy (FME3)

- Formulates and evaluates policies, regulations, instructions, and procedures related to Medicaid coverage activities. Prepares regulations, manuals, program guidelines, State plan preprints, and general instructions related to Medicaid institutional and noninstitutional payment policy.

• Provides interpretations of Medicaid payment policies to regional offices, congressional staffs, other Departments of the Federal government, interest groups and State agencies.

• Develops, evaluates, reviews Medicaid policies, regulations, guidelines and instructions pertaining to provider and other facility payment under the Medicaid program including, for example, Medicaid institutional payment plans, Medicaid community provider rates, Medicaid payment to such entities as rural health clinics and federally qualified health centers and capitated rates for Medicaid managed care organizations.

• Formulates and evaluates policies and procedures related to Medicaid payment for long-term care, physician services, practitioner services, case management, obstetrical and pediatric services, pharmaceuticals, supplies and equipment such as hearing aids, eyeglasses, durable medical equipment, laboratory and other medical services.

• Participates in the development and evaluation of proposed legislation in the area of Medicaid payment.

• Reviews State plan amendment requests under Medicaid.

• Analyzes and recommends legislative or other remedies to improve the effectiveness of Medicaid payment policies.

• Reviews with the Office of Research and Demonstrations, research and demonstration agendas in the area of Medicaid payment.

• A new Section FM.20.F.3., Division of Coverage Policy (FME4), will also be added to reflect the subdivision of the previous Division of Payment and Coverage Policy. The new functional statement for the Division of Coverage Policy (FME4) reads as follows:

3. Division of Coverage Policy (FME4)

• Formulates and evaluates policies, regulations, instructions, and procedures related to Medicaid coverage activities. Prepares regulations, manuals, program guidelines, State plan preprints, and general instructions related to these areas.

• Provides interpretations of Medicaid coverage policies to regional offices, congressional staffs, other departmental offices, other Departments of the Federal government, interest groups and State agencies.

• Develops, evaluates, and reviews Medicaid coverage policies, regulations, and procedures pertaining, for example, to long-term care under Medicaid, case management, transportation, coverage of prescription drugs, family planning services, sterilization, hysterectomy, abortion, teenage pregnancy services, alcoholism, drug abuse treatment services, instructions for mental disease, personal care services, medical day care, Indian health services, intermediate care facilities (ICFs) and intermediate care facilities for the mentally retarded (ICF/MR) (including ICF level of care and Special ICF/MR requirements and definitions), and comparability services and uniform availability for services.

• Develops, evaluates, and reviews policies, regulations, and procedures pertaining to States' requests for approval of waivers of Medicaid requirements to provide home and community-based services and recommendations whether the waivers should be approved or disapproved.

• Develops, evaluates, and reviews national coverage policies concerning Medicaid contracts, interagency agreements, and prior authorizations.

• Reviews State plan amendment requests under Medicaid.

• Identifies, studies, and makes recommendations for modifying Medicaid coverage policies to reflect changes in recipient health care needs, program objectives, and the health care delivery system.

• Analyzes and recommends legislative or other remedies to improve coverage and utilization effectiveness.

• Reviews, with the Office of Research and Demonstrations, research and demonstration agendas in the area of Medicaid coverage.

Dated: November 19, 1990.

Robert A. Streimer,

Associate Administrator for Management.

[FR Doc. 90-28435 Filed 12-4-90; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Establishment of Deafness and other Communication Disorders Programs Advisory Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Acting Director, National Institutes of Health (NIH), announces the establishment of the Deafness and Other Communication Disorders Programs Advisory Committee.

This Committee will advise the Director, NIH; Director, National Institute on Deafness and Other Communication Disorders (NIDCD); and the Director, Division of Communication Sciences and Disorders, NIDCD, on the needs and opportunities for research on the nature, causes, diagnosis, treatment and prevention of deafness and other communications disorders; make recommendations on areas of research which require greater emphasis and the development and review of proposed requests for applications, requests for proposals, program announcement, and proposed conferences; and provides the review of project concepts for activities to be conducted under research and development contracts.

Unless renewed by appropirate action prior to its expiration, the Deafness and Other Communications Disorders Programs Advisory Committee will terminate two years from the date of establishment.

Dated: November 27, 1990.

William F. Raub,

Acting Director, National Institute of Health.

[FR Doc. 90-28441 Filed 12-4-90; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Asthma Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, February 5, 1991, from 8:30 a.m. to 3 p.m., at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, (301) 897-9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Asthma Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Mr. Robinson Fulwood, Coordinator, National Asthma Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, Bethesda, Maryland 20892, (301) 496-1051.

Dated: November 27, 1990.

William F. Raub,

Acting Director, NIH.

[FR Doc. 90-28442 Filed 12-4-90; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) for approval of an information collection for the Administration on Aging's Certification of Maintenance of Effort.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Certification of Maintenance of Effort.

OMB No.: Title III, section 309(c) of the Older Americans Act of 1965, as amended, Pub. L. 89-73, requires that a State's allotment be reduced by the percentage by which its State expenditures for such year are less than its average annual expenditures from State sources for the period of three fiscal years preceding such year. The information collected on the SF-269 report, which is provided to the federal government, combines the funds from State and local sources; as a result, the Department would be unable to identify funds solely from State sources.

The information will be used by the Administration on Aging (AoA) to verify the amount of State expenditures and make comparisons with the average annual expenditures for the period of three fiscal years preceding such year to assure that a State is in compliance with 45 CFR 1321.49. This section requires a State agency to spend for both services and administration at least the average amount of State funds it spent for the three previous fiscal years to meet the required non-federal share applicable to its allotments. If the information is not collected, AoA would not be able to comply with section 309(c) of the Older Americans Act.

Annual Number of Respondents: 57

Annual Frequency: 1

Average Burden Hours Per Response: 0.5

Total Burden Hours: 28.5

Dated: November 27, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90-28434 Filed 12-4-90; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area

AGENCY: National Park Service; Delaware Water Gap National Recreation Area Citizens Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth dates of the next two meetings of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act.

Date: January 12, 1991.

Time: 9 a.m.

Location: Montague Township Municipal Office, Clove Road, Montague, New Jersey.

Alternate Date in Case of Inclement Weather: January 26, 1991

Date: February 9, 1991.

Time: 9 a.m.

Location: Northampton County Government Center, 4th Floor Council Chambers, 7th and Washington Streets, Easton, PA.

Alternate Date in Case of Inclement Weather: February 16, 1991

AGENDA: The agendas will be devoted to committee reports, Superintendent's report, old business, new business, correspondence, identification of topics of concern. An opportunity for public comment to the Commission will be provided.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent; Delaware Water Gap National Recreation Area Bushkill, PA 18324; 717-588-2435.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100-573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 90-28485 Filed 12-4-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Technical Assistance Plan for the Americans with Disabilities Act of 1990

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: The Department of Justice has prepared a technical assistance plan for public comment in accordance with the requirements of section 506 of the Americans with Disabilities Act of 1990 (ADA). The purpose of this plan is to explain the strategies that will be followed to assist entities covered by the ADA, individuals with disabilities, Federal agencies, and the general public to understand the rights and responsibilities established by the ADA. This plan was prepared in consultation with the Equal Employment Opportunity Commission, the Department of Transportation, the Architectural and Transportation Barriers Compliance Board, the Federal Communications Commission, the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, the Department of Commerce, and the National Institute on Disability and Rehabilitation Research.

DATES: Comments must be received by January 4, 1991.

ADDRESSES: Comments should be sent to Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Box 66118, Washington, DC 20035-6118.

FOR FURTHER INFORMATION CONTACT: James D. Bennett, Supervisory Program Analyst, (202) 307-2220 (Voice) and (202) 307-2678 (TDD).

This document is available on request in the following accessible formats:

—Audio tape;
—Large print;
—Braille; and
—Electronic file on computer disk and electronic bulletin board (202) 514-6193.

SUPPLEMENTARY INFORMATION: The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability in employment, State and local government operations, public transportation, public accommodations, and telecommunications (42 U.S.C. 12101–12213). The ADA requires that the Department of Justice (DOJ) develop a technical assistance plan to assist entities covered by the ADA, and Federal agencies, to understand their responsibilities under this law. The ADA further requires that DOJ prepare the plan in consultation with the Equal Employment Opportunity Commision, the Department of Transportation, the Architectural and Transportation Barriers Board, and the Federal Communications Commission, and the ADA provides that DOJ may consult the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce. All of these agencies were consulted in the development of the proped plan, and DOJ also consulted the National Institute on Disability and Rehabilitation Research.

The purpose of this proposed plan is to outline how technical assistance with respect to understanding the ADA will be provided to entities covered by the ADA, individuals with disabilities, and the general public. The proposed plan discusses technical assistance in the areas of employment, public accommodations, transportation, State and local government services, and telecommunications, and the actions that the agencies identified above will undertake to fulfill their statutory responsibilities. We seek comments on all aspects of the plan. Following analysis of the comments received, a final technical assistance plan will be published by January 26, 1991, as required by section 506 of the ADA.

The responsibility for publishing this plan has been delegated by the Attorney General to the Assistant Attorney General for Civil Rights (55 FR 40653) (1990). This proposed technical assistance plan is issued in accordance with the requirements of section 506 of the ADA (Pub. L. 101–336, 104 Stat. 371, 42 U.S.C. 12206).

Dated: November 27, 1990.

John R. Dunne,

Assistant Attorney General for Civil Rights.

Americans with Disabilities Act of 1990: Proposed Federal Government Technical Assistance Plan

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I. Introduction

A. Technical Assistance Provisions of the Americans With Disabilities Act

The Americans with Disabilities Act of 1990 (ADA), which was signed into law by President Bush on July 26, 1990, provides to individuals with disabilities comprehensive civil rights protections that are similar in scope to those provided to individuals on the basis of race, national origin, sex, and religion. The ADA seeks to ensure equal opportunity for individuals with disabilities in employment, public accommodations, public services (including transportation), and telecommunications.

The ADA recognizes the necessity of educating the public about its rights and responsibilities under the Act. Section 506 of the ADA requires the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission (EEOC), the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board (ATBCB), and the Chairman of the Federal Communications Commission (FCC), to develop a plan to assist entities covered under the ADA, as well as other Federal agencies, in understanding their responsibilities under the Act.

The Attorney General is authorized to obtain the assistance of other Federal agencies in preparing the technical assistance plan. These agencies, especially the National Council on Disability (NCD) and the President's Committee on Employment of People with Disabilities (PCEPD), and including the Small Business Administration (SBA) and the Department of Commerce, also have a role in the planning and delivery of technical assistance under the ADA. Other Federal agencies not specifically mentioned in the statute, such as the National Institute on Disability and Rehabilitation Research of the Department of Education, are part of the ADA technical assistance planning and delivery network by virtue either of their mission or their current or planned programs.

The ADA requires the Attorney General to develop the technical assistance plan not later than 180 days after the date of the ADA's enactment, i.e., by not later than January 26, 1991. It is the Department of Justice's (DOJ) intention to publish the final technical assistance plan within the 180 day period established by the ADA. The Attorney General also is required to publish the technical assistance plan for public comment according to the provisions of the Administrative Procedure Act.

This document constitutes the proposed technical assistance plan developed by the Attorney General, in consultation with the above-cited agencies, that is being presented for public review and comment in the **Federal Register.** The period covered by the plan is FY 1991 through FY 1994; however, certain technical assistance activities, such as those carried out under grants and contracts that may be awarded during FY 1994, can be expected to continue into FY 1995 and FY 1996.

It is important to remember that the scope and amount of technical assistance actually provided under the ADA will depend upon the result of the Federal Government's budget preparation and approval process, and subsequent appropriations by Congress. Specific additional appropriations will be required to carry out the assistance and outreach initiatives described in this plan. In the absence of additional appropriations, the technical assistance grants and contracts described in this plan cannot be implemented, and the overall provision of technical assistance necessarily will be limited to minimum levels of dissemination of basic information regarding the ADA's

requirements and compliance techniques.

Four Federal agencies have primary responsibility for implementing the ADA: DOJ, EEOC, DOT, and FCC. The ADA authorizes these agencies, within their respective spheres of responsibility under the ADA, to render technical assistance to individuals and institutions that have rights or duties under the ADA. These agencies are required to publish regulations under title I (employment), title II (public services, including transportation), title III (public accommodations), and title IV (telecommunications). They specifically are required to provide and make available, not later than six months after the publication of these regulations, appropriate technical assistance manuals to individuals or entities with rights or duties under the ADA. However, the Act states that the failure to receive technical assistance or publications required under the Act does not excuse entities covered under the ADA from complying with its provisions.

The four implementing agencies are convinced that, once given information on how to comply with the ADA, covered entities will do so voluntarily. The Federal Government's experience in implementing section 504 of the Rehabilitation Act of 1973, as amended, has demonstrated that a publicized, readily available, comprehensive technical assistance program responsive to the problems and needs of its audience offers many advantages. It reduces misunderstandings regarding rights and responsibilities, facilitates voluntary compliance, and promotes the exchange of information and the development of more effective and less costly methods to address compliance issues. It also avoids an unnecessary reliance on enforcement and litigation mechanisms to achieve compliance.

B. Definition and Description of Technical Assistance

Technical assistance, as used in this plan, refers to the provision of expert advice, and both general and specific information and assistance, to the public and to entities covered by the ADA. The purposes of this technical assistance are twofold: to inform the public (including individuals with rights protected under the Act) and covered entities about their rights and duties; and to provide information about cost-effective methods and procedures to achieve compliance. Many of the initial strategies and programs described in this plan are directed at providing broad dissemination of basic program information and compliance requirements. Longer-range activities focus on addressing particular compliance issues and methods.

The technical assistance discussed in this plan will take many forms. It will employ virtually all aspects of communications, including the use of publications, exhibits, videotapes and audiotapes, public service announcements, and electronic bulletin boards. The development and dissemination of this body of information and materials in alternate formats accessible to individuals with disabilities is essential to the ADA technical assistance program.

Technical assistance under the ADA will include presentations at interactive group events such as conferences, workshops, and training programs. It also will include advice to individuals that addresses a specific topic or the resolution of a specific problem, such as can be provided through the use of telephone hotlines, information clearinghouses or on-site experts.

Finally, technical assistance will include a variety of clearinghouse functions in order to benefit from the experiences of covered entities and individuals with disabilities in complying with the ADA. Information systematically will be sought and shared to enhance the development, assessment, and replication of new and improved compliance methods and techniques.

Technical assistance under the ADA will be provided by staff of the four implementing agencies, by staff of other Federal agencies under agreements with the implementing agencies, by individual experts or consultants retained by the implementing agencies, and by associations, groups, or organizations under grant or contract to the implementing agencies. The ADA specifically authorizes the four Federal agencies with implementation responsibilities under the Act to enter into grants and contracts, subject to the availability of appropriations, with individuals, not-for-profit institutions, and associations that represent individuals who have rights or responsibilities under the ADA, and to enter into contracts with for-profit entities.

This plan provides for the extensive use of the skills, knowledge, and experience of trade associations, advocacy groups, and other similar organizations that have existing lines of communications and credibility with covered entities and persons with disabilities. By working with existing networks, whenever feasible, Federal agencies can maximize the resources devoted to technical assistance. Further, as the Federal Government's experience with section 504 enforcement and compliance has demonstrated, there will be a continuing need for technical assistance beyond the first several years of ADA implementation. By entering into a technical assistance partnership with appropriate national, regional, and "grassroots" organizations, Federal agencies can build the capacity of these organizations to provide technical assistance to their respective constituencies after the period covered by this plan and for as long as needed.

These organizations outside of the Federal Government will be active participants in the identification of the specific audiences that are covered or affected by the ADA's requirements. They will assist in the definition of the differing problems and technical assistance needs of these widely varied audiences. These associations, groups, and organizations also will participate in the development of technical assistance initiatives to address specific compliance problems and issues. In addition, they will participate in the actual delivery of technical assistance. The knowledge, experience, credibility, and existing communications networks and delivery systems that they possess will be a key element in assuring the success of the overall ADA technical assistance program.

The Federal agencies providing technical assistance under this plan recognize the importance of sound planning and evaluation to the development of an effective technical assistance program. They recognize that is important to coordinate their activities to avoid overlap or duplication of efforts. They also recognize the need to share information and evaluate the operation and effectiveness of their respective technical assistance activities.

C. Coordination of Federal Technical Assistance Activities

This plan describes a comprehensive, coordinated Federal multiyear program of technical assistance to promote compliance with the ADA. Although specific program development, management, and evaluation responsibilities rest with DOJ, EEOC, DOT, and FCC, the need remains for government-wide coordination, especially during the FY 1991 through FY 1994 period covered by the plan.

To this end, the Attorney General will establish an ADA Technical Assistance Working Group. This working group will be chaired by DOJ. It will be composed of representatives of the four

implementing agencies (DOJ, EEOC, DOT, and FCC), representatives from the ATBCB, NCD, PCEPD, SBA and Department of Commerce, and representatives from other agencies with ADA technical assistance responsibilities and activities that the Attorney General may identify and invite to participate. The working group will meet at least twice annually to discuss its activities under this plan, to assess the adequacy and effectiveness of technical assistance that is being provided, and to make recommendations to the Attorney General for improved coordination in the planning and delivery of technical assistance under this plan.

The Attorney General will prepare guidelines for the development of annual updates to this ADA Technical Assistance Plan by the agencies represented on the working group. These annual updates will be submitted to the Attorney General by October 1 of each year. The Attorney General also may require other Federal agencies, identified by the working group as having ADA technical assistance responsibilities or programs, to submit technical assistance plans. The technical assistance plans or updates will describe progress made during the past fiscal year to implement the provisions of the ADA and this plan, the results of any assessments or evaluations of technical assistance delivery or innovative methods or procedures to promote compliance, and program initiatives proposed for the current fiscal year.

The Attorney General, based upon the review of agency plans, will prepare an annual report that describes technical assistance provided by or on behalf of the Federal Government in support of the ADA. This report will be issued by December 31 of each year.

D. Organization and Contents of the Plan

Section II of this plan describes EEOC's technical assistance programs. Section III discusses DOJ's technical assistance program. Section IV describes the technical assistance to be provided by DOT. Section V focuses on FCC's technical assistance program. Section VI describes the technical assistance roles and activities of other Federal agencies in the planning and delivery of technical assistance under the ADA. Each section provides a brief summary of the agencies' responsibilities under the ADA and provides information on the entities and audiences for whom technical assistance projects and initiatives are to be developed.

Each agency's plan describes, on a broad program level, the technical assistance to be provided and the purposes the assistance is intended to achieve. Given that not all goals can be accomplished at once, each plan describes a framework of priorities for technical assistance delivery.

Neither the overall plan nor the individual component plans are intended to serve as detailed project-level operational documents, especially with respect to longer-range program activities. However, each plan does provide more detailed information with respect to short-term technical assistance activities (e.g., FY 1991 activities already underway).

II. Equal Employment Opportunity Commission Technical Assistance Program

Title I of the ADA prohibits employment discrimination on the basis of disability against qualified individuals with disabilities. Employers with 25 or more employees will be subject to the nondiscrimination requirements of the ADA on July 26, 1992; employers with 15 to 24 employees will be covered two years later, on July 26, 1994. The phase-in of coverage over four years was established to allow time for employers to become informed about their obligations under the statute and to provide additional time for smaller employers to comply with their obligations. This phase-in parallels the manner in which coverage of title VII of the Civil Rights Act of 1964 was applied to employers. All employers who are subject to title VII, with the exception of the Federal government, will be subject to the nondiscrimination requirements of the ADA. (The Federal government is covered by similar nondiscrimination requirements as well as affirmative action requirements under the Rehabilitation Act of 1973.)

The Equal Employment Opportunity Commission (EEOC or the Commission) is primarily responsible for the enforcement of the ADA's nondiscrimination provisions in employment. As is the case with title VII, which is also primarily enforced by the Commission, the Department of Justice has concurrent litigation authority under the ADA with respect to nondiscrimination in employment by State and local governmental entities. The Commission is responsible for issuing regulations to carry out the ADA's employment requirements by July 26, 1991.

As outlined in this proposed plan, the Commission, in cooperation with other governmental and private agencies and organizations, will conduct or expand existing technical assistance activities designed to ensure that employers, individuals, and the public learn about the ADA's requirements with respect to employment and develop the ability to identify and solve employment compliance problems. The Commission expects these technical assistance efforts to result in greater compliance with the ADA's employment requirements, with a corresponding reduction in the need to resort to enforcement activity.

The Commission initially will seek to develop active liaison with a wide range of organizations and associations representing employers, other covered entities, and individuals with disabilities, at national and local levels, and to explore ways in which their established informational channels can be used to provide general and specific information on the employment requirements of the ADA. These organizations also will be asked to identify specific technical assistance needs of their constituencies, so that the Commission may better direct its efforts to meet these needs.

In addition, the Commission will solicit from these groups examples of ways to accommodate individuals with disabilities and other practical experiences that will be helpful in promoting voluntary compliance. The Commission also will utilize resources of other Federal agencies with responsibilities and specialized expertise on disability issues related to employment. To assure consistent guidance, materials developed by other agencies with respect to title I legal requirements will be reviewed by EEOC, pursuant to Executive Order 12067.

Employers and other covered entities will be actively encouraged to seek information and assistance to maximize voluntary compliance. The Commission's technical assistance program will be separate and distinct from its enforcement responsibilities. Accordingly, employers and others who request information or assistance in regard to a particular aspect of compliance, or who participate in training conducted by the Commission, will not be subject to investigation or other enforcement action on the basis of such inquiries or participation.

The Commission's technical assistance program will include development of informational materials and training for employers, individuals with disabilities and the public, and assistance in response to individual requests. The program will be designed to provide information needed for compliance with the law to all those

covered by title I legal requirements. However, in allocating limited resources, priority may be given to providing technical assistance to targeted audiences. For example, small employers generally have not had previous experience in meeting nondiscrimination requirements of the Rehabilitation Act that have applied to larger employers who are Federal contractors or grantees. In addition, smaller employers have little access to information and assistance provided by commercial consultant services. The Commission also is aware of concerns expressed by small employers that indicate particular needs for guidance and assistance on the nature of their title I obligations.

The Commission's technical assistance program will be implemented in phases related to the effective dates of the statute and the issuance of regulations by the Commission. The Commission will focus its efforts on providing information and assistance on title I requirements prior to July 26, 1992, so that covered entities and individuals with disabilities are informed about their rights and obligations by the time the law comes into effect. It will provide general information on rights and responsibilities in employment under the ADA, specific information on the application of ADA nondiscrimination requirements to a range of employment practices, as well as guidance on how employers may comply with the law's reasonable accommodation requirements. In addition to technical assistance activities conducted by EEOC, many activities will be conducted by organizations representing employers and disabled individuals. The Commission also will utilize the resources of other Federal agencies to communicate legal requirements as widely as possible.

Prior to the issuance of regulations, EEOC will disseminate general information on the basic statutory requirements through a wide range of communications and information channels. It will publish a basic brochure on title I requirements, and separate, more detailed pamphlets providing information on legal requirements for employers as well as information on title I rights for disabled applicants and employees. Additional fact sheets and questions and answers will be developed in response to specific inquiries. The Commission's informational materials will be available in alternative formats to make them accessible to individuals with disabilities.

Information also will be provided to public media and to specialized communications media of employer and disability-oriented organizations. Commission staff will provide information on the law through active participation in conferences, workshops and meetings of these organizations throughout the country. An exhibit providing information on ADA requirements will be displayed at organizations' conferences and conventions.

EEOC will respond to individual inquiries through systems now used to respond to public inquiries on other laws it enforces, including a toll-free "800" number which will provide basic information on the ADA. Queries not answered by recorded information will be transferred to the nearest field office for a personal response. EEOC staff will be trained to assure that accurate helpful information is provided to the public. Staff also will be equipped to refer employers and others to appropriate specialized sources of assistance (such an national and local organizations representing persons with disabilities, the technical resources of regional disability research centers, and vocational rehabilitation agencies), that can provide assistance on making accommodations and other aspects of compliance.

Following issuance of the implementing regulations in July 1991, an expanded information and outreach program will be conducted to provide more detailed guidance to employers and individuals with disabilities on the application of the regulatory requirements. A comprehensive technical assistance manual will be produced and disseminated six months before the effective date of title I. The manual will be a major resource for employers and disabled persons. It will explain the legal requirements of the statute and regulations as they apply to specific employment practices, and will include guidance on reasonable accommodation, such as ways to accommodate individuals with specific types of impairments in specific work situations, as well as detailed guidance and examples of other important aspects of compliance.

The manual will include an extensive directory of technical assistance resources for reasonable accommodation, accessibility, and other aspects of compliance. EEOC intends to publish the manual in a format that can be updated with supplements as the Commission issues further guidance on specific issues, and as additional technical assistance references and resources become available.

Further guidance on key title I policy issues will be developed prior to the effective date of the law for EEOC's internal compliance manual. This policy guidance, with the regulations, will be used to train Commission staff, nationwide, before the law goes into effect. The compliance manual guidance also will be available to the public at EEOC headquarters and its 50 field offices, in public libraries, and through commercial information services. Information on this guidance, in simplified and condensed formats, will be developed for broader public dissemination.

The Commission will conduct training seminars for employers and for individuals with disabilities on the regulatory requirements and their application to specific employment practices. It will expand the availability of training by producing videotapes of training sessions and explore use of mechanisms such as video-conferences to reach wider audiences. Organizations representing employers and disabled persons will be encouraged to conduct training for their members, with materials, speakers and other assistance from the Commission. If funding is available, training and technical assistance also may be developed and conducted by other organizations, under grants or contracts from the Commission.

The Commission will expand public information and technical assistance activities near the effective date of title I. Public service announcements will be aired on radio and television, additional information will be provided to a broad range of general and specialized media, and Commission speakers will participate in radio, television, organizational and other forums throughout the country, to emphasize and clarify legal requirements.

EEOC will continue to provide technical assistance after the law becomes effective, through additional information materials, training activities and response to requests for information and assistance. As the Commission develops additional policy guidance, and as particular aspects of compliance are identified by employers and disabled individuals to require further explanation, informational materials and training will address these specific compliance issues. Expanded technical assistance will be provided by Commission field staff. A central information library of technical assistance resources will be developed and updated to facilitate response to

individual requests. The Commission will continue to work closely with disability groups, employer organizations, and other Federal agencies, utilizing their resources and information networks to supplement its own technical assistance activities, and to provide specialized assistance that will aid compliance with the employment requirements of the ADA.

III. Department of Justice Technical Assistance Program

The Department of Justice is responsible for enforcing titles II and III of the ADA, and is responsible for providing technical assistance related to compliance with those titles, except as described below. Title II prohibits discrimination on the basis of disability by non-Federal public entities, and title III prohibits such discrimination in public accommodations. Although, as discussed below, each of these titles covers different types of entities and establishes separate substantive requirements, technical assistance in both areas will be discussed in this portion of the plan because DOJ has responsbilities in both areas and will pursue similar strategies in each area.

Title II of the ADA prohibits discrimination on the basis of disability by public entities, including State and local governments. Although the coverage provided by title II extends to public transportation services provided by such public entities, technical assistance related to transportation is covered in section IV of this plan. The ADA requires that State and local government operations be in compliance with those requirements of title II that are covered in this section of the plan effective January 26, 1992. The ADA further requires DOJ to issue regulations implementing the nontransportation requirements of title II by July 26, 1991. Compliance with title II shall be in accordance with the requirements of section 504 of the Rehabilitation Act of 1973, as amended. Accordingly, State and local governments will be required to ensure that government facilities, services, and communications are accessible to individuals with disabilities except where a fundamental alteration in the program or an undue burden would result. Enforcement of title II will be effected by Federal agencies to be designated by DOJ or by lawsuits brought by private parties.

Title III of the ADA prohibits discrimination on the basis of diability by public accommodations so that individuals with disabilities will have the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations in places of public accommodation. Although the coverage provided by title III extends to certain public transportation services provided by certain private entities, technical assistance related to transportation will be covered in section IV of this plan. The ADA requires that public accommodations be in compliance with those requirements of title III that are covered in this section of the plan effective January 26, 1992. The ADA further requires DOJ to issue regulations implementing the nontransportation requirements of title III by July 26, 1991.

Compliance with title III means that public accommodations will be readily accessible to individuals with disabilities. In order to accomplish this, the ADA establishes physical accessibility standards to make new construction and alterations accessible. The ADA also requires public accommodations to remove physical barriers to accessibility in existing facilities, if readily achievable, or, if such removal is not readily achievable, alternative methods of providing the services must be offered if those methods are readily achievable. In addition, entities covered by title III will be required to provide auxiliary aids and services to individuals with disabilities, such as hearing or vision impairments, in order to ensure that such individuals have access to the goods and services offered by a public accommodation, unless an undue burden would result. Enforcement of title III will be by DOJ or by lawsuits brought by private parties.

Examples of public accommodations addressed in this portion of the plan are private entities, other than those providing public transportation services, with operations that affect commerce, such as: places of public lodging, including inns, hotels, and motels; establishments that serve food or beverages, including restaurants and bars; places of entertainment or exhibition, including theaters, concert halls, and stadiums; places of public gathering, including auditoriums, convention centers, and lecture halls; sales or retail establishments, including bakeries, grocery stores, clothing stores, hardware stores, and shopping centers; service establishments, including laundromats, dry cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, gas stations, accountants' offices, attorneys' offices, pharmacies, insurance offices, health care providers' offices, and hospitals; places of public display or collection, including museums, libraries, and galleries; places of recreation, including parks, zoos, and amusement parks; places of education, including nursery, elementary, secondary, undergraduate, and postgraduate private schools; social service establishments, including day care centers, senior citizen centers, homeless shelters, food banks, and adoption agencies; and places of exercise or recreation, including gymnasiums, health spas, bowling alleys, and golf courses.

DOJ will expand existing technical assistance activities designed to ensure that entities and individuals affected by titles II and III learn about the ADA's requirements and develop the ability to identify and solve compliance problems. The goal of this aspect of the plan is to provide technical assistance to as many entities and individuals as possible over the term of the plan. DOJ recognizes that it will be necessary to set priorities that take into consideration the relative need for such assistance and strategies for maximum effectiveness of such assistance.

Since July, 1990, DOJ has staffed an ADA information line to take requests for materials and answer questions about the ADA. Concomitantly, DOJ has developed and distributed general information, such as fact sheets, pamphlets, and copies of the ADA, in printed and accessible formats. DOJ has established a speakers' bureau to make DOJ personnel available to make speeches and participate in workshops, seminars, classes, conferences, conventions, and other similar meetings. A display also has been developed for use at such gatherings to focus attendees' attention on the ADA and facilitate the distribution of materials.

DOJ plans to base its future technical assistance activities on research, requests from contacts, and information received during the process of issuing regulations. DOJ will survey the universe of entities covered by titles II and III as well as existing networks of agencies, organizations, and associations that represent the covered entities. DOJ then will determine which of these organizations could most effectively provide technical assistance, and how to structure such technical assistance efforts.

Projects undertaken in conjunction with organizations of covered entities will inform and train covered entities about ADA requirements and how to solve compliance problems. Those projects will also provide information about model compliance strategies and will assist individual entities in achieving compliance. DOJ planning efforts will also determine the most

effective types of informational and training materials and mechanisms for delivery of training for the different types of audiences that must be reached. For example, the informational needs and training delivery mechanisms for places of recreation, such as amusement parks, would differ greatly from those required by sales or retail establishments, such as grocery stores. In addition, DOJ will do research to determine issues on which further information is needed and prepare materials and training accordingly.

Similar types of determinations with respect to most effective technical assistance and the structuring of such assistance efforts will be made with respect to organizations and associations of, or representing, individuals with disabilities. Projects undertaken with such organizations will provide information and training to persons with disabilities to enable them to assist covered entities to resolve compliance questions.

In addition, DOJ will use teleconferences and videotapes to reach widely dispersed audiences. Depending on the needs of the particular groups participating in a given teleconference, a varying mix of presentations and questions and answers will be provided. Teleconferences will be videotaped and copies of the tapes distributed and made available for rebroadcast by media such as cable television stations. Wherever possible, other Federal agencies involved in enforcing the ADA or providing technical assistance about the ADA will participate in these teleconferences.

In addition to other types of training materials, DOJ will also prepare video training tapes that will be tailored to assist major groups of entities in complying with the ADA. For example, there could be one training tape designed to answer questions related to compliance by entities in the food service industry, and there could be another tape oriented toward answering compliance questions raised by sales and retail establishments.

In accordance with a requirement of the ADA, DOJ will also develop a technical assistance manual. DOJ will use both research and contacts to determine the contents of the manual and the most effective format for wide distribution. It is anticipated that it will be made available in electronic format (CD-ROM and computer disk), which will both enhance DOJ's ability to distribute the manual in an efficient manner and make the manual readily available to persons with sensory impairments. Moreover, as policy develops and as information is received regarding technical assistance needs, in succeeding years this manual will be updated and revised.

Other technical assistance materials will be developed to meet varying degrees of technical need by entities and individuals affected. For example, a narrative description of the requirements of the regulations implementing title III will be developed for general use. Question-and-answer booklets will be prepared, some for general use, others for use by specific types of entities that are encountering specific types of compliance issues. In addition, technical assistance guides (TAG's) each of which address a specific compliance issue or resource, will continue to be prepared. (DOJ has issued 43 such guides to assist entities in complying with section 504 of the Rehabilitation Act of 1973, as amended, and this ongoing program is now expanded to cover the ADA.)

Additional special technical assistance and training projects will be undertaken by DOJ, either directly or through grants or contracts. Personnel from other Federal agencies, who are either involved in ADA enforcement or other activities of have significant contact with individuals with disabilities, will be trained on the requirements of titles II and III. Examples might include personnel from United States Attorney's offices, the Rehabilitation Services Administration, and the civil rights offices of other Federal Executive agencies.

In addition, special training or outreach projects will be planned to meet needs as they are identified. Where problems are significant in terms of number of degree, checklists for compliance or models of compliance for certain types of entities and certain types of compliance issues will be developed for duplication elsewhere. (For example, checklists for the food service industry could be prepared, or compliance models for health providers' offices could be developed.) Or, where problems are found in terms of providing information to individuals with disabilities who are members of minority groups, including racial, language, or cultural minorities, special outreach and training projects will be developed. Special projects will be conducted to reach specific audiences, in some instances at a national level and in other instances at the local level, whichever will be more effective.

IV. Department of Transportation Technical Assistance Program

The Department of Transportation (DOT) has lead responsibility for issuing a regulation to implement title II of the ADA with respect to nondiscrimination in public mass transportation systems. (DOT has already issued a portion of the rules needed to implement the ADA, concerning the acquisition of accessible vehicles.) DOT has significant enforcement responsibilities for processing complaints alleging violations of the ADA in the public and private transportation sectors. The Secretary of Transportation reviews paratransit plans developed by local public transportation service providers. The Secretary also may grant relief from requirements addressing issues such as the purchase of new accessible vehicles or alternation of existing facilities. DOT has substantial interagency consultation responsibilities, primarily with the Architectural and Transportation Barriers Compliance Board (ATBCB) for the development of accessibility standards for public transit vehicles and facilities.

An entirely new sector of transportation service providers is affected by title III of the ADA. For the first time, many private entities engaged in transportation services are prohibited by Federal law from discrimiating on the basis of disability. The ADA requires new over-the-road buses to be accessible within six years (seven years for small companies). This deadline may be extended by the President after completion of a study of Congress's Office of Technology Assessment. Other new vehicles, such as vans, must be accessible, unless the transportation company provides service to individuals with disabilities that is equivalent to that operated for the general public. If a private charter company can accommodate its disabled consumers by using accessible vehicles in its existing fleet (or by using leased vehicles), newly purchased vehicles do not have to be accessible. With reqard to private sector transportation, the ADA also requires that related transportation operations, including station facilities, must meet the requirements for public accommodations under title III.

Under title III, DOT must issue a regulation for such private sector transportation services, including an interim regulation for over-the-road buses until the technology study is completed. DOT will coordinate its activities and consult extensively with the ATBCB and DOJ in the development of private sector transportation service accessibility standards.

Under its general mandate to establish and administer national transportation policy, DOT has been involved over the years in an array of technical assistance efforts to make

transportation services accessible, safe, convenient, and affordable for persons with disabilities. As a result, DOT has developed considerable institutional expertise in accessibility issues as they relate to transportation services. Many ongoing technical assistance projects and projected FY 1991 activities also are applicable to the ADA. Thus, DOT's technical assistance program under ADA would be dovetailed into the agency's ongoing efforts to enforce accessibility requirements, and to otherwise assist transportation providers and representatives of disabled individuals.

One of DOT's major technical assistance initiatives in the area of accessibility is Project Action, a program mandated by Congress in 1988, that calls for the creation and demonstration of cooperative methods for improving accessible transportation.

It is managed by the Easter Seal Society in conjunction with DOT's Urban Mass Transportation Administration. Congress, after consulting with transportation industry and disability rights leaders, identified Project Action's technical assistance priorities. These areas include: identifying people with disabilities in the community and their transportation needs; developing outreach and marketing strategies; developing training programs for transit providers and for transit users with disabilities; and, applying technology to eliminate barriers to transportation accessibility.

DOT would use these identified transportation access critical areas as the strategy springboard for its technical assistance activities under the ADA. DOT also would seek to expand upon these priority areas. Particular attention would be paid to identifying the range of disabilities that require innovation to make transportation accessible, and to providing technical assistance materials in alternate formats. The objects is to provide adequate notice so that the public and especially individuals with disabilities can participate effectively in the development of standards and regulations under the ADA. DOT also would focus on programs designed to train transit operators and educate consumers. DOT would give priority to expanding these activities beyond single-event orientation training.

Currently, DOT provides technical assistance to selected Federal agency staff and to a wide variety of public and private transportation entities, including many mass transit professionals. Individual consumers are also targeted. Many of these activities have been responsive to specific requests. DOT, as part of its ADA technical assistance initiatives, would actively encourage staff to develop technical assistance outreach efforts and to establish and maintain ongoing assessments (including compliance reviews and audits) of covered entity and consumer needs.

The goal of DOT's initial technical assistance activities would be to reach the public at large, the staff of State and local transit authorities, contract providers in the transit industry, equipment vendors, trade and professional organizations, disability advocacy groups, and individual consumers. DOT would provide technical assistance principally by using existing staff. However, to implement the ADA, and as budgeted resources permit, DOT could supplement its technical assistance effort with grants, cooperative agreements, and contracts.

DOT could encourage projects that are expected to continue to provide assistance beyond the duration of Federal funding, particularly when they foster cooperation between the transit industry and the disability community or promote interagency coordination. In selecting technical assistance grantees or contractors, DOT will consider giving priority to the grantees and contractors with the capacity to continue technical assistance activities, to produce deliverables that can be readily replicated, and to address innovative subject areas or solutions to problems.

DOT is considering a number of technical assistance activities, including the following:

- DOT could prepare materials for dissemination to covered entities and consumers that summarize and explain ADA requirements and DOT's policies and regulations. Preparation of such materials includes updating UMTA's 1986 bus lift and securement device guidelines.
- DOT could promote the training of transit industry officials, disability advocates, and individual consumers to encourage voluntary compliance with the ADA. Training transportation design and construction professionals, engineers and architects, and State and local code enforcement agencies also will be encouraged. Areas of emphasis would include innovative technology (such as wheelchair life and securement devices), transit operator training, consumer use outreach, marketing, and training, and the identification of the variety of disabilities that must be accommodated to achieve access to trasportation.
- DOT could develop guidance materials for DOT's program and legal staff to facilitate ADA enforcement techniques and strategies. Training in the newly covered areas of private sector transportation compliance would be provided as appropriate.
- DOT could continue with efforts underway to foster the exchange of information, materials, technical assistance strategies, techniques, and successful compliance practices and procedures among DOT staff providing technical assistance. Where current procedures are inadequate, DOT would intra-agency memoranda of understanding or other types of formal agreements to enhance such activities.
- DOT could improve its coordination with outside staff, including those of State and local transportation and civil rights agencies, to facilitate meeting mutual civil rights and ADA compliance objectives and to promote the sharing of information. Again, formal memoranda of understanding or delegation agreements to improve current efforts would be developed in warranted.

To summarize, DOT efforts would be intended to promote an extensive exchange of information, materials, techniques, and strategies to achieve compliance with the ADA. DOT would spread its technical assistance efforts equitably among its own staff, the transportation industry, and disability advocacy and individual consumers. Comment is sought on whether these activities are beneficial or sufficient, or whether there are more or different activities that DOT should consider. Given that DOT's resources for providing technical assistance may be limited, comment is also sought on how these activities should be prioritized.

V. Federal Communications Commission Technical Assistance Program

Title IV of the Americans With Disabilities Act (ADA) amends title II of the Communications Act of 1934 and codifies the requirement that common carriers provide intrastate and interstate telecommunication relay services for telephone calls made between users of telecommunication devices for the deaf (TDD's) and users of voice telephones. Title IV also requires closed-captioning of federally produced or funded television public service announcements.

The Federal Communications Commission (FCC) has responsibility for issuing regulations to carry out the ADA's provisions for common carriers to establish relay services within three years either individually, through designees, or through selected vendors. The FCC also has significant enforcement responsibilities with regard to the establishment and operation of the intrastate and interstate relay

systems. Within 180 days, the FCC shall resolve complaints alleging violations of the relay service regulations. In instances where the FCC has certified a State relay service program, primary enforcement authority is placed with the States. However, the FCC exercises jurisdiction over complaints when States do not process complaints in timely fashion (180 days or sooner if State programs require) or when the State program is decertified by the FCC.

The FCC has been involved historically with issues concerning the telecommunications needs of hearing impaired and other disabled persons. For example, for purposes of section 504 of the Rehabilitation Act of 1973, as amended, the FCC is an "executive agency" and has issued its handicapped nondiscrimination regulations. Section 710 of the Communications Act, Telephone Service for the Disabled, 47 U.S.C. 610, required the Commission to establish regulations "as are necessary to ensure reasonable access to telephone service by persons with impaired hearing." Thus, prior to the ADA, the FCC gained considerable expertise on the broad subject of accessibility to telecommunications by disabled persons. As a result of these activities and its traditional role in regulating the telecommunications industry, the FCC has concluded that the principal method for providing the ADA's required technical assistance is through its rulemaking activity.

With its attendant private and public press coverage, the FCC's rulemaking process can be expected to go far in developing effective and efficient relay services as well as performing necessary education functions. The overarching principle the FCC will follow in telephone relay service rulemaking and other technical assistance efforts under the ADA will be to continue to provide the broadest and fairest opportunity for public participation to the telecommunications industry, disability rights advocacy groups, and to consumers.

In addition, the FCC will actively pursue other technical assistance actions to complement its regulation. For example, as resources permit, outside contractors and grantees may be used to develop technical assistance projects, especially in issue areas that require study or creative solutions to complex problems. The use of innovative technological products will be another focus area of technical assistance efforts. These efforts will be implemented by FCC staff, the regulated entities, and disability rights advocacy groups. In addition to responding to requests for technical assistance, the FCC headquarters and field staff will encourage affirmative outreach efforts based on existing staff resources and on the continuing assessment of needs among the common carriers, consumers, and their respective representative organizations.

Some specific ADA technical assistance activities and focus areas that will receive particular attention during FY 1991 are as follows:

- The FCC will encourage its staff to coordinate with and pursue advice and comments from all interested parties affected by telecommunications relay systems, *i.e.*, beyond the public forums. This action will include participation by FCC staff in the Technical Assistance Working Group. Ideally, meetings of industry or consumer coalitions will result in consensus recommendations about how to implement functional and reliable relay service systems that can be shared among covered entities and brought to the Commission for consideration and action.
- The FCC's headquarters Office of Public Affairs and the Field Operations Bureau through its Public Service Division will develop and disseminate ADA materials such as news releases, public notices, internal informaton documents, forms, bulletions, fact sheets, and other information material that summarize the ADA and the FCC's telephone relay regulations and enforcement procedures thereunder.
- The FCC will train appropriate staff about the ADA's requirements, particularly staff within the Common Carrier Bureau who work directly with the telecommunications industry, Public Utility Commissions, and State and local officials with telecommunications responsibilities.
- Material and training courses will be provided to the FCC's investigative personnel and legal staff charged with responding to complaints. Because primary enforcement responsibility for State certified relay programs resides with State officials, the FCC will promote the sharing of information about successful telephone relay operations and techniques.
- By virtue of the fact that there are approximately 17 States with operational formal relay programs and approximately 10 more are in planning stages, the FCC's technical assistance effort will seek to encourage the exchange of research, technical, and program information among these entities and carriers or States with less experience in relay systems. The FCC's staff will provide scientific and technical support, monitor scientific and technological developments, and analyze information in this regard.
- The FCC will seek to resolve in its rulemaking and technical assistance efforts issues that hinder effective and reliable relay services. They include such matters as operator confidentiality, ability of relay systems and operators to handle all classes of calls (credit card calls, TDD/voice mixed calls, calls to recorded messages, 911 emergency), skills of operators to interpret typewritten American sign language, general skills of operators as regards typing, spelling, and vocabulary, and transmission by both ASCII Baudot formats.
- The FCC will coordinate with other Federal agencies and disseminate information about the requirement that federally funded or produced public service announcements require closed captioning of verbal content. The FCC will monitor implementation of this provision and, if noncompliance dictates, the FCC will pursue remedial action.

VI. Technical Assistance Provided by Other Federal Agencies

A. Architectural and Transportation Barriers Compliance Board

The Architectural and Transportation Barriers Compliance Board (ATBCB or the Board) is an independent Federal agency established by section 502 of the Rehabilitation Act principally to enforce the Architectural Barriers Act. The Board's other major functions include establishing minimum guidelines for accessibility standards and providing technical assistance to entities affected by the Rehabilitation Act of 1973.

Pursuant to its technical assistance authority, the Board has been and is currently involved in various projects related to accessibility under the Uniform Federal Accessibility Standards (UFAS), the current Federal standard implementing the Architectural Barriers Act. The Board is also engaged in various other projects that are not specifically connected with UFAS but which were or will be undertaken pursuant to the Board's broad technical assistance authority under section 502 of the Rehabilitation Act. With the passage of the ADA, each of these projects will be amended to include specific ADA components, and other future projects will be specifically aimed at providing technical assistance under the ADA.

The ADA identifies UFAS as the interim accessibility standard for new construction and alterations if the Department of Justice (DOJ) or Department of Transportation (DOT)

regulations are delayed or until the new ATBCB supplemental minimum guidelines are issued. Provision of technical assistance concerning UFAS is, accordingly, particularly important to ensure adequare understanding of ADA requirements. The Board has begun several major technical assistance projects concerning UFAS, including a retrofit manual, a UFAS checklist (which is now in printing), a training program, and a videotape.

In addition to these projects aimed at providing assistance in understanding UFAS, the Board plans to offer training specifically on the ADA at 30 locations throughout the country, assuming adequate resources. The Board will also provide technical assistance about the ADA through brochures, pamphlets, and other materials related to the development of the supplemental minimum guidelines, which it is required to issue within nine months of enactment of the ADA.

The Board has undertaken or will undertake a series of projects specifically related to transportation. The Board has designated 1991 and 1992 as transportation focus years, and all future transportation projects will have statements of work that have ADA components in them. During 1991 the Board will be developing training materials for the Urban Mass Transportation Administration (UMTA) and, during 1992, the Board will conduct training sessions for UMTA staff using those materials.

The Board will continue to fund and manage research projects to ensure that accessibility standards are consistent with emerging technologies and needs. The Board intends to conduct research on mobility aids and maneuvering space in vehicles as well as on transit facility design for persons with hearing and visual impairments. Upon completion of these research projects, the Board will provide technical assistance in the form of brochures, pamphlets, etc., to disseminate the research results. Each of these projects, although originally developed under the Board's section 502 or Architectural Barriers Act authority, is directly related to the ADA and will serve to provide technical assistance on implementation of the ADA.

In addition to modifications to projects already contemplated and authorized under other authorities, the Board will provide technical assistance to transportation officials specifically regarding implementation of the ADA. Given sufficient resources, it will develop a manual on transit vehicles and will subsequently give training around the country in connection with its facility accessibility training.

The Board currently provides technical assistance to Federal agencies as well as to a wide variety of private entities, including architects, designers, and private individuals. This effort will be greatly expanded under the ADA and will include technical assistance concentrated primarily on the building profession. The focus will be on architects, designers, architecture and design schools, engineering schools, organizations of construction companies and construction-related manufacturers, State and local code enforcement officials and organizations representing such officials, and State and local officials who are particularly responsible for access. Work with State code enforcement agencies will include technical assistance efforts for those agencies interested in improving their accessibility codes and obtaining certification. The Board's transportation efforts will be directed toward transportation planners and engineers (those who prepare bid specifications or similar documents), and equipment designers and manufacturers. Since July 1990, the Board has operated a toll-free information line to provide information to consumers and professionals about accessibility requirements under titles II and III of the ADA. In addition, the Board has an extensive technical library that is open to the public. The library has more than 3,500 titles, which provide technical information on products, services, and methods related to accessible design in new construction and alterations. The Board also has a computerized data base catalog of this collection with abstracts and is currently exploring options for making this resource available to the public through a computer bulletin board or other on-line service.

The ATBCB and DOJ will work closely together in connection with the development of accessiblity standards for the regulations implementing title III and, when ADA enforcement begins, the ATBCB will provide technical assistance to DOJ in connection with complaints filed with DOJ alleging violations of the new construction and alterations standards of the ADA. Likewise, in the area of transportation, the ATBCB will work closely with DOT in developing standards for vehicles and public transit facilities under title II. As part of its technical assistance effort, the Board will subsequently be available to DOT to provide technical assistance on complaints filed alleging violations of those standards.

B. Department of Commerce

The Department of Commerce (DOC) is responsible for fostering, promoting and developing commerce in both domestic and foreign markets. In order to accomplish these objectives, DOC is involved in an extensive array of activities in which a variety of offices within DOC interact with, and provide services to, the business community nationwide and State and local governments. These existing programs and services will be used by DOC to provide technical assistance to entities covered by the ADA, particularly in the areas of employment, public accommodations, and State and local government operations. Among the offices of DOC that will be participating in technical assistance efforts will be the National Technical Information Service, the International Trade Administration, the Office of Business Liaison, the National Institute of Science and Technology, the Office of Information Resources Management, the Minority Business Development Agency, and the Census Bureau.

Depending on the particular mission and expertise of each of these offices within DOC, some of these offices will focus more on providing information about the rights and responsibilities established by the ADA, and other DOC offices will focus more on the complementary function of providing information that will assist covered entities in complying with the ADA. For example, the International Trade Administration, the Office of Business Liaison, and the Minority Business Development Agency will all use their respective publications to disseminate information about the requirements of the ADA, about sources of additional information related to specific issues, and about resources available to assist their clientele to comply with the ADA. As appropriate, these offices will also utilize their mailing lists of clients to disseminate materials related to ADA issues of special interest to their client communities. As a general principle, these activities will be directed toward the dissemination of materials that have been prepared by other Federal agencies, particularly EEOC, DOJ, or ATBCB, or the incorporation of materials that have been prepared by EEOC, DOJ, or ATBCB into DOC publications. In addition, field staff in these offices will be prepared to serve as information coordinators so that when clients in the business community served by the DOC office call with specific questions about compliance with the ADA or sources available to assist them in complying with the ADA, DOC field staff will be able to make appropriate referrals.

For other offices within DOC, the technical assistance provided will focus on the dissemination of information that will assist entities covered by the ADA to comply with its requirements. For example, the Office of Information Resources will continue to provide workshops and exhibits for participants from the business community and from the public sector that provide information on computer technology available to assist in making reasonable accommodations for individuals with disabilities in employment and to assist in enabling individuals with disabilities to participate in other types of programs or activities. Similarly, the National Institute of Science, and Technology will acquire a collection of scientific and technical publications on disability issues, particularly publications that will be useful to the resolution of compliance questions. The availability of these publications, in a variety of accessible formats, will be extensively publicized by the Service. In addition, the National Institute of Science and Technology will continue to conduct research on disability-related issues and will disseminate its findings relevant to the solution of compliance issues arising under the ADA in the most effective manner available. The Census Bureau will make statistical information on individuals with disabilities available to business, government, and community representatives seeking to identify and resolve compliance issues.

C. National Council on Disability

The National Council on Disability (NCD) is an independent Federal agency responsible for reviewing all Federal laws, programs, and policies affecting individuals with disabilities and for making recommendations in these areas, as it deems necessary, to the President, the Congress, and a variety of Federal Executive departments and agencies, including the Department of Education, the Rehabilitation Services Administration, and the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, NCD establishes policies for and monitors the performance of NIDRR, and it reviews and approves standards concerning "Independent Living" and "Projects With Industry" programs.

Although many Federal agencies deal with issues and programs affecting people with disabilities, NCD is the only agency with a comprehensive mandate to address, analyze, and make recommendations on issues of public policy that affect people with disabilities regardless of age, disability type, perceived employment potential, perceived economic need, specific functional ability, status as a veteran, or other indivdual circumstance(s). In carrying out these responsibilities, NCD performs a unique function by assuring a coordinated approach to addressing the concerns of persons with disabilities and eliminating barriers to their active participation in all aspects of life. In the performance of these responsibilities, NCD prepared a report to the President and the Congress, *Towards Independence*, which has been recognized as the seminal document leading to the enactment of the ADA. As stated by the Conference Committee on the ADA:

> The conferees intend to recognize the National Council on Disability as the impetus, force, and originator of the initial legislation for the Americans with Disabilities Act, reflected in the Council's report, *Toward Independence*, published in February, 1986. Therefore, the conferees agree that the National Council on Disability should be one of the [F]ederal agencies with which the Attorney General consults in developing a plan to assist entities covered under this Act. The experience, expertise, and commitment of the Council will ensure that the technical assistance activities mandated under section 506 will be comprehensive, focused, and timely.

In order to carry out these responsibilities, NCD will be involved in the development of overall strategies for implementation of the ADA. As intended by Congress, an important focus of NCD's work with these other Federal agencies will be the development of strategies to ensure the performance of technical assistance activities that are coordinated, comprehensive, and effective.

D. National Institute on Disability and Rehabilitation Research

The National Institute on Disability and Rehabilitation Research (NIDRR) is a Federal institute responsible for the promotion and coordination of research and related activities regarding the provision of vocational and other rehabilitative services to individuals with disabilities. Among NIDRR's responsibilities is the award of contracts and grants for the purpose of planning and conducting research, demonstrations, and related activities pertaining to the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to individuals with disabilities. One of NIDRR's specialized research tasks is the establishment and support of rehabilitation research centers, which are operated in collaboration with institutions of higher education. Among the research responsibilities of these centers is the development and dissemination of innovative methods of applying advanced medical technology, engineering technology, and other scientific knowledge to solve rehabilitation problems. The research activities at other research centers established and supported by NIDRR are focused on training related to the more effective provision of rehabilitative services.

In order to assist entities covered by the ADA to benefit from the advanced engineering, medical, psychological, vocational, and other scientific information available through NIDRR and organizations assisted by NIDRR, NIDRR will establish technical assistance centers in 8 to 12 communities throughout the country. The centers will offer such services as toll-free infomation lines, publications and other materials, training, on-line data bases, referrals, and direct consultations with technical assistance providers. The emphasis of these technical assistance centers will be on assisting employers to comply with the ADA, for example, by providing engineering information relevant to making reasonable accommodations. However, the centers will also be available to provide this type of information to entities covered by other provisions of the ADA, such as public accommodations.

E. President's Committee on Employment of People With Disabilities

The President's Committee on Employment of People with Disabilities (PCEPD) is one of the oldest Presidential committees, established in 1947 as the President's Committee on Employment of the Handicapped. Since that time PCEPD has worked to eliminate structural and attitudinal barriers that have impeded opportunities and progress for individuals with disabilities, particularly in the work place, and to mobilize public and private resources to achieve these objectives. Members of PCEPD are selected from the public and private sectors, including government, business, industry, labor, education, the media, and the professions. As discussed below, PCEPD provides valuable services and works closely with existing networks that can be important in assisting and supplementing the technical assistance program of the Equal Employment Opportunity Commission on the employment requirements of the ADA.

Every State has a Governor's Committee on the Employment of the Handicapped or a similar organization

with comparable goals that works closely with PCEPD. The State organizations enable PCEPD to reach the "grass roots" level, and the membership of the State committees reflects both the public and private sectors in a manner similar to PCEPD's membership. In many cases there are also committees with the same goals at the city, county, or town level, which work cooperatively with the State committees, enhancing further the ability of PCEPD to reach the "grass roots" level. Using these networks that have been developed over the years, PCEPD has engaged in a variety of activities that shall be expanded in order to provide technical assistance about the employment provisions of the ADA.

One of the most important of PCEPD's traditional activities has been its Job Accommodation Network (JAN), which is a service that provides specific information, free of charge, about how to make reasonable accommodations, about the most up-to-date technological devices that are available to assist employers in making reasonable accommodations, and about strategies that have been used successfully in specific employment contexts. This service is primarily used by employers, and has proved to be invaluable to employers who were subject to Federal laws requiring nondiscrimination on the basis of disability that predate the ADA, such as sections 503 and 504 of the Rehabilitation Act of 1973, as amended, which prohibit discrimination on the basis of disability by Federal contractors and by federally assisted programs, respectively. In order to provide even more technical assistance in this area so that new needs for information resulting from the ADA are met, PCEPD will expand this service by adding more incoming lines on its toll-free JAN telephone number and by adding staff to receive these calls and provide the requested information.

Another longstanding activity engaged in by PCEPD is the distribution of technical assistance materials, such as publications and posters, free of charge, to the Governor's Committees and other interested organizations. The State committees disseminate these materials to local committees and other local organizations. in addition, PCEPD maintains a library of technical assistance films and videotapes, which are loaned to interested organizations. Representatives of PCEPD provide direct technical assistance advice to these State and local organizations on a regular basis. All of these activities, distribution and loan of materials and provision of information directly to State and local committees, will be expanded to address the requirements of the ADA.

Another technical assistance network that has been developed over the years by PCEPD consists of labor and management organizations. Technical assistance materials are also disseminated through these channels and representatives of PCEPD provide direct technical assistance to these organizations. The technical assistance provided by PCEPD to labor and management organizations will be augmented to provide practical information about the employment requirements of the ADA.

Also, PCEPD has developed technical assistance networks with interested trade associations, providing materials and advice to these organizations. These activities will also be expanded to provide information about rights and responsibilities in employment under the ADA.

The primary mission of PCEPD is the provision of technical assistance related to employment and, for this reason, PCEPD will concentrate on providing information related to the employment provisions of the ADA. However, because many of the employers and other organizations with which PCEPD will be in contact will be affected by provisions of the ADA in addition to those pertaining to employment, for example, the provisions regarding nondiscrimination in public accommodations, PCEPD will also provide a certain amount of general technical assistance about the ADA through its existing networks.

F. Small Business Administration

The Small Business Administration (SBA) is responsible for assisting small businesses in their efforts to compete effectively in the national and international economies. Among the many activities carried out by SBA in order to accomplish these objectives are the dissemination of information needed by small businesses, and the training and counseling of individuals involved in the management of small business and individuals who are interested in owning and operating a small business. As explained below, in connection with carrying out its many activities, SBA has developed a number of networks for the communication of information and these networks will be used to provide technical assistance about the ADA, in the areas of employment and public accommodations, to small businesses covered by those provisions of the ADA. Several offices within SBA are particularly well suited to provide assistance, including the Office of Civil Rights Compliance, the Office of Advocacy, and the Office of Business Development. For the most part, SBA's technical assistance efforts will be directed toward (1) The dissemination of materials that have been prepared by other Federal agencies, particularly the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), or the Architectural and Transportation Barriers Compliance Board (ATBCB); and (2) the incorporation of materials that have been prepared by EEOC, DOJ, or ATBCB into SBA publications.

The SBA Office of Civil Rights Compliance has years of experience in assisting small businesses covered by section 504 of the Rehabilitation Act and similar laws that require equal opportunity regardless of disability to comply with those laws. This office will use these same channels of communication with organizations representing small businesses and directly with small businesses to disseminate information about the ADA and to provide information about resources available to small businesses to assist in compliance efforts.

The SBA Office of Business Development works with small businesses to assist them in starting up and operating effectively and successfully. This office will use its networks and resources to disseminate information about the requirements of the ADA and about how to comply with the ADA. Included among the channels of communication are training courses throughout the nation and publications and other materials that are made available to small businesses. This office also is able to access a variety of mailing lists that could be used for technical assistance purposes. The technical assistance efforts of this office will be further enhanced through its ongoing work in cooperation with the small business development centers and university programs, and through its coordination with the Service Corps of Retired Executives.

The SBA Office of Advocacy works with small businesses with an orientation toward determining what is helpful or what is detrimental to the operation of small businesses and then taking steps in a variety of forums to assist small businesses in the development of positive factors and the removal of harmful factors. This office also has resources and networks, including a newsletter and an "answer desk" with a toll-free number, that will be employed to disseminate information about the requirements of the ADA and how to comply with the ADA. It is also

anticipated that this office, in its role of advocate for small businesses, will serve an important coordination role so that small businesses that have specific questions about the nature of their obligations with respect to employment or public accommodations under the ADA or technical questions about how to comply with those provisions will be put in touch with the appropriate sources of information and assistance.

[FR Doc. 90-28478 Filed 12-4-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-90-176-C]

Dominion Coal Corporation; Petition for Modification of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of CFR 75.305 (weekly examinations for hazardous conditions) to its Dominion No. 1 Mine (I.D. No. 44-05254) located in Buchanan County, Virginia. The petition is filed under section 101 (c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Access required to conduct weekly examinations of the seals is located between two gob areas and is becoming unsafe to travel due to deteriorating roof conditions.

3. Due to solid blocks of coal left adjacent to the seals the chances of accidental rupture of the seals are slim. Also, should something unforseen happen which would allow for contaminated air to leak from the seals, contaminated air would be coursed through a bleeder performance evaluation station.

4. As an alternate method, petitioner proposes to include examinations of the seals within its weekly examination at a bleeder performance evaluation station.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 4, 1991. Copies of the petition are available for inspection at that address.

Dated: November 29, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-28522 Filed 12-4-90; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-81; Exemption Application No. D-8294 et al.]

Grant of Individual Exemptions; Norman B. Pester C.P.A. P.C. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Norman B. Pester CPA, P.C. Profit Sharing Plan (the Plan) Located in Denver, CO.

[Prohibited Transaction Exemption 90-81, Exemption Application No. D-8294]

Exemption

The restrictions of 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale by the account of Mr. Normal Pester in the Plan of an interest in two parcels of real estate to Mr. Pester, a participant and trustee of the Plan, for a sale price equal to the fair market value of the interest.

For a more complete statement of facts and representations supporting the Department's decision to grant the exemption refer to the notice of proposed exemption published on September 28, 1990 at 55 FR 39755.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department (202) 523-8671.

State Farm Insurance Companies' Incentive and Thrift Plan for United States Employees (the Plan) Located in Chicago, Illinois

[Prohibited Transaction Exemption 90-82; Exemption Application No. D-8329]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale (the Sale) on August 29, 1989, of 219,700 shares of Joslyn Corporation common stock (the Stock) by the Plan to State Farm Mutual Automobile Insurance Company (the Company), a party in

interest with respect to the Plan, provided that the Company reimburses to the Plan an amount equal to the difference between the cost to the Plan of purchasing the Stock and the proceeds received by the Plan from the sale of the Stock to the Company; and further provided that the Company reimburses the Plan $3,295.50 for the commission paid by the Plan incidental to the Sale.

EFFECTIVE DATE: This exemption will be effective August 29, 1989.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 12, 1990, at 55 FR 37587.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Donaldson, Lufkin & Jenrette Securities Corporation (DLJ) Located in New York, New York

[Prohibited Transaction Exemption 90-83; Application No. D-8346]

Exemption

I. Transactions

A. Effective March 13, 1990, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective March 13, 1990, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective March 13, 1990, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective March 13, 1990, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trusts;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act fo 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates had discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which DLJ or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purpose of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either—

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificates*, as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter means:*

(1) DLJ;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with DLJ; or

(3) Any member of an underwriting syndicate or selling group of which DLJ or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* mean the entity that is a party to to pooling and

servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interst in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leases;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust hold a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

EFFECTIVE DATE: This exemption will be effective for transactions occurring on or after March 13, 1990.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 6, 1990 at 55 FR 36713.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Dean Witter Reynolds Inc. (Dean Witter) Located in New York, NY

[Prohibited Transaction Exemption 90–84; Exemption Application No. D–8473]

Exemption

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[4]

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A Plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[5] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective November 1, 1985, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[6]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of

[4] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[5] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[6] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which Dean Witter or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either—

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificates*, as defined in 29 CFR section 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) Dean Witter;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Dean Witter; or

(3) Any member of an underwriting syndicate or selling group of which Dean Witter or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any sub-servicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the identure trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor"

within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sales* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligaton to delivery certificates to, or demand delivery of certificate from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not change the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt intruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 28, 1990 at 55 FR 39757.

EFFECTIVE DATE: This exempton, if granted, will be effective for transactions occurring on or after November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Jan. D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

City Wide Management Company Pension Plan and Trust (the Plan) Located in Baltimore, Maryland

[Prohibited Transaction Exemption 90–85; Exemption Application No. D–8391]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a sale for cash of certain ground rent leases (the Property) to the Plan by City Wide Management Company and certain related entities, parties in interest with respect to the Plan, provided that the Plan pays no more than fair market value for the Property and that the transaction accounts for no more than 25 percent of the assets of the Plan at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 28, 1990, at 55 FR 39756.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 30th day of November, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-28523 Filed 12-4-90; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts in Education Advisory Panel (Arts in Schools Basic Education Grants Section); 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 Arts in Education Advisory Panel (Arts in Schools Basic Education Grants Section) to the National Council on the Arts will be held on December 12, 1990 from 8:30 a.m.-5:30 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m.- 4:30 p.m. The topic will be policy discussion.

The remaining portions of this meeting from 8:30 a.m.-3:30 p.m. and 4:30 p.m.-5:30 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 of November 7, 1990, 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 interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

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) 682-5433.

Dated: November 13, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-28496 Filed 12-4-90; 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 (Advancement Section) to the National Council on the Arts will be held on December 10-11, 1990 from 9 a.m.-5:30 p.m. in Room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendaton on applications for financial assistance 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 7, 1990, 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) 682-5433.

Dated: November 13, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-28497 Filed 12-4-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-280]

Virginia Electric and Power Co.; Surry Power Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time exemption from the requirements of appendix R to 10 CFR part 50 to Virginia Electric and Power Company (the licensee), for the Surry Power Station, Unit 1, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

A one-time exemption would be granted from the requirements of section III, paragraph 0 of appendix R to 10 CFR part 50, which requires that the reactor coolant pump oil collection system to capable of collecting oil from potential pressurized and non-pressurized leakage sites and routing it to a vented, closed container of sufficient capacity to hold the entire lube oil system inventory.

The Need for the Proposed Action

The Surry, Unit 1 reactor coolant pump (RCP) motor oil collection systems currently satisfy the requirements of Paragraph O. The Unit 1 "C" RCP motor required a routine, 5-year refurbishment at the end of Operating Cycle 10. The required that the RCP motor be shipped to an offsite facility. A replacement motor was purchased for the "C" pump. However, certain components of the new RCP motor have a different physical configuration than the existing "C" motor. Because of the configurational differences, the RCP oil collection system from the "C" motor cannot be fitted to the new motor without extensive modifications which cannot made within the current Cycle 10 refueling outage. Consequently, a one-time exemption was requested from Paragraph O to permit an interim oil collection method in conjunction with other compensatory measures to mitigate the consequences should a oil

fire occur. The exemption would be effective through Operating Cycle 11, which is currently scheduled to commence on December 5, 1990 and end in February 1992.

Environmental Impact of the Proposed Action

The proposed exemption would be degrade the level of safety attained by compliance with the rule and there would be no change in accident doses to the environment. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined; nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. The proposed exemption would not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts associated with fire protection modifications and would reduce operational flexibility.

Alternative Use of Resources

The action does not involve the use of resources not previously considered in the Final Environmental Statement for the Surry Power Station, Unit No. 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated November 14, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington DC., and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 29th day of November 1990.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2 Division of Reactor Projects-I/II Office of Nuclear Reactor Regulation.

[FR Doc. 90-28489 Filed 12-4-90; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Performance Review Board, Senior Executive Service; Appointment of Members

Appointments of Performance Review Board members are required to be published in the **Federal Register** by 5 U.S.C. 4314(c)(4).

The following persons have been appointed to, and will serve on Performance Review Boards for senior executives at the National Transportation Safety Board:

Susan M. Coughlin
Lloyd F. Miller
John V. Moulden
B. Michael Levins
Daniel D. Campbell
Barry M. Sweedler
Herbert W. R. Banks
Leslie D. Kampschror
Timothy P. Forte
Robert W. Pyle
Bernie Loeb
George Reagle

Dated: November 27, 1990.

Robert W. Pyle,

Director, Personnel and Training Division.

[FR Doc. 90-28477 Filed 12-4-90; 8:45 am]

BILLING CODE 7533-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley, (202) 606-0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on November 15, 1990 (55 FR 12973). Individual authorities established or revoked under Schedules A, B, or C between October 1, 1990 and October 31, 1990, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities is published annually as of June 30, 1990.

Schedule A

No Schedule A authorities were established or revoked during October.

Schedule B

No Schedule B authorities were established or revoked during October.

Schedule C

U.S. Arms Control and Disarmament Agency

One Deputy to the Director, Office of Congressional Affairs. Effective October 29, 1990.

Air Force

One Secretary (Stenography), to the Under Secretary. Effective October 31, 1990.

Agency for International Development

One Public Affairs Specialist, to the (Acting) Director, Office of Public Liaison. Effective October 11, 1990.

One Special Assistant to the Assistant Administrator, Bureau for Asia and Private Enterprise. Effective October 17, 1990.

Department of Agriculture

One Staff Assistant to the Administrator, Federal Grain Inspection Service. Effective October 9, 1990.

One Private Secretary to the Deputy Director, Office of Public Affairs. Effective October 9, 1990.

One Director, Public Liaison, to the Director, Office of Public Affairs. Effective October 30, 1990.

Commission on Civil Rights

One Special Assistant to a Commissioner. Effective October 5, 1990.

One Special Assistant to the Chairman. Effective October 25, 1990.

Commodity Futures Trading Commission

One Supervisory Public Affairs Specialist to the Chairman. Effective October 3, 1990.

Department of Commerce

One Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration. Effective October 4, 1990.

One Congressional Liaison Specialist to the Director of Congressional Affairs, International Trade Administration. Effective October 4, 1990.

One Press Secretary to the Director, Office of Public Affairs. Effective October 5, 1990.

One Congressional Liaison Specialist to the Director of Congressional Affairs, International Trade Administration. Effective October 10, 1990.

One Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 11, 1990.

One Confidential Assistant to the Managing Director, U.S. and Foreign Commercial Service. Effective October 11, 1990.

One Director, Executive Secretariat, to the Chief of Staff. Effective October 11, 1990.

One Special Assistant to the Under Secretary for Technology. Effective October 18, 1990.

One Confidential Assistant to the Director, Office of White House Liaison. Effective October 21, 1990.

One Confidential Assistant to the Assistant Secretary for Oceans and Atmosphere. Effective October 26, 1990.

One Speech Writer to the Secretary to the Director, Office of Public Affairs. Effective October 26, 1990.

One Special Assistant to the Assistant Secretary and Counselor to the Secretary. Effective October 26, 1990.

One Confidential Assistant to the Assistant Secretary for International Economic Policy. Effective October 30, 1990.

One Family Policy Specialist to the Deputy Assistant Secretary (Family Support, Education and Safety). Effective October 23, 1990.

Department of Defense

One Executive Assistant to the Deputy Assistant Secretary for Environment. Effective October 29, 1990.

One Private Secretary to the Deputy Under Secretary for International Programs. Effective October 31, 1990.

Department of Energy

One Director of Policy Coordination to the Deputy Under Secretary, Office of Policy, Planning and Analysis. Effective October 3, 1990.

One Staff Assistant to the Director, Office of Civilian Radioactive Waste Management. Effective October 17, 1990.

One Public Affairs Specialist to the Director, Office of Environmental Restoration and Waste Management. Effective October 17, 1990.

One Staff Assistant to the Superconducting Super Collider Project Manager. Effective October 23, 1990.

Department of Transportation

One Director of Public Affairs to the Administrator, Urban Mass Transportation Administration. Effective October 21, 1990.

One Staff Assistant to the Secretary. Effective October 25, 1990.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective October 25, 1990.

Department of Education

One Confidential Assistant to the Director, Issues Analysis Staff. Effective October 10, 1990.

One Confidential Assistant to the Special Advisor to the Secretary on Teacher Education. Effective October 18, 1990.

Environmental Protection Agency

One Special Assistant to the Associate Administrator for Communications and Public Affairs. Effective October 3, 1990.

One Special Assistant to the Administrator. Effective October 12, 1990.

One Staff Assistant to the Assistant Administrator, Office of Pesticides and Toxic Substances. Effective October 12, 1990.

Farm Credit Administration

One Public Affairs Specialist to the Director, Office of Congressional and Public Affairs. Effective October 15, 1990.

Department of Health and Human Services

One Confidential Assistant to the Secretary. Effective October 9, 1990.

One Special Assistant to the Associate Administrator, Office of Communications, Family Support Administration. Effective October 12, 1990.

One Executive Assistant to the Assistant Secretary for Human Development Services. Effective October 21, 1990.

One Deputy to the Director of Communications. Effective October 21, 1990.

One Special Assistant to the Commissioner, Administration on Developmental Disabilities. Effective October 21, 1990.

One Special Assistant to the Director, Office of Policy, Planning and Legislation, Office of Human Development Services. Effective October 21, 1990.

One Special Assistant to the Associate Commissioner, Office of Disability, Social Security Administration. Effective October 23, 1990.

One Special Assistant to the Director, Medicaid Bureau, Health Care Financing Administration. Effective October 26, 1990.

One Special Assistant to the Assistant Secretary for Health. Effective October 31, 1990.

Department of Housing and Urban Development

One Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs. Effective October 4, 1990.

One Staff Assistant to the Assistant Secretary for Administration. Effective October 29, 1990.

One Executive Assistant to the Assistant Secretary for Public Affairs. Effective October 29, 1990.

One Executive Assistant to the Assistant Secretary for Administration. Effective October 30, 1990.

Department of the Interior

One Special Assistant to the Director, National Park Service. Effective October 11, 1990.

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective October 12, 1990.

One Staff Assistant to the Director, Bureau of Land Management. Effective October 26, 1990.

Department of Justice

One Congressional and Public Liaison Officer to the Assistant Attorney General, Office of Justice Programs. Effective October 31, 1990.

Department of Labor

One Confidential Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective October 16, 1990.

National Mediation Board

One Confidential Assistant to a Board Member. Effective October 26, 1990.

National Transportation Safety Board

One Confidential Assistant to a Board Member. Effective October 9, 1990.

Small Business Administration

One Special Assistant to the Administrator. Effective October 10, 1990.

Department of State

One Staff Assistant to the Under Secretary for Economic Affairs. Effective October 4, 1990.

One Supervisory Foreign Affairs Officer to the Deputy Assistant for International Social and Humanitarian Affairs. Effective October 4, 1990.

One Deputy to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs. Effective October 11, 1990.

One Staff Assistant to the Secretary. Effective October 29, 1990.

One Special Assistant to the Assistant Secretary for Near Eastern and South Asian Affairs. Effective October 31, 1990.

Department of the Treasury

One Marketing Specialist to the Executive Director, U.S. Savings Bond Division. Effective October 5, 1990.

One Public Affairs Specialist to the Deputy Assistant Secretary for Public Liaison. Effective October 5, 1990.

One Deputy Director of Scheduling to the Assistant Secretary for Policy Management. Effective October 12, 1990.

One Legislative Assistant to the Deputy Assistant Secretary (Legislative Affairs). Effective October 21, 1990.

One Deputy Director (Operations) to the Executive Director, U.S. Savings Bonds Division. Effective October 25, 1990.

United States Information Agency

One Program Officer to the Deputy Director. Effective October 17, 1990.

One Special Assistant to the Director of Corporate Participation for the Seville Expo. Effective October 17, 1990.

Authority: 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp, P. 218.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90–28491 Filed 12–4–90; 8:45 am]

BILLING CODE 6325-01-M

PRESIDENT'S COMMISSION ON THE FEDERAL APPOINTMENT PROCESS

Meeting

AGENCY: President's Commission on the Federal Appointment Process.

ACTION: Notice of open meeting.

SUMMARY: The Commission will meet to consider its final recommendations regarding the federal appointment process. The public is welcome to attend.

DATES: December 7, 1990, from 10 p.m. to 12 p.m.

ADDRESSES: The meeting will be held in Conference Room 5230, Department of Commerce, 14th and Constitution, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alvin S. Felzenberg, Executive Director, President's Commission on the Federal Appointment Process, Room 502, Old Executive Office Building, Washington, DC 20500, (202) 456–6490.

SUPPLEMENTARY INFORMATION: The Commission was established by Executive Order 12719 to advise the President on the best means of simplifying the Presidential appointment process through reducing the number and complexity of forms to be completed by Presidential nominees. The Commission's mandate is to give special attention to achieving coordination between forms required in the executive branch clearance process and forms required by Senate Committees for confirmation hearings.

Alvin S. Felzenberg,

Executive Director.

[FR Doc. 90–28428 Filed 12–4–90; 8:45 am]

BILLING CODE 3510-17-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28649; File No. SR–MBSCC–90–07]

Self-Regulatory Organizations; MBS Clearing Corp.; Filing and Immedidate Effectiveness of Proposed Rule Change Relating to Dealer Trade Input on Trade Date

November 28, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 1, 1990, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBSCC–90–07) as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change will require MBSCC dealer participants to submit dealer trade input on trade date.

II. SRO's Statement of the Purpose of, and Statutory Basic for, the Proposed Rule Change

In its filing with the Commission, the SRO included statments 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 SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify MBSCC's current trade date plus one ("T+1") input requirement for trades submitted by its dealer participants. Article I, Rule 1 of MBSCC's rules defines a "dealer" as "a Participant which is in the business of buying and selling Securities as principal, either directly or through a Broker." Article II, Rule 3, section 1 of MBSCC's rules provides that both selling and purchasing dealers are required to submit trade input on each business day as MBSCC specifies in its procedures. Currently, MBSCC's procedures require both selling and purchasing dealers to submit trade input T+1. Since June 1, 1990, MBSCC's procedures have required brokers, acting on behalf of selling and purchasing dealers in "broker give-up trades," [2] to submit trade input on trade date. Approximately 85% of all MBSCC trade input is submitted in the form of "give-up trades" by brokers.

In consultation with MBSCC's New Procedures/Services and Risk Management Committees, MBSCC will require dealer participants to submit trade input by the current cut-off time on the trade date. The effective date of this revised procedure is November 1, 1990. At that time, dealer participants will be responsible for reporting any discrepancies to the contra-side dealer

[2] The term "broker give-up trade" is defined as certain specified types of trades reported by a broker on behalf of selling and purchasing dealers in which the broker temporarily is identified as the original contra-side participant with respect to each dealer and in which the dealers are to be substituted on the broker give-up date. MBSCC rules, art. I, rule 1.

on T+1, and the contra-side dealer will be responsible for corrections on T+2.

The proposed rule change is consistent with section 17A of the Act in that it facilitates the prompt and accurate clearance and settlement of securities transactions. The proposed change is designed to reduce to MBSCC and its participants by expediting reconciliation of trade comparison and reducing risks associated with market exposure. All trade data will now be immediately subject to MBSCC's market and margin protections.

B. SRO's Statement on Burden on Competition

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. SRO's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Participants were advised of the proposed rule change, and as of this date, all informal comments received have been positive.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19 (b)(3)(A) of the Act and paragraph (e) of Rule 19b-4,[3] thereunder, in that it effects a change to an existing MBSCC service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street,. NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 MBSCC. All submissions should refer to File No. SR-MBSCC-90-07 and should be submitted by December 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28439 Filed 12-4-90; 8:45 am]

BILLING CODE 8010-01-M

[3] 17 CFR 240.19b-4(e).

[4] 17 CFR 200.30-3(a)(12).

[Release No. 34-28655; File No. SR-NYSE-90-54]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Charge for the Specialist Principal Activity Routing Service

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, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the adoption of a one-time charge to be imposed on specialist units which subscribe to the Specialist Principal Activity Routing ("SPAR") service. The charge will be $3,000 for each Common Message Switch ("CMS") [1] port requested by a specialist unit in connection with this service.

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

Purpose

Beginning in December, 1990, the Exchange plans to offer the new SPAR service to specialists. The SPAR service will enable specialist firms, or clearing firms acting on their behalf, to receive information electronically intra day, relating to specialist principal trading executed against system orders.

The SPAR service is designed to help reduce the costs to specialist firms of keypunching a large percentage of their principal trading activity. Subscribers to the SPAR service will be required to have a communications line into the CMS in order to receive principal reports. The one-time charge of $3,000 for each SPAR/CMS port connection is to enable the Exchange to recoup costs associated with introducing the system.

Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60

[1] The CMS is a data communications application that accommodates a wide variety of member firm computer and technical connections, enabling a member firm to send orders directly to the appropriate floor booth on either the American Stock Exchange, Inc. or NYSE for execution by the firm's floor broker or to the appropriate specialist post.

days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-54 and should be submitted by December 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 29, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28440 Filed 12-4-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28665; File No. SR-NASD-90-61]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Entry and Annual Fees Charged to Issuers Whose Securities Are Included in the NASDAQ System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1990,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has proposed amendments to Schedule D, part IV of the Association's By-Laws, governing the entry and annual fees charged to issuers whose securities are included in the NASDAQ System. Below is the text of the proposed rule change. Proposed new language is in italic, proposed deletions are in brackets.

Schedule D

Part IV

[NASDAQ ISSUER QUOTATION] *LISTING* FEES

THE NASDAQ STOCK MARKET—NATIONAL MARKET SYSTEM

A. Entry Fee

1. Each issuer that submits an application for inclusion of any of its securities in the National Market System shall pay a $1,000 non-refundable processing fee with respect to each application, to be credited against the issuer's entry fee.

2. The issuer of each class of security which is listed in the National Market System shall pay to the Corporation:

a. Upon initial entry, a one-time original company listing fee of $5,000; and

b. For each class of security listed, a fee calculated on a graduated rate of $.005 per share for the first 5 million shares, $.0025 per share for each share between 5,000,001 and 15 million, inclusive, and $.001 per share for each share over 15 million, based on the total number of shares outstanding. The total entry fees paid by a company for all classes of securities listed on the National Market system, regardless of the date those securities are listed, cannot exceed $50,000 (inclusive of the $5,000 original company listing fee).[2]

3. The entry fee shall be based on the total outstanding securities of the class to be included in the National Market System as shown in the issuer's most recent periodic report or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority and received by the NASDAQ Stock Market.

4. The Board of Governors or its designee, may, in its discretion, waive all or any part of the entry fee prescribed herein.

B. Annual Fee

1. The issuer of each class of security which is listed in the National Market System shall pay annually to the Corporation an annual fee for each such class of security to be computed as follows with a maximum annual fee of $8,000 per issuer;

a. A $2,000 National Market System participation fee; and,

b. The sum of $500 or $.0005 per share outstanding, whichever is higher, up to a maximum of $6,000 for each security listed in the National Market System.[3]

2. The annual fee shall be based on the total amount of outstanding securities of the class included in the National Market System as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority and received by the NASDAQ Stock Market.

3. The Board of Governors, or its designee, may, in its discretion, waive all or any part of the annual fee prescribed herein.

4. If a security is removed from the National Market system, that portion of the annual fees for such security attributable to the months following the date of removal shall not be refunded.

REGULAR NASDAQ SYSTEM

[A.] *C.* Entry Fee

1. Each issuer that submits an application for inclusion of any class of its securities in the Regular NASDAQ System shall pay a $1,000 non-refundable processing fee with respect to each application, to be credited against the issuer's entry fee.

[1.] *2.* The issuer of each *class of* security which is [authorized for inclusion] *listed* in the *Regular* NASDAQ System shall pay to the Corporation upon *initial* entry *of any of the issuer's securities* into the *Regular* NASDAQ System [an entry] *a one-time original company listing* fee *of $5,000. In addition, for each class of*

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[1] By letter dated November 19, 1990, the NASD filed Amendment No. 1 to this proposed rule change. The amendment was technical in nature and changed the Article and Section cited in the NASD By-Laws that gives the Board of Governors authority to amend Schedules to the By-Laws without membership approval.

[2] *For purposes of this part, the term "shares" shall include common and preferred stock, American Depositary Receipts (ADRs), warrants, partnership interests, or any other security listed on the National Market System.*

[3] *Id.*

securities listed in the Regular NASDAQ System, the issuer shall pay an entry fee to be computed as follows with a maximum entry fee [during any 24 month period] *ffor all classes of securities listed, regardless of the date those securities are listed,* of [$5,000] *$10,000* per issuer (*inclusive of the $5,000 original company listing fee*):

(i) Equity Securities—$1,000 or $.001 per share outstanding, whichever is higher. For purposes of this section, the term "equity securities" includes all securities eligible for inclusion in the Regular NASDAQ Sysem not covered by another provision of this section.[4]

[a. Stock Issues—$1,000 or $.001 per share outstanding, whichever is higher;]

[b. Investment Company Shares—$1,000 or $.001 per share outstanding, whichever is higher;]

[c. Warrant Issues—$1,000 or $.001 per warrant outstanding, whichever is higher;]

[d. Unit Issues]

[(i) Where one or more of the component securities in the unit is an authorized security in the NASDAQ System—$1,000;]

[(ii) Where the component securities in the unit are not authorized securities in the NASDAQ System—$1,000 or $.001 per unit share outstanding, whichever is higher;]

[e. Shares of Beneficial Interest—$1,000 or $.001 per share outstanding, whichever is higher;]

[f.] *(ii)* Convertiable Debentures—$1,000 or $50 per million face amount of debentures outstanding, whichever is higher [;].

[g. Securities of Foreign Issuers and American Depository Receipts—$1,000.]

[2. The entry fee shall be waived for those securities reentering the NASDAQ System for which an entry fee the same security has been paid to the Corporation during the twenty-four month period the date of reentry. For purposes of calculating the above-mentioned twenty-four (24) month period the date of reentry shall be the date of receipt of the application for eentry in the NASDAQ System.]

[3. In the case of a merger, consolidation, or reorganizaton at least one issuer of an authorized security, the entry fee shall be waived for the security issued issued to carry out such merger, consolidation or re-organization provided that such security is promptly authorized for inclusion in the NASDAQ System.]

3. The Board of Governors or its designee, may, in its descretion, waive all or any part of the entry fee prescribed herein.

4. [Except for Unit Issues, Securities of Foreign Issuers, and American Depositary Receipts] t]*T*he entry fee shall be based on the total outstanding securities of the class to be included in the *Regular* NASDAQ System as shown [on] *in* the issuer's most recent [Form 10–K filed with the SEC] *periodic report* or, in the case of new issues, as shown in the [appropriate prospectus] *offering circular,* [. In the case of issuers which are not required to file a Form 10–K with the Commission, the entry fee shall be based on the annual report] required to be filed with the *issuer's* appropriate regulatory authority *and received by the NASDAQ Stock Market.*

[B.] *D.* Annual Fee

1. The issuer *of* each *class* of security which is [authorized for inclusion] *listed* in the *Regular* NASDAQ System shall pay annually to the Corporation an annual fee for each such security to be computed as follows with a maximum annual fee of $6,000 per issuer;

(i) Equity Securities—$500 or $.0005 per share outstanding, whichever is higher. For purposes of this section, the term "equity securities" includes all securities eligible for inclusion in the Regular NASDAQ System not covered by another provision of this section.[5]

[a. Stock Issues-$500 or $.0005 per share outstanding, whichever is higher;]

[b. Investment Company Shares-$500 or $.0005 per share outstanding, whichever is higher;]

[c. Warrant Issues-$500 or $.0005 per warrant outstanding, whichever is higher;]

[d. Unit Issues

[(i) Where one or more of the component securities in the unit is an authorized security in the NASDAQ System-$500;]

[(ii) Where the component securities in the unit are not authorized securities in the NASDAQ System-$500 or $.0005 per unit initially issued, whichever is higher;]

[e. Shares of Beneficial Interest-$500 or $.0005 per share outstanding, whichever is higher;]

[f.] *(ii)* Convertible Debentures-$500 or $25 per million dollars face amount of debentures outstanding, whichever is higher[;].

[g. Securities of Foreign Issuers and American Depositary Receipt-$500.]

2. [Except for Unit Issues, Securities of Foreign Issuers, and American Depositary Receipt, t]*T*he annual fee shall be based on the total amount of outstanding securities of the class included in the *Regular* NASDAQ System as shown [on] *in* the issuer's most recent [Form 10–K annual report filed with the SEC. In the case of issuers which are not required to file a Form 10–K with the Commission, the annual fee shall be based on the annual] *periodic* report required to be filed with the *issuer's* appropriate regulatory authority *and received by the NASDAQ Stock Market.*

[3. In addition to the annual fee stated above, the issuer of each security designated for inclusion in the NASDAQ National Market System, shall pay annually to the corporation a NASDAQ/National Market System participation fee of $2,000 except with respect to issuers whose annual fee is calculated pursuant to section B.1.g. above.][6]

3. The Board of Governors or its designee, may, in its discretion, waive all or any part of the entry fee prescribed herein.

4. If a [n authorized] security is removed from the *Regular* NASDAQ [(or NASDAQ/National Market)] System, that portion of the annual fees for such security attributable to the months following the date of removal shall not be refunded.

[C. Interim Inclusion Fee]

[1. In the case of a new issue which is authorized for inclusion in the NASDAQ System and for which an application has been made for listing on a national securities exchange pursuant to section 12(b) of the Securities Exchange Act of 1934, such issuer shall pay to the Corporation upon entry into the NASDAQ System an Interim Inclusion Fee to be computed as follows with a maximum Interim Inclusion Fee of $1,000:]

[(a) Stock Issues-$200 or $.0005 per share outstanding, whichever is higher;]

[(b) Warrant Issues-$200 or $.0005 per warrant outstanding, whichever is higher;]

[(c) Unit Issues]

[(i) Where one or more of the component securities in the unit is an authorized security in the NASDAQ System-$200;]

[(ii) Where the component securities in the unit are not authorized securities in the NASDAQ System-$200 or $.0005 per unit initially issued, whichever is higher;]

[(d) Shares of Beneficial Interest-$200 or $.0005 per share outstanding, whichever is higher;]

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[4] *Id.* In the case of units, each component, but not the unit itself be considered separately as an "equity security" for fee purposes.

[5] *See supra notes 1 and 3.*

[6] [This exception will expire December 31, 1990]

[(e) Convertible Debentures-$200 or $25 per million dollars face amount of debentures outstanding, whichever is higher;]

[(f) Securities of Foreign Issuers and American Depository Receipts-$200.]

[2. In the event the issue is not accepted for listing on a national securities exchange within 60 calendar days of inclusion in the NASDAQ System, the entry and annual fees set forth in sections A and B above shall apply and the Interim Inclusion Fee shall be credited toward the entry and annual fees.]

II. Self-Regulatory Organization's Statement of the Purpose of, And Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD's current fee structure for issuers under Schedule D, part IV of the By-Laws, governing inclusion in the NASDAQ System generally does not distinguish between issues listed on the NASDAQ National Market System ("NASDAQ/NMS" or "NMS") and issues that are not listed on NMS ("Regular NASDAQ") (together referred to hereinafter as "The NASDAQ Stock Market"). With the continued substantial growth in the NASDAQ Stock Market in the last decade, and especially the growth in the quality and competitiveness of the National Market System, the NASD believes that changes to the fee structure are necessary and appropriate. Changes to the fee structure will compensate the NASD for the competitive value that National Market System listings provide to issuers and will differentiate between the two segments of the NASDAQ Stock Market.

Under the current fee structure, issuers that apply for inclusion on the NASDAQ Stock Market pay identical entry fees for both Regular NASDAQ and NMS listings. This fee schedule results in an NMS issuer's entry fee that is only a small fraction of that charged by the national securities exchanges. The NMS initial inclusion and maintenance requirements, however, are significantly more rigorous than the requirements for Regular NASDAQ and are comparable to the listing standards of the national securities exchanges.

In addition to erroneously implying to issuers that NMS listing may be less valuable than listing on the national securities exchanges, such low fees inhibit the NAD's ability to generate the revenue necessary to further enhance the NASDAQ Stock Market. In the current competitive environment, the NASD must devote adequate resources to maintaining and upgrading the NASDAQ Stock Market in order to provide issuers listed on the NASDAQ Stock Market with the superior access to capital they have so far enjoyed. As a result of these considerations, the NASD believes that a bifurcation of the fee structure and adjustments to the fees charged to NMS and Regular NASDAQ issuers are necessary.

The NASD is, therefore, proposing to replace entirely the current provisions of part IV to Schedule D to the By-Laws with a new structure that distinguishes between NMS fees in proposed sections A and B and Regular NASDAQ fees in proposed sections C and D. The NASD is proposing in new section A to charge a new initial one-time entry fee for NMS listing of $5,000 per issuer, plus a new graduated fee for each listed based on the total number of shares of the listed class of security outstanding. The total NMS entry fee will not exceed $50,000 for each NMS issuer (inclusive of the $5,000 one-time entry fee) in comparison to the current maximum of $5,000 per issuer during any 24 month period. The NMS annual fee in new section B is unchanged.

The NASD is similarly proposing to adopt the $5,000 one-time entry fee with respect to Regular NASDAQ and to raise the maximum entry fee from $5,000 to $10,000 per issuer (inclusive of the one-time $5,000 fee) in proposed section C. The NASD is also proposing to change the Regular NASDAQ entry and annual fee provisions to consolidate identical fees for different types of securities. Proposed new subsections C.2.(i) and D.1.(i) impose fees on what are now referred to as "equity securities." Each section defines equity securities to mean all securities eligible for inclusion in the Regular NASDAQ System and not otherwise covered by another subsection of each section. A footnote to each section also clarifies that in the case of units, only the components of the units will be considered an equity security. The purpose of this change is to establish a single fee formula for all types of securities eligible for inclusion unless a unique formula is established for a particular type of security in another subsection of the section. Thus, the language of subsections C.2.(ii) and D.1.(ii) retains the current language specifying the calculation of the fee for convertible debentures.

The NASD is also proposing to amend part IV of Schedule D to require the payment of a new non-refundable $1,000 processing fee, which will be credited against the applicant issuer's minimum entry fee applications to both NMS and Regular NASDAQ to cover the costs associated with processing these applications. Currently, issuers are not required to pay any fee to the NASD until their securities have been authorized for inclusion and are trading in the NASDAQ Stock Market. Each year the NASD receives approximately 200 applications for inclusion in the NASDAQ Stock Market from issuers that are never included. Many applications for inclusion are based upon the successful completion of a best-efforts offering of securities, and the issuer fails to satisfy the minimum contingency. In still other instances, the issuers' registration statements are never declared defective by the SEC. Furthermore, in many of these cases, the issuers apply for inclusion of their securities in the NASDAQ Stock Market when they do not meet the requirements for initial inclusion and are without any plan or prospect for meeting the requirements.

The costs to the NASD of processing these applications are significant, given the number of applications and the complexity of issues that may require resolution. The NASD believes the processing fee will discourage applications by issuers that cannot meet the NASDAQ Stock Market initial inclusion requirements and will encourage all applicant issuers to determine prior to applying for inclusion in the NASDAQ Stock Market the likelihood that their securities will qualify for inclusion.

The NASD is also proposing to add a provision allowing the waiver of entry and annual fees for both NMS and Regular NASDAQ applicants if, in the discretion of the Board of Governors or its designee, such a waiver is justified. Currently, part IV to Schedule D allows for a waiver of entry fees if comparable fees have been paid in the previous twenty-four months, or if new securities which qualify for listing are issued as the result of the merger, consolidation or reorganization of a listed company. When the current waiver provisions were adopted, virtually all situations where a waiver might be justified fell

into the standard categories covered by the provisions. The NASD has increasingly found situations in which granting a waiver under the current provisions appears unjustified and other situations where granting a waiver is justified but not permitted by the current provisions. The proposed waiver provision would allow the NASD more flexibility to waive fees on a case-by-base basis in situations which are not precisely covered by the waiver provisions currently in effect or where other unforeseen considerations might warrant a waiver.

Finally, the NASD is proposing to eliminate the current section entitled Interim Inclusion Fee with respect to both NMS and Regular NASDAQ. The interim inclusion fee has provided a means for new issues seeking listing on a national securities exchange to be listed on the NASDAQ Stock Market on an interim basis. If the issuer's application for listing on a national securities exchange was rejected, the interim fee was then applied to the issuer's regular entry and annual fees and the issue remained on the NASDAQ Stock Market without interruption. If, however, the exchange listing was accepted, the issuer was only subject to the interim fee which had a maximum of $1,000. In view of the proposed changes to the fee structure for NMS and Regular NASDAQ, the NASD has determined to eliminate the interim inclusion fee. Any need for a reduced fee for interim inclusion of a security can now be accommodated through the proposed entry fee waiver provision.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written 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 NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: November 30, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28654 Filed 12-4-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Allied Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 90-11-53, Order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Allied Airlines, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, room 6401, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: November 28, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-28453 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 47292]

Application of Arctic Circle Air Service, Inc. for Authority To Transport Passengers

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 90-11-57).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Arctic Circle Air Service, Inc., fit and authorizing it to commence interstate and overseas scheduled air transportation of passengers under its existing section 401 certificate.

DATES: Persons wishing to file objections should do so no later than December 14, 1990.

ADDRESSES: Objections and answers to objections should be filed in Docket No. 47292 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Szekely, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721).

Dated: November 28, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-28454 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Advisory Circular on Emergency Medical Services/ Helicopter.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed Advisory Circular (AC) for Emergency Medical Services/Helicopter (EMS/H).

SUMMARY: The proposed AC is intended to provide information in the conduct of EMS (Helicopter) for operators providing service under part 135 of the Federal Aviation Regulations.

COMMENTS INVITED: Comments are invited on all aspects of the proposed AC. Commentors must identify file number AC 135-14A.

DATES: Comments must be received on or before January 4, 1991.

ADDRESSES: Send all comments and request for copies of the proposed AC to: Federal Aviation Administration, Air Transportation Division (Attention: AFS-250), 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: William Wallace, AFS-250, at the above address; telephone: (202) 267-8086 (8 a.m. to 4:30 p.m. EST).

SUPPLEMENTARY INFORMATION: The guidance material contained in this AC reflects the material to assist all operators in the conduct of EMS.

Issued in Washington, DC, on November 22, 1990.

Thomas C. Accardi,

Acting Director, Flight Standards Service.

[FR Doc. 90-28511 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-90-51]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 25, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 28, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26376.
Petitioner: Bolivar Aviation.
Sections of the FAR Affected: 14 CFR 61.187(b).
Description of Relief Sought: To allow petitioner to utilize flight instructors who have held the flight instructor certificate for less than the required 24 months preceding the date of instruction.

Dispositions of Petitions

Docket No.: 23647.
Petitioner: Embry-Riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/ Disposition: To amend Exemption No. 3859, as amended, which allows petitioner to recommend graduates of its flight instructor certification courses for flight instructor certificates (with the associated ratings) without having to take the FAA written or flight tests. The amendment eliminates the authorization that allows petitioner to recommend graduates of its flight instructor certification course (with associated ratings) without having to take the FAA's written test.

GRANT, November 20, 1990, Exemption No. 3859F

Docket No.: 25728.
Petitioner: Trans World Airlines, Inc.
Sections of the FAR Affected: 14 CFR part 121, appendix H.
Description of Relief Sought/ Disposition: To extend Exemption No. 5097, as amended, which allows petitioner to upgrade L-1011 flight engineers to L-1011 seconds in command in a Phase II simulator without receiving any training or checking in the actual airplane.

GRANT, November 23, 1990, Exemption No. 5097B

Docket No.: 26247.
Petitioner: Era Aviation, Inc.
Sections of the FAR Affected: 14 CFR 121.411 and 121.413.
Description of Relief Sought/ Disposition: To amend Exemption No. 5182, which allows petitioner to utilize certain FlightSafety International instructors to train petitioner's pilots in de Havilland DHC8-100 airplanes that were newly acquired by petitioner. The amendment would extend the authorization to allow FlightSafety International to train eight pilots in a new DHC8-103 airplane purchased by the petitioner.

GRANT, November 23, 1990, Exemption No. 5182A

[FR Doc. 90-28512 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

Deadline for Submission of Preapplication for Airport Grant Funds Under the Airport Improvement Program for Fiscal Year 1991

Section 509(e) of the Airport and Airway Improvement Act of 1982 (AAIA) provides that the sponsor of each airport to which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as

prescribed by the Secretary, of the sponsor's intent to apply for passenger and cargo entitlement funds. Notification of the sponsor's intent to apply during fiscal year 1991 for any of its entitlement funds, including those unused from prior years, shall be in the form of a project preapplication or application (SF 424) submitted to the Federal Aviation Administration (FAA) field office no later than January 31, 1991. Approval of preapplications or applications after that date may be deferred by the FAA until the following fiscal year. FAA field offices, in developing their regional programs, may request sponsors' input at an earlier date. Every effort should be made to have projects under grant by August 15, 1991.

The FAA also recommends that all other airports or planning agencies expecting to apply for airport grant funds do so early in the fiscal year. Such prospective applicants should contact the appropriate FAA field office for information on that office's deadline. These offices will assist in the preparation of preapplications/applications and provide procedural information as needed.

Prompt submission of complete requests will allow earlier funding decisions by the FAA. This, in turn, may be advantageous to sponsors in competing for available funds and in maximizing construction during a construction season.

This notice submitted by Mr. Stanley Lou, Manager, Programming Branch, APP-520 on (202) 267-7595.

Robert W. Yatzeck,

Director, Office of Airport Planning and Programming.

[FR Doc. 90-28513 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Daviess, Greene & Monroe Counties, Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for construction of a portion of the proposed Evansville to Indianapolis highway between SR 37 at Bloomington and SR 57 near Newberry.

FOR FURTHER INFORMATION CONTACT: L. D. Tucker, District Engineer, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana, 46204, Telephone 317/226-7492.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation, will prepare an environmental impact statement (EIS) on the proposed construction of a portion of the Evansville to Indianapolis highway from SR 37 to SR 57, a distance of approximately 30 miles. The proposed typical highway section will be 2-24' pavements with a 60' median within a minimum 300' right-of-way. The facility will be built with either a partial access control or full access control.

The following alternatives are being considered: (1) Do Nothing; (2) Alternate #A is an alignment that begins at SR 37 west of Bloomington and roughly follows the SR 45 route to US 231 and then goes west to SR 57 south of Newberry; (3) Alternate #B is an alignment that begins at SR 37 south of Bloomington and heads west to within 4 miles of Bloomfield before turning southwest and connecting with SR 57 south of Newberry; (4) Alternate #C is an alignment that begins south of Bloomington on SR 37 and heads west to Stanford and then southwest along SR 45 to Cincinnati, Indiana and then southwest to SR 37 south of Newberry; (5) Alternate #D is a alignment that begins south of Bloomington on SR 37 and continues southwest to SR 45 and roughly follows SR 45 to US 231 and then west to SR 57 south of Newberry.

Construction of this highway is considered necessary to efficiently accommodate the traffic demand for existing and projected levels in Southwestern Indiana.

The project will be coordinated with various federal, state and local agencies to obtain and incorporate their input into the draft environmental impact statement.

A formal scoping meeting is currently planned for this proposed project. This meeting will be held on December 19, 1990 at the Ramada Inn in Bloomington, Indiana from 10 a.m. to 12 p.m. (noon). An opportunity for a public hearing will be advertised at a later date to discuss the DEIS. Notice will be given of the time and place of the public hearing. The approved draft environmental impact statement will be available for public and agency review and comment.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Agencies, organizations and individuals interested in submitting comments and/or questions should direct them to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: November 27, 1990.

L. D. Tucker,

District Engineer.

[FR Doc. 90-28496 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Waiver Petition Docket No. RST-90-3]

Petition for Exemption or Waiver of Compliance; Burlington Northern Railroad Company

Notice is hereby given that the Burlington Northern Railroad Company (BN) has submitted a petition dated August 10, 1990, requesting a waiver of compliance with the provisions of 49 CFR 213.113(a)(2), notes C and D, as they apply to remedial action to be taken regarding the following types of internal rail defects: detail fracture; engine burn fracture; and defective weld.

BN, on specific tracks within Nebraska, Wyoming, South Dakota, and Montana proposes to place 132 pound/136 pound sized bars and clamps (known as the "Bulldog Clamp") over detected internal defects in lieu of bolted joint bars as presently required. The Bulldog Clamp would only be placed on rail which is box anchored on at least every other tie.

BN's request for waiver, applying to the tracks leading to and from the Wyoming Powder River Coal Basin, is predicated upon three goals:

1. Elimination of both holes in 132 and 136 pound per yard continuous welded rail (CWR),

2. Elimination of "subgrade memory" of rail joint location, where individual rail profile is deformed from temporary placement of repair rail and bolted rail joints; and

3. Increased daily productivity of internal railflaw detection equipment.

The BN line segments involved in the waiver petition are:

1. Hobson (Lincoln), Nebraska through York and Ravenna to East Alliance, Nebraska, Nebraska Division, 2nd Subdivision, railroad mileposts 1.9 to 364.4.

2. Third Street, (Alliance, Nebraska) through Northport to Bridgeport,

Nebraska, Denver Division, 3rd Subdivision, Railroad milepost 0.3 to 41.

3. East Alliance, Nebraska through Crawford to Edgemont, South Dakota, Denver Division, 4th Subdivision, railroad mileposts 364.4 to 476.1.

4. Edgemont, South Dakota through New Castle, Wyoming to Gillette, Wyoming, Denver Division, 5th Subdivision, railroad mileposts 476.1 to 597.2.

5. Gillette, Wyoming through Sheridan to Huntley, Montana, Denver Division, 6th Subdivision, railroad mileposts 597.2 to 829.3.

6. Northport, Nebraska through Guernsey and Wendover, Wyoming, to Bridger Junction, Wyoming, Denver Division, 7th Subdivision, railroad mileposts 0.0 to 133.2.

7. Bridger Junction, Wyoming through Bill to Donkey Creek (Gillette) Wyoming, Denver Division, 10th Subdivision railroad mileposts 127.3 to 0.0.

8. Reno, Wyoming to Black Thunder Junction, Wyoming, Denver Division, 12th Subdivision, railroad mileposts 0.0 to 3.0.

9. Campbell, Wyoming to Eagle Butte Junction Wyoming, Denver Division, 13th Subdivision railroad mileposts 0.0 to 9.5.

10. Dutch, Wyoming to Nero, Montana, Denver Division, 14th Subdivision, railroad mileposts 0.0 to 22.6.

No National Railroad Passenger Corporation (Amtrak) trains operate over any of the above defined BN line segments.

BN requests that 49 CFR 213.113(a)(2) Note C., (prescribed remedial action) read as follows for this waiver petition request: "Apply joint bars bolted only through the outermost holes, or Bulldog Clamp system, to defect within 20 days after it is determined to continue the track in use. In the case of Classes 3 through 6 track, limit operating speed over defective rail to 30 mph until angle bars or Bulldog Clamp system are applied; thereafter limit speed to 60 mph or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. This revised Note C will not apply to Damaged Rail. The petitioner (BN) will remove the Bulldog Clamp system after no more than five (5) calendar days in service. If the internal defect has not been removed or repaired in that time, bolted joint bars will be immediately applied."

BN requests that 49 CFR 213.11(a)(2) Note D., (prescribed remedial action) read as follows for this waiver petition request: "Apply joint bars bolted only through the outermost holes, or Bulldog Clamp system, to defect within 10 days after it is determined to continue the track in use. In the case of Classes 3 through 6 track, limit operating speed over the defective rail to 30 mph or less as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, until angle bars or Bulldog Clamp system are applied; thereafter, limit speed to 60 mph or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. The petitioner (BN) will remove the Bulldog Clamp system after no more than five (5) calendar days in service. If the internal defect has not been removed or repaired in that time, bolted joint bars will be immediately applied".

FRA is seeking information and comments from all interested parties. FRA will take these comments into account in arriving at a final disposition of the petition. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if by January 17, 1991 the party submits a written request for hearing that demonstrates that the individual's position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA Waiver Petition Docket No. RST-90-3" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street, SW., Washington, DC 20590.

Comments received by January 17, 1991 will be considered in this proceeding. All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC, on November 23, 1990.

E.R. English,

Acting Director, Office of Safety Enforcement.

[FR Doc. 90-28455 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Invitation to Nonprofit Organizations To Apply for Assistance Establishing Memorials to Merchant Mariners

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Maritime Administration is informing nonprofit organizations of its intention to implement Public Law 101-595, which authorizes the Secretary of Transportation to transfer title to obsolete vessels in the National Defense Reserve Fleet, which are of no use to the Government, to a group or groups of nonprofit organizations that would scrap the vessel(s) and share equally in the proceeds. Those proceeds would be used for expenses directly related to acquiring land for, designing, berthing, refurbishing, repairing, or constructing a memorial to merchant mariners

EFFECTIVE DATE: December 5, 1990

FOR FURTHER INFORMATION CONTACT: Linda Somerville, Vessel Transfer and Disposal Officer, Maritime Administration, U.S. Department of Transportation, room 7324, 400 Seventh Street SW., Washington, DC 20590, telephone 202-366-5821.

SUPPLEMENTARY INFORMATION: Section 709 of Public Law 101-595, enacted on November 16, 1990, is summarized below. It authorizes the Secretary of Transportation, until November 16, 1992, to convey to a group of not less than two and not more than three nonprofit organizations, without consideration, all rights, title and interest of the United States Government in a vessel that is in the National Defense Reserve Fleet on November 16, 1990, is of not less than 4,000 displacement tons, has no usefulness to the Government, and is scheduled to be scrapped. The statute provides further that prior to the conveyance of such a vessel to a group of nonprofit organizations, the Secretary shall require that each nonprofit organization in the group shall: (1) Have entered into a formal agreement with others in the group that requires the sale of the vessel for scrap and the equal division of the sale proceeds among the nonprofit organizations in the group; (2) use its share of those proceeds for expenses directly related to acquiring land for, designing, berthing, refurbishing, repairing, or constructing a memorial to merchant mariners; and (3) have raised prior to November 16, 1990, at least $100,000 from non-Federal sources for use in establishing a memorial to merchant mariners.

In implementing this authority, MARAD initially desires to identify all eligible groups of nonprofit organizations that wish to participate in this program.

Any nonprofit organization or any group of not less than two and not more than three nonprofit organizations which is interested in participating in this program, and believes it satisfies the three necessary statutory conditions, is invited to submit all relevant

information concerning their eligibility to MARAD's Vessel Transfer and Disposal Officer, at the address above, no later than March 31, 1991. Sufficient information must be submitted to establish eligibility in order for any organization to be considered further under this program. Interested organizations should note that the statute provides that a nonprofit organization may not be a member of more than one group of nonprofit organizations for purposes of this program, and, further, that any vessels conveyed under the program will be conveyed on an "as is, where is" basis, without cost to the Government.

Section 709 of Public Law 101-595 provides that:

* * * * *

(b) Vessel conveyance authority.—(1) Notwithstanding any other law, the Secretary of Transportation may convey to any group of not less than two and not more than three nonprofit organizations, without consideration, all right, title, and interest of the United States Government in a vessel which—

(A) Is in the National Defense Reserve Fleet on the date of enactment of this section;

(B) Is of not less than 4,000 displacement tons;

(C) Has no usefulness to the Government; and

(D) Is scheduled to be scrapped.

(2) As a condition of conveying a vessel to a group of nonprofit organizations pursuant to this section, the Secretary shall require that each nonprofit organization in the group—

(A) Before the date of that conveyance, enter into an agreement with the other nonprofit organizations in that group which requires—

(i) The sale of the vessel for scrap purposes; and

(ii) The equal division of the proceeds of the sale among the nonprofit organizations in that group;

(B) Use its share of those proceeds for the expenses directly related to acquiring land for, designing, berthing, refurbishing, repairing, or constructing a memorial to merchant mariners;

(C) Have raised, before the date of enactment of this section, at least $100,000 from non-Federal sources for use for establishing a memorial to merchant mariners; and

(D) Agree to any other conditions the Secretary considers appropriate.

(3) (A) A nonprofit organization may apply to the Secretary for a conveyance under this section individually or as a member of a group of nonprofit organizations.

(B) The Secretary shall designate, for purposes of this section, groups of not less than two and not more than three nonprofit organizations which apply individually under this section.

(C) A nonprofit organization may not be a member of more than one group of nonprofit organizations for purposes of this section.

(c) Delivery.—The Secretary shall deliver a vessel conveyed under this section to a group of nonprofit organizations—

(1) At a place where the vessel is located on the date of the approval of the conveyance,

(2) In its condition on that date, and

(3) Without cost to the Government.

(d) Expiration.—The authority of the Secretary under this section to convey vessels shall expire two years after the date of enactment of this section.

Dated: November 29, 1990.

By Order of the Maritime Administration.

James E. Saari,

Secretary.

[FR Doc. 90-28452 Filed 12-4-90; 8:45 am]

BILLING CODE 8910-81-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements for OMB review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting approval of the extension of OMB 3116-0191 entitled "Assurance of Compliance with U.S. Information Agency Regulation under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and Title IX of the Education Amendments of 1972." The above-mentioned form requires prospective grantees to sign a statement that they, if awarded a grant, will comply with the provisions of the Civil Rights Act of 1964 the Rehabilitation Act of 1973, and the Education Amendments of 1972 regarding discrimination. Estimated burden for this information collection is estimated at five minutes. Respondents will be required to respond only one time.

DATES: January 4, 1991.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA; and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for USIA.

Title: Assurance of Compliance with U.S. Information Agency Regulation under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and title IX of the Education Amendments of 1972.

Form Number: IAP-100.

Abstract: The signing of the above-mentioned form indicates a commitment on the part of the grantee to comply with the three statutes referred to in the Summary, as required by law. This assurance is given in connection with any and all financial assistance from the U.S. Information Agency after the date the form is signed, including payments after that for financial assistance approved previously. The applicant recognizes and agrees that any such financial assistance will be extended in

reliance on the representations and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant, its successors, the transferrees, assignees and the authorized official whose signature appears on the form.

Proposed Frequency of Responses:
No. of Respondents—200.
Recordkeeping Hours—0.
Total Annual Burden—16.6.

Dated: November 29, 1990.

Rose Royal,
Federal Register Liaison.

[FR Doc. 90-28459 Filed 12-4-90; 8:45 am]
BILLING CODE 8230-01-M

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Proposed collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256. USIA is requesting approval of a proposed information collection entitled "Secondary School Administrators Views on Foreign Exchange Student Programs—J-Visa Exhange Program Survey." Estimated burden hours per response is 30 minutes. Respondents will be required to respond only one time.

DATES: Comments must be received by December 20, 1990.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Secondary School Administrators Views on Foreign Exchange Student Programs—J-Visa Exchange Program Survey.

Form Number: IAP 118.

Abstract: Pursuant to the Mutual Educational and Cultural Exchange Act of 1961, as amended, the U.S. Information Agency (USIA) administers an exchange program which includes a large portion of the international teenage student exchanges in U.S. high schools. In the interest of proper administration of the Exchange Visitor Program, USIA undertakes the collection of information on the attitudes and experience of Secondary School Administrators with regard to foreign teenage exchange student in their schools. The information obtained from this survey will be used by the Office of General Counsel, USIA, to evaluate existing regulations affecting issuance of the J-visa to foreign exchange students.

Proposed Frequency of Responses:
No. of Respondents—2000.
Recordkeeping Hours—0.
Total Annual Burden—1000.

Dated: November 30, 1990.

Rose Royal,
Federal Register Liaison.

[FR Doc. 90-28460 Filed 12-4-90; 8:45 am]
BILLING CODE 8230-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-81]

Response to Actions by the European Economic Community Under Article XXIV of the General Agreement on Tariffs and Trade

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of notification in response to actions by the European Economic Community (EEC) under Article XXIV of the General Agreement on Tariffs and Trade (GATT).

SUMMARY: The United States Trade Representative (USTR) has notified the Contracting Parties to the GATT that it will suspend tariff concessions on specified products in the United States tariff schedule, effective midnight December 31, 1990, unless there is by that time a satisfactory agreement to continue compensating the United States for trade damage associated with the accession of Portugal and Spain into the EEC. This notification has been made in accordance with United States rights and obligations under Articles XXIV and XXVIII of the GATT. The existing duty rates will continue to apply after December 31 until further notice is given to the GATT Contracting Parties. Before raising duties, the USTR will also give notice in the **Federal Register.**

DATES: Notification to the GATT Contracting Parties was made on November 30, 1990. The suspension of Tariff concessions on specified products will take effect at midnight on December 31, 1990, unless there is by that time a satisfactory resolution.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Director, European Community Affairs, (202) 395-3074, or Marilyn Moore, Senior Agricultural Economist, (202) 395-5006, or Andrew Shoyer, Assistant General Counsel, (202) 395-7203.

SUPPLEMENTARY INFORMATION: As part of the arrangements for the accession of Portugal and Spain to the European Economic Communities (EEC), the EEC withdrew tariff concessions on products from Portugal and Spain, imposed variable levies on Spanish imports of corn and sorghum, and took other actions affecting U.S. exports, effective beginning March 1, 1986.

In discussions with the EC in 1986, the United States Government sought the removal of certain restrictions and, in accordance with U.S. rights under Articles XXIV and XXVIII of the

General Agreement on Tariffs and Trade (GATT), sought appropriate compensation from the EC for the tariff and variable levy actions.

On January 29, 1987, the United States Government entered into an "Agreement for the Conclusion of Negotiations Between the United States and the European Community Under GATT Article XXIV:6." That agreement set forth several measures to be taken by the EC and temporarily compensated the United States by, *inter alia*, reducing duty rates on an autonomous basis on 29 tariff lines and ensuring a minimum access level of imports of two million metric tons of corn and of three hundred thousand metric tons of sorghum into Spain for consumption from non-EC sources. Those measures were to apply until December 31, 1990. The agreement also specified that both parties would initiate in July 1990 a "major review of the situation * * * with the objective of determining at that time what new action, if any, might be appropriate." Both parties reserved "full GATT rights including those which would otherwise be time-limited."

In July 1990, representatives of the Government of the United States and the EC met to initiate a review of the situation. Notwithstanding the U.S. right under GATT Article XXIV to continued compensation for the withdrawal of concessions associated with the addition of Portugal and Spain to the EEC, the EC has refused to extend such compensation beyond December 31, 1990.

Where a contracting party to the GATT has withdrawn a concession in the expansion of a customs union, Article XXIV of the GATT entitles other contracting parties to negotiated compensation, or, in the absence of a successful negotiation, to use Article XXVIII to " withdrawal substantially equivalent concessions." The Article XXVIII right is time-limited and could be construed, in this case, to expire at midnight on December 31, 1990, unless exercised.

Unless the trade measures in the 1987 agreement are extended or a new agreement is reached with the EC, certain trade rights or measures contained in the 1987 agreement might expire at midnight on December 31, 1990. Article XXVIII requires that notice of intent to withdraw substantially equivalent concessions be received by the GATT Contracting Parties thirty days prior to the date that such concessions are withdrawn.

Thus, the United States Government considers itself to be obliged to give notice by December 1, 1990, of the intent of the United States to exercise its Article XXVIII rights after December 31, 1990.

Text of Notification to the GATT Contracting Parties

Accordingly, on November 30, 1990, the Government of the United States notified the Contracting Parties to the GATT as follows:

Article XXVIII:3 Notification in Response to Actions by the European Economic Community Under Article XXIV

Schedule XX: United States

On 13 February 1986, in document L/5936/Add.2, the European Economic Community gave notice that, pursuant to Article XXIV, it had withdrawn schedule XLV of Spain, Schedule XLIV of Portugal and Schedule LXXII and LXXIIBIS of the European Community of 10. The European Economic Community forwarded a copy of EC Council regulation No. 3330/85 containing the Community's offer under Article XXIV:6, suspended the rates laid down in the offer, and indicated that the rates in schedules LXXII and LXXIIBIS would apply for the EC of 10, with Spanish and Portuguese rates aligning onto EC rates according to the timetable foreseen in the Treaty of Accession. However, where the EC of 10 rate was not bound and a variable levy applied, the corresponding Spanish and Portuguese trade was subjected to the variable levy (in excess of 100 percent ad valorem) since 1 March 1986 notwithstanding the existence of any Spanish or Portuguese concessions and without prior examination of these actions in GATT or prior negotiation of compensation.

The above withdrawals had an immediate damaging effect in particular on the trade in two concessions made by Spain to the United States in previous negotiations, namely TSUS Item 10.05BII bound at 20 percent (corn, not hybrid, not for sowing) and TSUS Item 10.07CII bound at 20 percent (sorghum, not for sowing). The United States holds initial negotiating rights on both of these items and was the principal supplier of corn. The United States had also been a principal supplier of sorghum to Spain, together with Argentina. According to Spain's import statistics, 1981–1983 average annual Spanish imports of corn and sorghum from the United States amounted to U.S. $624 million.

Following the actions by the European Economic Community, the United States on several occasions communicated its views to the EC regarding the EC actions, in particular on those actions affecting corn and sorghum. The United States requested compensation for the corn and sorghum actions by 1 July 1986 which were to be factored into the results of the Article XXIV:6 negotiations.

Since the European Economic Community had already effected the withdrawal of the Spanish concessions on corn and sorghum and replaced them with variable levies, without agreement on compensation as provided in Articles XXIV:6 and XXVIII, the United States found it necessary, as provided in the procedures of paragraph 3 of Article XXVIII, to notify the suspension of certain concessions in Schedule XX (see L/5997, 26 May 1986). The suspensions took effect thirty days from the receipt of that notice by the Contracting Parties (which for the purposes of that notice was the day of receipt by the Secretariat).

Negotiatons continued and on 29 January 1987, the Government of the United States and the European Community entered into an agreement under Article XXIV:6. That agreement set forth several measures to be taken by the EC and temporarily compensated the United States by, inter alia, reducing duty rates on an autonomous basis on 29 products and ensuring a minimum access level of imports form non-EC sources of two million metric tons of corn and of three hundred thousand metric tons of sorghum into Spain for consumption. Those measures are to apply until 31 December 1990. The agreement also specified that both parties would initiate in July 1990 a "major review of the situation * * * with the objective of determining at that time what new action, if any might be appropriate." Both parties reserved "full GATT rights including those which would otherwise be time-limited."

On 31 March 1988, the United States notified the Contracting Parties that the suspended bindings listed in document L/5997 were restored, subject to the provisions of the United States-European Community agreement of January 1987. (See L/5997/Add.2, 31 March 1986.)

In July 1990, representatives of the Government of the United States ad the EC met to initiate the "review of the situation" which had been provided for in the January 1987 agreement. Notwithstanding the U.S. right under GATT Article XXIV to continued compensation for the withdrawal of concessions associated with the addition of Portugal and Spain to the ECC, the ECC has failed to extend such compensation beyond 31 December 1990, and has refused to continue a review of the situation at this time.

Where a contracting party to the GATT has withdrawn a concession in the expansion of a customs union, Article XXIV of the GATT entitles other contracting parties to negotiate compensation, or, in the absence of a successful negotiation, to use Article XXVIII to "withdraw substantially equivalent concessions." The Article XXVIII right is time-limited to six months. The agreed "review of the situation" began in July and has not resulted in a negotiated continuation of compensation to the United States.

If negotiations to continue compensation to the United States are not successful, then compensation under the 1987 agreement will expire at midnight on December 31, 1990. Moreover, the time-limited Article XXVIII right could be construed, in this case, to expire on December 31, 1990, unless exercised.

Therefore, without agreement on compensation as provided in Article XXIV:6 and XXVIII, the United States will find it necessary, as provided in the procedures of paragraph 3 of Article XXVIII, to suspend certain tariff concessions in Schedule XX, effective midnight, December 31, 1990.

Accordingly, the United States hereby notifies the suspension of concessions in Schedule XX as listed in the attachment. The

suspensions shall take effect at midnight on December 31, 1990, in the absence of a successful settlement. The existing duty rates will continue to be applied until further notice is given to the Contracting Parties. For the purposes of this notice, the day of receipt by the Secretariat shall be the date of receipt of this notice by the contracting parties.

The United States continues to reserve its rights with respect to the withdrawals of concessions in schedules XLV, XLIV, LXXII, and LXXIIBIS as announced by the European Economic Community on February 13, 1986.

Annex Containing Products for Which Tariff Concessions May Be Suspended

The annex to this **Federal Register** notice sets forth the text of the attachment to the above-referenced notification to the GATT Contracting Parties and constitutes a complete list of the tariff items for which tariff concessions may be suspended.

Richard H. Steinberg,

Assistant General Counsel and Acting Chairman, Section 301 Committee.

Articles on Which United States Tariff Concessions in Schedule XX Under the General Agreement on Tariffs and Trade Are Suspended

[United States Imports in 1987–1989 from Principal and Substantial Suppliers. For each tariff subheading contained herein, this tabulation lists (a) GATT countries which supplied 10 percent or more of average annual U.S. imports in the subheading in 1987–1989 from all GATT sources. The European Community is treated as a single "country" in this tabulation.]

Tariff Subheading	Product/Country	1987	1988	1989	Average 1987–1989
0406.40.60	Blue-veined cheese, other than Roquefort, in original loaves				
	GATT countries, total	$10,261,000	$8,935,000	$6,428,000	$8,541,000
	EC	10,261,000	8,935,000	6,428,000	8,541,000
0406.40.80	Blue-veined cheese, other than Roquefort, not in original loaves				
	GATT countries, total	497,000	230,000	506,000	411,000
	EC	409,000	230,000	506,000	382,000
0406.90.15	Edam and Gouda cheeses				
	GATT countries, total	18,349,000	16,251,000	9,951,000	14,850,000
	EC	17,542,000	15,640,000	9,567,000	14,249,000
0705.21.00	Witloof chicory (*Cichorium intybus* var. *foliosum*) fresh or chilled				
	GATT countries, total	[1] 7,661,000	[1] 8,652,000	[1] 12,909,000	[1] 9,741,000
	EC	[1] 7,409,000	[1] 8,509,000	[1] 12,371,000	[1] 9,430,000
0705.29.00	Chicory, other than Witloof chicory, fresh or chilled				
	GATT countries, total	([2])	([2])	([2])	([2])
	EC	([2])	([2])	([2])	([2])
0802.40.00	Chestnuts (*Catanea* spp.) fresh or dried, whether or not shelled or peeled				
	GATT countries, total	6,246,000	8,073,000	10,205,000	8,175,000
	EC	5,796,000	7,693,000	9,564,000	7,684,000

ARTICLES ON WHICH UNITED STATES TARIFF CONCESSIONS IN SCHEDULE XX UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE ARE SUSPENDED—Continued

[United States Imports in 1987–1989 from Principal and Substantial Suppliers. For each tariff subheading contained herein, this tabulation lists (a) GATT countries which supplied 10 percent or more of average annual U.S. imports in the subheading in 1987–1989 from all GATT sources. The European Community is treated as a single "country" in this tabulation.]

Tariff Subheading	Product/Country	1987	1988	1989	Average 1987–1989
1514.90.90	Rapeseed, colza or mustard oil, and fractions thereof, refined but not chemically modified, not denatured or imported to be used in the manufacture of rubber substitutes or lubricating oil				
	GATT countries, total	22,885,000	63,829,000	48,667,000	45,127,000
	Canada	22,870,000	54,124,000	41,833,000	39,609,000
	EC	—	9,705,000	6,834,000	5,513,000
2001.90.25	Artichokes, prepared or preserved by vinegar or acetic acid				
	GATT countries, total	17,877,000	25,154,000	11,091,000	18,041,000
	EC	17,837,000	25,093,000	10,979,000	17,970,000
2005.90.50	Pimientos (*Capsicum anuum*), prepared or preserved otherwise than by vinegar or acetic acid, not frozen				
	GATT countries, total	9,997,000	10,243,000	8,850,000	9,697,000
	EC	9,995,000	10,015,000	8,331,000	9,434,000
2005.90.80	Artichokes, prepared or preserved otherwise than by vinegar or acetic acid, not frozen				
	GATT countries, total	7,563,000	7,541,000	24,170,000	13,091,000
	EC	7,523,000	7,461,000	24,108,000	13,031,000
2201.10.00	Mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored				
	GATT countries, total	72,889,000	93,232,000	89,890,000	85,337,000
	EC	66,051,000	80,224,000	78,540,000	74,938,000
2205.10.30	Vermouth in containers holding 2 liters or less				
	GATT countries, total	[3] 18,164,000	[3] 17,065,000	[3] 17,221,000	[3] 17,483,000
	EC	[3] 18,164,000	[3] 17,060,000	[3] 17,220,000	[3] 17,481,000
2205.90.20	Vermouth in containers each holding over 2 liters but not over 4 liters				
	GATT countries, total	(4)	(4)	(4)	(4)
	EC	(4)	(4)	(4)	(4)
2205.90.40	Vermouth in containers each holding over 4 liters				
	GATT countries, total	(4)	(4)	(4)	(4)
	EC	(4)	(4)	(4)	(4)
2208.20.40	Spirits, except pisco and singani, obtained by distilling grape wine or grape marc (grape brandy), in containers each holding not over 4 liters, valued over $3.43/liter				
	GATT countries, total	(5)	(5)	27,369,000	[5] 27,369,000
	EC	(5)	(5)	27,123,000	27,123,000

ARTICLES ON WHICH UNITED STATES TARIFF CONCESSIONS IN SCHEDULE XX UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE ARE SUSPENDED—Continued

[United States Imports in 1987–1989 from Principal and Substantial Suppliers. For each tariff subheading contained herein, this tabulation lists (a) GATT countries which supplied 10 percent or more of average annual U.S. imports in the subheading in 1987–1989 from all GATT sources. The European Community is treated as a single "country" in this tabulation.]

Tariff Subheading	Product/Country	1987	1988	1989	Average 1987–1989
2208.20.60	Spirits, except pisco and singani, obtained by distilling grape wine or grape marc (grape brandy), in containers each holding over 4 liters, valued over $2.38/liter				
	GATT countries, total	(5)	(5)	339,000	(5) 339,000
	EC	(5)	(5)	338,000	(5) 338,000
2208.90.45	Cordials, liqueurs, kirschwasser and ratafia				
	GATT countries, total	229,659,000	221,879,000	231,229,000	227,589,000
	EC	203,911,000	196,941,000	203,647,000	201,500,000
4111.00.00	Composition leather with a basis of leather or leather fiber, in slabs, sheets or strip, whether or not in rolls				
	GATT countries, total	13,426,000	12,123,000	12,767,000	12,772,000
	EC	13,027,000	11,647,000	12,231,000	12,302,000

[1] Includes imports of chicory in subheading 0705.29.00.
[2] Imports of chicory in subheading 07005.29.00 are included in statistics shown for subheading 0705.21.00.
[3] Includes imports of vermouth in subheading 2205.90.20 and 2205.90.40.
[4] Imports of vermouth in subheadings 2205.90.20 and 2205.90.40 are included in statistics shown for subheading 2205.10.30
[5] Data on imports corresponding to subheadings 2208.20.40 and 2208.20.60 were not separately reported in 1987 and 1988. Imports reported in 1989 are also used as a proxy for average imports in 1987–1989.

BILLING CODE 3190-01-M

Articles on Which United States Tariff Concessions in Schedule XX under the General Agreement on Tariffs and Trade Are Suspended

[Note.— All concessions were established in protocol G/HS/88]

Tariff Subheading	Article	Rate of duty
	[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings on which concessions are being suspended, and such language is not itself intended to describe articles on which concessions are suspended.]	
	Cheese and curd:	
	Blue-veined cheese:	
	[Roquefort]	
	Other:	
0406.40.60	In original loaves	15%
0406.40.80	Other	20%
	Other cheese:	
0406.90.15	Edam and Gouda cheeses	15%
	Lettuce (Lactuca sativa) and chicory (Cichorium spp.), fresh or chilled:	
	Chicory:	
0705.21.00	Witloof chicory (Cichorium intybus var. foliosum)	0.33 cents/kg
0705.29.00	Other	0.33 cents/kg
	Other nuts, fresh or dried, whether or not shelled or peeled:	
0802.40.00	Chestnuts (Castanea spp.)	Free
	Rapeseed, colza or mustard oil, and fractions thereof, whether or not refined, but not chemically modified:	
	[Crude oil]	
	Other:	
	[Imported to be used in the manufacture of rubber substitutes or lubricating oil]	
	Other:	
	[Denatured]	
1514.90.90	Other	7.5%
	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:	
	[Cucumbers including gherkins]	
	[Onions]	
	Other:	
	[Capers]	
	Other:	
	Vegetables:	
2001.90.25	Artichokes	12%
	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen:	
	[Sweet corn (Zea mays var. saccharata)]	
	Other vegetables and mixtures of vegetables:	
	Fruits of the genus Capsicum (peppers) or of the genus Pimenta (e.g., allspice):	
2005.90.50	Pimientos (Capsicum anuum)	9.5%
2005.90.80	Artichokes	17.5%
	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored; ice and snow:	
2201.10.00	Mineral waters and aerated waters	0.4 cents/liter

Tariff Subheading	Article	Rate of duty
	Vermouth and other wine of fresh grapes flavored with plants or aromatic substances:	
	In containers holding 2 liters or less:	
2205.10.30	Vermouth	5.5 cents/ liter
	Other:	
	Vermouth:	
2205.90.20	In containers each holding over 2 liters but not over 4 liters	5.5 cents/ liter
2205.90.40	In containers each holding over 4 liters	8.5 cents/ liter
	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages:	
	Spirits obtained by distilling grape wine or grape marc (grape brandy):	
	[Pisco and singani]	
	Other:	
	In containers each holding not over 4 liters:	
2208.20.40	Valued over $3.43/liter	13.2 cents/ pf. liter
	In containers each holding over 4 liters:	
2208.20.60	Valued over $2.38/liter	10.6 cents/ pf. liter
	Other:	
2208.90.45	Cordials, liqueurs, kirschwasser and ratafia	13.2 cents/ pf. liter
4111.00.00	Composition leather with a basis of leather or leather fiber, in slabs, sheets or strip, whether or not in rolls	2.8%

[FR Doc. 90-28500 Filed 12-5-90; 8:45 am]
BILLING CODE 3190-01-C

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 29, 1990.

By direction of the Secretary

Frank E. Lalley,

Director, Office of Information Resources Policies.

Revision

1. Veterans Benefits Administration.
2. Request for Verification of Employment.
3. VA Form 26–8497.
4. The form is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. The use of this form is optional since any comprehensible form of independent verification is acceptable, provided all information contained on VA Form 26–8497 is furnished.
5. On occasion.
6. Businesses or other for-profit.
7. 300,000 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90–28468 Filed 12–4–90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 29, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Revision

1. Veterans Benefits Administration.
2. Application for Automobile or Other Conveyance and Adaptive Equipment (Under 38 U.S.C. 1901–1904).
3. VA Form 21–4502.
4. The form is used to gather the necessary information to determine eligibility for financial assistance in the purchase of an automobile or other vehicle and/or the necessary adaptive equipment. The information is used to determine initial and continuing eligibility for benefits.
5. On occasion.
6. Individuals or households.
7. 1,500 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 90–28469 Filed 12–4–90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 234
Wednesday, December 5, 1990

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).

UNITED STATES INSTITUTE OF PEACE

DATES: December 6–7, 1990.

TIME: 9:00 a.m. to 5:30 p.m.

PLACE: 1550 M Street NW., Washington, DC. (ground floor, Board Room).

STATUS: Open session.—(portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98–525).

AGENDA: (Tentative):

Meeting of the Board of Directors convened. Chairman's Report. President Report. Committee Reports. Consideration of the Minutes of the Forty-Third meeting of the Board of Directors. Consideration of grant application matters.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs, telephone (202) 457–1700.

Dated: December 3, 1990.

Ms. Bernice J. Carney,

Director of Administration, The United States Institute of Peace.

[FR Doc. 90–28605 Filed 12–3–90; 1:26 pm]

BILLING CODE 3155-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 29, 1990.

TIME AND DATE: 10:00 a.m., Thursday, December 6, 1990.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Rochester & Pittsburgh Coal Company,* Docket No. PENN 88–284–R, etc. (Issues include whether the judge erred in finding that two violations of 30 CFR § 75.305 were not the result of the operator's unwarrantable failure.)

Any person attending this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Rochester & Pittsburgh Coal Company,* Docket No. PENN 88–284–R. (See oral argument listing)

It was determined by a unanimous vote of the Commissioners that this portion be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 706–9300 for TDD Relay 1–800–877–8339 Toll Free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90–28610 Filed 12–3–90; 1:27 pm]

BILLING CODE 6735-01-M

RESOLUTION TRUST 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 2:58 p.m. on Thursday, November 29, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Vice Chairman Andrew C. Hove, Director T. Timothy Ryan Jr., (Director of the Office of Thrift Supervision), and Director Robert L. Clarke (Comptroller of the Currency), 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)(8), (c)(9)(a)(ii), (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)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550 17th Street, N.W., Washington, D.C.

Dated: November 30, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–28630 Filed 12–3–90; 1:28 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [55 FR 48954 and 49751 November 23 and November 30, 1990]

STATUS: Closed/open meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, November 19, 1990 and Wednesday, November 28, 1990.

CHANGE IN THE MEETING: Deletions.

The following item was not considered at a closed meeting on Thursday, November 29, 1990, at 3:30 p.m., formerly scheduled for Thursday, November 29, 1990, at 2:30 p.m.

Settlement of administrative proceedings of an enforcement nature.

The following item will not be considered at a closed meeting on Tuesday, December 4, 1990, at 2:30 p.m.

Institution of administrative proceeding of an enforcement nature.

The following item will not be considered at an open meeting on Thursday, December 6, 1990, at 2:00 p.m.

Oral argument on cross-appeals by Willaim L. Kicklighter, Jr., a salesman for the former brokerage firm of Hereth, Orr & Jones, Inc. and the Division of Enforcement from an administrative law judge's initial decision. For further information, please contact Richard E. Connor at (202) 272–3981.

The following item will not be considered at a closed meeting on Thursday, December 6, 1990, following the 2:00 p.m. open meeting.

Post oral argument discussion.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes.

At times, change 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: Stephen Young at (202) 272–2000.

Dated: November 30, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28656 Filed 12-3-90; 1:29 pm]

BILLING CODE 6010-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, December 10, 1990.

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 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28580 Filed 11-30-90; 4:50 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 55, No. 234
Wednesday, December 5, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-221]

Citrus Canker Regulations; Quarantined Areas

Correction

In rule document 90-28015 beginning on page 49501, in the issue of Thursday, November 29, 1990, make the following correction:

On page 49502, in the third column, in the first line, "§ 301.74-4" should read "§ 301.75-4".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Bureau of Census

15 CFR Part 30

[Docket No. 900112-0265]

RIN 0607-AA13

Foreign Trade Statistics; Amendment to the Foreign Trade Statistics Regulations

Correction

In rule document 90-28288 beginning on page 49613 in the issue of Friday, November 30, 1990, make the following correction:

On page 49614, in the first column, the **EFFECTIVE DATE** should read "November 30, 1990".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISION

Chicago Board of Trade Proposed Option Contracts

Correction

In notice document 90-27957 beginning on page 49560 in the issue of Thursday, November 29, 1990, in the third column, under **DATES**, in the second line, the date should read "December 31, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[Federal Acquisition Circular 90-2]

RIN 9000-AD01

Federal Acquisition Regulation (FAR); Procurement Integrity

Correction

In rule document 90-28113 beginning on page 49852 in the issue of Friday, November 30, 1990, make the following correction:

On page 49852, in the first colum, the **EFFECTIVE DATE** should read "November 30, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 89F-0481]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 90-26531 beginning on page 47054 in the issue of Friday, November 9, 1990, make the following corrections:

1. On page 47054, in the third column, in the first complete paragraph, in the first and second lines, the section reference should read "§ 171.1(h) (21 CFR 171.1(h))".

2. On the same page and column, in the second complete paragraph, in the third line, "section" should read "action".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312, 314, and 320

[Docket No. 89N-0367]

Retention of Bioavailability and Bioequivalence Testing Samples

Correction

In rule document 90-26484 beginning on page 47034 in the issue of Thursday, November 8, 1990, make the following corrections:

1. On page 47034, in the first column, in the part heading " 414" should read " 314".

2. On page 47035, in the 2nd column, in the 14th line from the bottom, "51216" should read "51219".

§ 320.32 [Corrected]

3. On page 47038, in § 320.32(c), in the third line "identify" should read "identity".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 85N-0053]

Additional Standards for Viral Vaccines; Measles Virus Vaccine Live, Mumps Virus Vaccine Live, Rubella Virus Vaccine Live, and Measles Live and Smallpox Vaccine

Correction

In rule document 90-26996 beginning on page 47873 in the issue of Friday, November 16, 1990, make the following correction:

On page 47874, in the first column, in the eighth line from the bottom, the second "and" should read "through".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

RIN 1018-AA50

Refuge-Specific Fishing Regulations

Correction

In proposed rule document 90-26703 beginning on page 47350 in the issue of Tuesday, November 13, 1990, make the following correction:

§ 33.22 [Corrected]

On page 47352, in the third column, in § 33.22(c), the second paragraph designated "(c)" should read "(1)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[E-930-1-4212-13; MTM 76693]

Conveyance and Order Providing for Opening of Public Land in Beaverhead County; MT

Correction

In notice document 90-25841 appearing on page 46106, in the issue of Thursday, November 1, 1990, make the following correction:

1. In the first column, under **Principal Meridian, Montana**, (the first time it appears) the first line should read "T.3S., R. 9W.,".

2. On the same page, in the 2nd column, in the 13th line, under item 5,"simultaneously" was misspelled..

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-030-00-4212-13, I-25446]

Realty Action; Private Exchange Involving Public Land in Jefferson County, ID

Correction

In notice document 90-27537 beginning on page 48916 in the issue of Friday, November 23, 1990, make the following corrections:

1. On page 48916, in the third column, under "**Boise Meridian, Idaho**", the second line should read "Sec. 21, W½SW¼"

2. On page 48917, in the first column, under "**Boise Meridian, Idaho**", the fourth line should read, "Sec. 7, lots 7 & 8 (portions), SW¼NE¼".

BILLING CODE 1505-01-D

federal register

Wednesday
December 5, 1990

Part II

Environmental Protection Agency

40 CFR Parts 177, 178, 179 and 180

Procedures To Establish, Modify, or Revoke Food Additive Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 177, 178, 179 and 180

[OPP-260051A; FRL 3688-4]

RIN 2070-AB78

Procedures To Establish, Modify, or Revoke Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing rules to set forth procedures for establishing, modifying, or revoking food additive regulations concerning pesticide residues in or on processed food under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348. EPA also is issuing procedural rules governing the filing of objections, requests for hearings, and the holding of hearings under FFDCA sections 408 and 409. Accordingly, EPA is replacing the current procedural rules concerning objections and hearings under FFDCA section 408 with the procedural rules issued herein.

EFFECTIVE DATE: The rules are effective January 5, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Rosalind L. Gross, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, ((703) 557-7700).

SUPPLEMENTARY INFORMATION: EPA proposed issuance of these rules in the October 19, 1988 **Federal Register** (53 FR 41126). Discussed below are the comments received, the agency's response to the comments and some changes made in the rules at the initiative of EPA.

I. Comments on Proposed Rule and Agency Responses to Comments.

The Agency received only three comments on the October 19 proposal. The commenters were the National Agricultural Chemicals Association (NACA), the Agricultural Division of Ciba-Geigy Corporation (Ciba-Geigy), and the National Food Processors Association (NFPA). No one requested an extension of the comment period. The substance of the comments, and the Agency's responses to the comments, are set forth in this unit.

A. Definition of Terms "Pesticide Chemical" and "Pesticide Residue"

NACA and Ciba-Geigy commented on the proposed definitions of the terms "pesticide chemical" and "pesticide residue." In § 177.3, "pesticide chemical" is defined as any substance which is a pesticide under FIFRA including active and inert ingredients as well as impurities. A "pesticide residue" is defined as the residue of a pesticide chemical or any metabolite or degradation product of a pesticide chemical. These terms are central to the applicability of 40 CFR part 177 (and, by implication, of part 180). It was the Agency's intention in proposing those definitions to make it clear that any residue that is found to occur in any processed food as the result of the use at any time of any "pesticide" in the production, transportation, or storage of any raw agricultural commodity or processed food is to be regulated by EPA under FFDCA section 408 or 409 (or both, when appropriate), rather than by FDA under section 409.

NACA and Ciba-Geigy both argued that adoption of the proposed § 177.3 definition of the term "pesticide chemical," with its express statement that it included "inert ingredients" of pesticides (both deliberately-added inert ingredients and impurities), would go beyond the FFDCA section 201(q) definition of the term.

EPA disagrees with these comments. The statutory provision in question states:

> The term "pesticide chemical" means any substance which alone, in chemical combination[,] or in formulation with one or more other substances, is a "pesticide" within the meaning of (FIFRA) ***.

That definition uniformly has been read by EPA (and by FDA before EPA was formed) as including any substance which is an ingredient of any pesticide. It thus has been read as including not only active ingredients but also individual inert ingredients of pesticides. This is illustrated by the many hundreds of regulations issued under FFDCA section 408 establishing exemptions for deliberately-added inert ingredients (see 40 CFR 180.1001 *et seq.*), most of which were issued in response to petitions seeking such exemptions filed by pesticide registrants or applicants for registration. Some such regulations have expressly imposed limits on impurities (see, e.g., 40 CFR 180.1025(d), 180.1027, 180.1051, and 180.1056). Thus, stating that deliberately-added inert ingredients of pesticides, and impurities of pesticides, are subject to regulation under part 177 was intended simply to reflect existing policy with respect to the treatment of such substances.

The presence in a pesticide of an impurity of an active ingredient results from less than complete reaction of the manufacturing starting materials, from undesired side reactions of such materials, or from the carryover of undesired impurities present in such materials. Impurities typically are present in the pesticide at very low levels compared to the level of the active ingredient. It is not and has not been the policy of EPA under FFDCA sections 408 and 409 to require the establishment of a separate tolerance or exemption for substances that occur as impurities of pesticides, unless in a particular case the toxicity of the impurity and its potential level in a food warrants a separate tolerance. Rather, the tolerance ordinarily is written in terms of "residues of" a pesticide chemical. The impurities of the pesticide chemical, as well as the pesticide chemical itself, are treated as being "residues of" the pesticide chemical and thus covered by the tolerance, unless the tolerance otherwise states. The extent to which the Agency would require toxicity testing, residue method development, or residue analytical data with respect to an impurity would depend on the concern, if any, the Agency had about the potential risk of the impurity.

Ciba-Geigy and NACA also argued that the definition proposed for the term "pesticide residue" was overly broad. The definition proposed in § 177.3 stated:

> The term "pesticide residue" means a residue of a pesticide chemical or of any metabolite or degradation product of a pesticide chemical.

Ciba-Geigy commented:

> This is a very broad definition and would include any form of a metabolite or degradate, even in the case where a complete breakdown of the chemical had taken place into naturally occurring products. In order for pesticide residues to have any relevance, their toxicological significance should be taken into consideration. What might be more appropriate to say is that a pesticide residue is a residue of a pesticide chemical or any of its metabolites or degradates that have toxicological significance.

NACA expressed a similar concern:

> Dramatically expanding by definition the universe of chemical substances potentially subject to the food additive regulations may result in otherwise wholesome food products being rendered "adulterated" not because of a health and safety finding, but simply because of a previously undetected trace amount that would be a "pesticide residue." As the techniques of analytical chemistry have advanced over the years, scientists

have been able to detect ever smaller trace amounts of chemicals. EPA, FDA, and other agencies charged with the responsibility for protecting the health and safety of the public have attempted to apply a commonsense approach when called upon to address these chemical residues in the context of existing regulatory programs.

Accordingly, we believe EPA should continue to use the statutory definition of "pesticide chemical" found in the FFDCA, and should define "pesticide residue" as "a residue of a pesticide chemical." To the extent inerts, impurities, or metabolites need to be addressed, EPA should continue to do so on a case-by-case basis.

On close examination, the concern expressed by the commenters relates to the manner in which EPA will regulate metabolites and degradation products, rather than their legal categorization under the FFDCA. The commenters admit that EPA can regulate certain metabolites and impurities under the FFDCA. However, their proposed distinction between metabolites which are of toxicological significance and other metabolites has no statutory basis. In the end, therefore, the commenters are advocating that EPA implement its authority with an eye toward toxicological risk. EPA agrees with such an approach. As with impurities (discussed earlier in this section of the preamble), the extent to which toxicological testing and residue characterization and measurement is required for metabolites and other degradation products, and the need or lack of need for a separate tolerance for a particular metabolite or degradation product, is determined by EPA on a case-by-case basis taking into account the degree of potential risk. This will not change as a result of a clear statement in the regulation regarding the legal authority for any requirements that may be directed at such residues.

Moreover, failing to include impurities and metabolites within the definitions of pesticide chemical and pesticide residue would not result in excluding those substances from the coverage of the FFDCA since they still would fall under the definition of "food additive" and thus may be subject to regulation by the Food and Drug Administration (FDA). The Agency believes that any residue on food resulting from the use of a pesticide is best regulated by a single agency. The proposed definition was intended to memorialize the fact that EPA and FDA consistently have treated such residues as within the scope of EPA's responsibilities, and that EPA for many years has regarded questions about impurities, and about metabolites and other degradation products, as appropriate for resolution by EPA as an integral part of its consideration of tolerances and food additive regulations for pesticide chemicals. For all of these reasons, the Agency declines to make any changes in response to the comments.

While the definition of pesticide chemical includes impurities in pesticides, impurities are considered constituents of pesticide chemicals. When a substance is a constituent, it is subject to regulation by EPA under the constituents policy, discussed by EPA in the regulation of dicamba, 48 FR 50528, November 2, 1983, and the statement of Policy on the Regulation of Pesticides in Food, 53 FR 41104, October 19, 1988. These policies are based on the FDA policy statements in 47 FR 14138 (April 2, 1982) and 47 FR 14464 (April 2, 1982) and the decision in *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

EPA intends to revise the definition of pesticide chemical in 40 CFR part 180, to be consistent with this one at the time the substantive portion of part 180 is revised. As noted in the proposal for this rule, EPA plans to revise part 180 to set forth criteria, interpretations, and categorizations it will use in implementing sections 408 and 409.

B. Reference to the Statutory "Clock" or Schedule for Action

NFPA, NACA, and Ciba-Geigy all argued that the regulation should contain a reference to the provision in FFDCA section 409 that directs the Administrator to act on a petition within 90 days (extendable to 180 days) after it is filed. One of the commenters urged retention of the "statutory clock" provisions of the present rule. Two of the commenters acknowledged that action within the statutory time period may not be feasible. For instance, Ciba-Geigy stated:

> In reality the Agency may find it difficult to complete its review in the given timeframe because of a lack of resources, etc.

Likewise, NFPA said that it:

> Recognizes that EPA has a difficult and time consuming task in reviewing pesticide tolerances and food additive petitions, and that full review of certain petitions may take longer than 180 days[.]

However, all three commenters argued that the regulation should include a reference to the provision. NFPA said:

> Even if a 180 day review period is unrealistic under some circumstances, it is a worthy goal for which the Agency should strive.

NACA said that:

> While EPA may want a different statutory provision or think that the law is unworkable, the statute is clear. Congress expects EPA to act on petitions quickly and the public has a statutory right to quick and responsible action. Accordingly, the rule should include the "statutory clock" and a reasonable approach to the deadline's demand on EPA's resources.

and Ciba-Geigy argued that:

> This provision in the law should not be ignored. If the Agency cannot meet its assigned responsibilities, then either the law must be changed to reflect another timeframe or a more effective way to handle petition requests must be devised***. Part 177 should address the statutory timeframe and the Agency's proposed method of dealing with petitions not reviewed within the 180 days.

EPA does not believe it is necessary to refer to the statutory time frames in the regulations. The time frames are statutory and repeating the timeframes in the regulation would not add to the obligation to abide by them. The Agency endeavors to meet the statutory time frames and will continue to use its best efforts to do so. EPA still believes, though, that in most cases it is unrealistic to expect that the Agency will be able to complete review of, and reach decision on, the merits of a petition under FFDCA section 409(b) in 90 or 180 days from the date of the initial submission. EPA considered retaining the intricate array of provisions similar to those in 40 CFR 180.4, 180.7(c), (d), (e), (f), and (g), 180.8, 180.9, 180.10(b), and 180.12(e) that would specify when the "clock" is started and when it may be restarted, for purposes of determining compliance with the 90-day action directive. However, EPA has concluded that this would be counterproductive. Resources spent on preparing and mailing letters to petitioners stating reasons why the clock has been reset reduce the time available for work on the petitions.

Virtually all failures to meet the statutory time frames are attributable to (1) inadequacies in the petition or the supporting data and information, (2) complexities of the issues presented by the petition, (3) competition for resources needed to review the petition presented by other pending petitions under section 408 and 409 and considerations of fairness in allocating available resources to their review, or (4) some combination of the first three factors. Thus, the question usually will not be whether EPA could make a timely response on the merits to a complete petition if EPA could devote its resources to that action alone. Rather the questions ordinarily will be whether the petition is adequately supported; whether the answer to the petition is obvious or difficult to perceive, and whether in fairness, other, earlier-filed petitions ought to be dealt with first.

Including references to the "clock" would not help EPA deal with these matters.

Moreover, the statutory timeframes were enacted in the mid-1950's when the amount of data needed to support a petition was considerably less. Today, there is a need for data to address pesticide food safety issues not even contemplated at the time of enactment of this provision. The responsibility to review the data adequately takes more time than that originally envisioned.

However, as Ciba-Geigy requested, EPA has added to the regulation a description of how it will deal with petitions not reviewed within the statutory period. The final rule provides in 40 CFR 177.99 that a petitioner may demand action on a petition if EPA has not acted on it within the statutory time period. As noted in the preamble to the proposed rule, the likely response to such a demand would be a denial of the petition on the ground that EPA has been unable to conclude that the criteria of the statute have been met. Such a denial could be made the subject of objections filed under part 178 and eventually of a petition for judicial review. These steps will not, however, lead to approval of the petition if the petition is not adequately supported.

C. Coordination of Data Requirements for Petitions Under FFDCA Sections 408 and 409

Ciba-Geigy stated that EPA should attempt to integrate its data requirements under 40 CFR parts 177 and 180 to avoid the possibility that petitioners would have to present slightly different information in order to deal with closely similar issues under the two parts. EPA agrees that the data requirements should be coordinated, and that submissions made under one part may be cited, rather than furnished again, in submissions made under the other part. As noted in the preamble to the proposed rule, the integration of the two sets of rules is being undertaken by the Agency as a second stage of this rulemaking project.

D. Requirement for Petition to Include Likely Opposing Arguments

NACA commented that the proposed § 177.102 requirement that a petition for the establishment of a regulation include "any information or argument reasonably likely to be advanced in opposition to approval of the petition" would unfairly compel a petitioner to attempt to frame the arguments of those who might oppose a petition. According to the comment "[a]s long as the data and petitions are complete," it is up to EPA and others to assess whether there is opposing information and argument.

After consideration of the matter, EPA agrees with the comment that the regulation should be directed at ensuring adequate disclosure of the information needed to rule on a petition and not at requiring a petitioner to formulate arguments that an opponent might make. The intent of the proposal was to require a petitioner to provide a balanced discussion of the merits of the petition including well-known arguments that would militate against approval. A discussion of these arguments, and the petitioner's response to them, can make the presentation in the petition more effective. The Administrator urges petitioners to include such a discussion, but does not regard it as essential. The regulation has been revised to delete the reference to an opponent's arguments.

EPA has also revised the final rule to identify better the information that a petitioner should disclose in the petition. The proposal would have required a petitioner to state why a petition is appropriate in light of information that an opponent might have. Instead of having a petitioner anticipate what information an opponent might have, the petitioner should disclose any information, in addition to that specifically listed in the regulation, that is known to the petitioner and relevant to the issues raised by the petition, even if it is unfavorable to the petition. Although the disclosure of unfavorable information may be required by the existing requirement that the petitioner submit full reports of investigations on toxicity, this addition will clarify the scope of the information that should be provided. A similar requirement also exists under the procedural regulations of FDA governing citizen petitions in 21 CFR 10.3.

E. Submitters' Rights in Data (Confidentiality and Compensation)

NACA pointed out that the proposed rule did not specify what connection there is between submission of data under part 177 and the protection afforded to that data under FIFRA section 3(c)(1)(D) (which concerns citation by registration applicants of previously-submitted data and the compensation rights of original data submitters) or FIFRA section 10 (which concerns the extent that data submitted under FIFRA may be disclosed to the public).

It is usually (but not always) the case that data submitted in support of a part 177 petition also are submitted in support of the issuance, amendment, or maintenance of a FIFRA registration; to the extent that such data are so submitted under FIFRA, the fact that the data also are submitted under FFDCA section 409 (or section 408, for that matter) will not alter any rights of the submitter under FIFRA. Accordingly, information and data submitted both under part 177 and FIFRA will be confidential to the extent provided in FIFRA section 10. In addition, the use of that data for registration purposes under FIFRA will be governed by FIFRA section 3. For example, data submitted simultaneously to support both a registration application and a petition for a section 409 tolerance would be available for disclosure to the public, subject to claims of confidentiality under FIFRA section 10(d)(1)(A), (B), and (C), once the pesticide is registered under FIFRA. The provisions of FIFRA section 10(g) would apply to disclosure of the data, and the use of that data for registration purposes under FIFRA would be governed by FIFRA section 3.

However, some data may be submitted to EPA under part 177 which is not also submitted under FIFRA. This would be likely to occur when a petition is submitted by a person who is not a registrant or applicant for registration under FIFRA, particularly in situations where the tolerance would be for a pesticide residue on imported food only (i.e. the pesticide is not registered for use on that food in the U.S.). In those situations FIFRA sections 3 and 10 would not apply to the data. FFDCA does not provide for data compensation for use of data under FFDCA. In addition, section 409 does not provide any special provisions for the confidentiality of data and information submitted under section 409. Accordingly, for information submitted only under part 177 EPA's general rules on confidentiality of information in 40 CFR part 2 and FFDCA section 301(j) would apply.

In the final rule EPA has added § 177.81(f) which, in accordance with 40 CFR part 2, allows petitioners to assert confidentiality claims for data and information submitted in petitions, amendments to petitions, and supplements to petitions. It prescribes the manner for asserting confidentiality claims. It also makes clear that failure to assert a confidentiality claim for data or information in a petition, amendment, or supplement at the time of submission means that EPA can make the data or information available to the public without further notice to the petitioner.

F. Service of Orders on Petitioner

Ciba-Geigy commented that an order denying a petition or establishing a food

additive regulation in response to a petition should be served on the petitioner, as well as being published in the **Federal Register**, before the 30-day period for filing objections begins to run. EPA declines to accept this suggestion. The proposed approach could not change the statutory provision that the time for filing objections runs from the date of the **Federal Register** publication; EPA regards this as a jurisdictional provision. From a logistical standpoint, the commenter's approach could be adopted without running afoul of the statutory 30-day objection period by furnishing a copy to the petitioner (and ensuring that it was received) before **Federal Register** publication occurred. However, this would require additional use of Agency resources. Moreover, adopting the suggestion could lead to a perception that EPA favored petitioners over others who might also be interested in filing objections to the Agency action. Finally, EPA is not aware of any problems resulting from the current practice under sections 408 and 409, which does not include the required furnishing of such an order.

G. Persons Who are "Adversely Affected" by EPA Orders Issued Under Part 177 or Part 180

NACA argued that it was improper to state, as proposed § 178.20 did, that "any person" could object to a tolerance or food additive regulation (or to the denial of a petition for a food additive) and request a hearing on an objection. NACA correctly noted that FFDCA sections 408 and 409 limit the right to a hearing to persons who are "adversely affected."

EPA has modified § 178.20 to reflect the statutory language in the FFDCA. EPA disagrees with the comment to the extent that it suggests that only certain narrow categories of persons may be "adversely affected." In EPA's view the term is broad. For example, an applicant for a pesticide registration, or an organization of agricultural producers, might be adversely affected either because it claimed that a tolerance was set too low to legalize the residue levels that would result from use of a pesticide, or because it argued that the tolerance was being set at a level that is higher than necessary and would cause public concern. A consumer organization might be adversely affected because it claimed that a tolerance was being set too high to protect its members' health, or at a level that was higher than necessary to allow effective use of a pesticide.

H. "Parties" versus "Participants" in Hearings

NACA also commented that EPA should distinguish, as does FDA in its procedural rules, between "parties" who have a right to cross-examine witnesses and "participants" who may cross-examine witnesses only if allowed to do so by an administrative law judge on a showing of good cause. NACA argued that intervenors should not be viewed as having the same legal rights as "adversely affected" parties.

The comment is correct that FDA does distinguish between the right of parties and of "nonparty participants" for purposes of cross-examination and certain other matters under 21 CFR 12.89. EPA is not persuaded by the comment to accept this approach. As noted in the preamble to the proposed rule EPA has not experienced difficulties with cross-examination by intervenors of the sort that FDA had found problematic at the time the FDA rules were proposed.

The question of what rights are afforded to those who participate in a hearing once a hearing has been granted is a separate question from whether a hearing is available by right on a certain matter. The party who requests a hearing and obtains one by right will have a key role in shaping the issues for the hearing. In that sense the rights of the party who requests a hearing are different from those of others who participate.

I. Discovery and Submission of Data in Hearings

NACA commented that there was an unexplainable difference in the treatment afforded EPA and other parties under proposed § 179.83 with respect to the routine, required production of files related to issues in a hearing. NACA noted that under the proposal EPA would be permitted to exclude internal memoranda reflecting the deliberative process, attorney work product, and documents prepared for use in connection with the hearing, but that no similar exclusion right was provided for other parties. EPA agrees with the comment. The final rule is being modified to provide the same rights for non-EPA parties with respect to attorney work product documents and documents prepared for use in connection with the hearing. On the other hand, deliberative process material relates to a specific exception to the Freedom of Information Act, 5 U.S.C. 552, and that exception is not pertinent to parties other than the Agency.

Ciba-Geigy was the only commenter on the general subject of the scope of discovery and sanctions for failure to comply with discovery requirements, saying simply that it agreed with the rule as proposed and that it set forth provisions that are "adequate and standard regarding this type of proceeding." However, Ciba-Geigy argued that inadvertent failure to comply with disclosure should not be the basis for exclusion of a party from a hearing, although it acknowledged that if a party was found to have willfully withheld information, it would be proper to make inferences about the information adverse to the party's position. In response, EPA notes that an inadvertent failure to comply with a disclosure requirement, corrected upon discovery of the failure, would not form the basis for sanctions of any sort against a party; the rule, in both its proposed and final form, allows only "adverse inferences and findings" as a remedy for a party's failure to comply "substantially and in good faith" with the requirement. A good faith, inadvertent failure to comply thus would not furnish a basis for excluding a party from a proceeding. No commenter urged that exclusion be adopted as an additional remedy, and the Agency has decided not to adopt that remedy.

J. Form of Direct Testimony: Written versus Oral

Ciba-Geigy argued that the regulation should permit a party to present direct testimony either in written form or orally, and should not (as was proposed) limit the presentation of oral direct testimony to cases in which the memory or demeanor of the witness is of importance. However, the commenter furnished no reasons to support this argument. EPA has determined not to make any changes.

II. Changes made at EPA'S Initiative

In reviewing the proposed regulation, EPA has decided to make certain changes on its own initiative. Several changes reflect the benefit of further experience since the time of the proposal with a proceeding subject to formal hearings under FIFRA. The changes and reasons for them are discussed below.

The definition of the term "pesticide chemical" was amended to clarify that the term "pesticide residue", which is defined as a residue of a pesticide chemical, covers both residues from pesticides used in the production, storage, and transportation of raw agricultural commodities and residues from pesticides used in the production,

storage, and transportation of processed foods. The definition of the term "tolerance" has been amended to apply to the amount of pesticide residues allowed on raw agricultural commodities as well as processed foods. As proposed, the definition only applied to processed foods. However, review of part 177 revealed that the term tolerance was used in connection both with food additive regulations for processed food and tolerances for raw agricultural commodities. Amending this definition required no changes in the text of the rule, but two headings (§§ 177.102 and 177.105) have been revised to reflect the meaning of the text of those sections.

Section 177.35 has been amended to clarify that for food additive regulations, the Administrator may establish an effective date on other than the "date of publication." A similar change has been made in § 180.7(g) and § 180.29(g).

Section 178.30(d) concerns the Administrator's rulings on hearing requests for related objections. This section has been amended to provide that the Administrator may rule on the objections at a different time than that ordinarily contemplated under the rule if unusual circumstances provide good cause for acting differently. Paragraph (d) has also been amended to clarify that when related objections are grouped for purposes of a hearing, the granting of the hearing request on a related objection means that all of the related objections will be resolved in conjunction with the hearing, rather than there being a deferral until the end of the hearing of any ruling on these other objections. Judicial review is appropriately delayed until the end of the hearing on any of these related matters for which a hearing has been granted. FDA has taken a similar position under its procedural rules (See 40 FR 40701, 1975).

Section 178.32 relates to rulings on requests for hearings. A change similar to that discussed above has been made in paragraph (a) of the rule to give the Administrator flexibility in the timing of rulings on requests for hearings. Although the Administrator continues to expect to rule on these requests at one time, there may be unforseen circumstances that provide good cause for acting differently. As revised, paragraph (b)(2) refers to uncontested "claims or facts" rather than uncontested "evidence" since the determination is made before a hearing and the introduction of any evidence. Paragraph (b)(4) has been amended to delete the reference to "preliminary" in connection with rulings. This change is intended to eliminate any confusion about the scope of the rulings that can be made when necessary to decide on requests for hearings.

Paragraph (b)(4) has also been redesignated as paragraph (c) because paragraph (b) is a list of findings necessary to the granting of an evidentiary hearing.

Section 178.35 has been revised to provide that opportunity for objections and requests for hearings will be provided on modified or revoked regulations to the extent required by law. Section 178.70 identifies the administrative record for judicial review. Editorial changes have been made in paragraph (a)(4)(i) and (a)(5) to refer consistently to regulations without describing them as "final regulations". Another change has been made in paragraph (a)(6) to refer specifically to the Administrator's response to comments and data relied on by the Administrator, since this material is appropriately included in the record when the Administrator invites comments on a Notice of Filing or proposes a rule for comment. Corresponding changes have been made in § 179.130 which identifies the administrative record for review after a hearing.

Section 179.20 has been revised to indicate that the place for a hearing will be designated in the Notice of Hearing. A conforming amendment has been made to § 179.70(a).

A change has been made in § 179.24(c)(2) to provide that cross-examination will be available, if an ex parte communication has occurred, to the extent necessary to determine the substance of the communication rather than "when possible." This change provides a standard to guide the availability of cross-examination for ex parte communications.

A change has been made in § 179.70 to refer to the Administrative Procedure Act rather than the ABA Canons of Judicial Ethics for general guidance in conducting these administrative proceedings.

Section 179.70, paragraph (b), has been revised to clarify the meaning of the presiding officer's role in establishing "procedures for use in developing evidentiary facts". The presiding officer is to establish an orderly manner for developing evidentiary facts at preliminary conferences and for making evidentiary rulings. Paragraph (m) which relates to the presiding officer's authority to modify these rules has been deleted as inconsistent with existing Agency rules for administrative hearings. Paragraph (o) has been changed to permit the presiding officer to take other action when it is not in conflict with law or these rules.

Section 179.80(a) has been revised to provide for the filing of copies in triplicate with the hearing clerk, the usual EPA requirement.

A change has also been made in § 179.80(e) to make it clear that a copy of the motion should be served upon other parties when a motion for an extension is made.

Section 179.81 has been revised to provide that the agency will make confidentiality determinations in accordance with part 2. The presiding officer will make certain determinations relating to the use of confidential documents only to the extent provided in § 2.301(g)(3) and (4).

Section 179.83 has been revised to clarify that the determination of what is a "principal file" for purposes of the disclosure of documents should be made with respect to each of the issues relevant in a hearing. Thus, if one of the issues at a hearing concerns a matter for which documents are ordinarily filed in a separate divisional file rather than in an organization's main files, the separate divisional file is the principal file with respect to the particular issue and the relevant documents in that file are to be disclosed. This change reflects the meaning of "principal files" indicated in the preamble, that the term is not an arbitrary location limitation and that a good faith effort is required to locate and produce relevant information without an unduly burdensome search for information of marginal relevance.

Section 179.90 has been changed to allow a party to submit a brief with a motion for summary judgment, or in response to such a motion.

An editorial change has been made in § 179.91 to refer to the burden of persuasion "on that issue" rather than "as to those contentions."

Section 179.93 has been modified to state that the presiding officer is to limit all oral testimony, including direct as well as cross, that is immaterial as well as irrelevant or unduly repetitious. This section has been revised to limit only unduly repetitious testimony, the test suggested in the Administrative Procedure Act (APA), 5 U.S.C. 556. A similar change has been made in § 179.95.

Section 179.95, which deals with admission or exclusion of evidence has been revised to delete the provision that, in making rulings, the presiding officer shall be guided by the principles of the Federal Rules of Evidence (FRE). The FRE governs courtroom trials where juries are present. The Administrator

believes the reference to the FRE is confusing as to its effect and undesirable in suggesting courtroom procedures as a model for administrative hearings. A more useful guide in making evidentiary rulings for administrative hearings is the APA. That law does not make the FRE applicable in agency hearings and allows any evidence to be received, but the agencies as a matter of policy are to provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence (5 U.S.C. 556). These rules provide for exclusion of such evidence. In particular, the Agency believes it is inappropriate to exclude evidence merely because it is hearsay. In a recent administrative hearing under FIFRA, the Chief Judicial Officer found that the general admissibility of hearsay evidence is more consistent with the agency's present rules for cancellation proceedings. (In re Protexall Products, Inc., FIFRA Docket Nos. 625, at pages 61–62, note 76). Under this approach, issues relating to the reliability of evidence, such as its hearsay quality, go to the weight to be given to the evidence. The Administrator believes that the standard used in the APA and under the existing cancellation regulations is more appropriate and less confusing than that suggested in the proposal and has accordingly deleted the reference to guidance by the principles of the FRE from the final rule. The section has also been amended to clarify that evidence may be excluded to enforce other requirements in part 179 when those specific requirements relate to the admissibility of evidence, such as § 179.83(c).

Section 179.105 has been changed with respect to the support needed for findings of fact to incorporate the standard in the APA, 5 U.S.C. 556, which refers to reliable, probative and substantial evidence. In addition, the section as revised calls upon the presiding officer to have citations to the record which are adequate. This change is to make clear that the citations should be to the important places in the record providing the relevant support in light of the whole record. There is no need for the presiding officer to provide an exhaustive inventory of all places in the record dealing with the matter.

Section 180.7 has been revised editorially to describe better the procedure when a proposed regulation has been published for comment.

Sections 180.29 and 180.32 have been amended to indicate that the Administrator may provide additional procedures, in his discretion, when reviewing requests from interested persons to propose or revise rules. These procedures can include publishing a **Federal Register** notice inviting views on the petition, or other procedures. When the Administrator provides additional procedures, the decision on the petition is not final until the procedures are complete and a decision is reached on whether to deny the request. The section as revised also specifies the administrative record for rulings on requests.

Section 180.30 has been revised to refer to § 180.32 as well as § 180.29 since both sections deal with requests that the Agency propose rules.

III. Basis for Adoption of Final Rules

The final rules promulgated by this document are, except insofar as discussed in this document, based on the reasons set forth in the preamble to the proposed rule and the documents cited in that preamble. The reasons for the changes from the proposed rule are explained in the preceding section. These changes to the proposal are minor or are of a procedural character and in most cases, are simply clarifications of the intent of the proposed rule. Some changes were in response to comments. Some reflect a reconsideration of proposed procedural limits in light of further experience. EPA has determined that such changes to a procedural rule do not warrant or require reproposal. Although EPA sought public comment when it first proposed these procedural rules, public comment was not required by the Administrative Procedures Act or the FFDCA. EPA does not believe that public comment is required on these minor changes to the final rule either. Moreover, if the regulations were to be adopted as proposed, while the changes made in this document were reproposed, the result would be confusing, since many of the changes represent clarifications of the meaning of the proposal. The implementation of the regulations would also be fragmented. Therefore, EPA finds it is appropriate to make the rules final at this time.

IV. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, must submit a Regulatory Impact Analysis supporting its findings to the Office of Management and Budget (OMB) for review. EPA has determined that this rule is not "major" as defined by E.O. 12291.

As described earlier in this preamble, this rule is largely procedural in nature and draws heavily from other procedural regulations in closely related areas that members of the regulated community can be expected to be familiar with. By providing procedures in areas where none now exist, this final rule will lessen the likelihood of costs to the regulated community caused by uncertainty and the potential for delays in handling petitions and objections.

To the extent that the rule contains substantive provisions, they largely repeat statutory requirements or codify requirements that have been in effect for many years. The one exception is the requirement that a petitioner under section 409 state why the petition should be approved and submit a releasable summary of the petition. A summary of the petition will open the petition process to the public by increasing their understanding of the issues involved and providing the public an opportunity to comment on these issues.

This final rule has been reviewed by OMB under section 3 of Executive Order 12291.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, the Administrator may certify that a rule will not, if promulgated have a signficant impact on a substantial number of small entities and therefore, does not require a regulatory flexibility analysis.

This rule has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act, and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this rule is intended to formalize procedures and criteria specified in the statute itself, it is anticipated that little or no economic impact will occur on any small entity.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0024.

Public reporting burden for this collection of information is estimated to average 1522.6 hours per response, (reduce the burden on respondents by 11,055 hours, or approximately 18 hours per response,) including time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 177, 178, 179, and 180

Administrative practice and procedure, Agricultural commodities, Processed foods, Pesticides and pests, Hearings, Reporting and recordkeeping requirements.

Dated: November 26, 1990.

William K. Reilly,

Administrator.

For the reasons stated in the preamble, chapter I of title 40, Code of Federal Regulations, is amended as follows:

1. By adding a new part 177, to read as follows:

PART 177—ISSUANCE OF FOOD ADDITIVE REGULATIONS

Subpart A—General Provisions

Sec.
177.1 Scope and applicability.
177.3 Definitions.

Subparts B—D [Reserved]

Subpart E—Procedures for Filing Petitions

177.81 Petition for establishment, modification, or revocation of a food additive regulation.
177.84 Deficient or incomplete petitions.
177.86 Acceptance for review.
177.88 Publication of notice.
177.92 Amendments or supplements to petitions.
177.98 Withdrawal of petitions.
177.99 Demand for action.

Subpart F—Submission of Scientific and Technical Information

177.102 Data and information required to support petition to establish a food additive regulation, to increase a tolerance, or to remove a condition on use.
177.105 Data and information required to support petition to revoke a food additive regulation, to decrease a tolerance, or to add a condition on use.
177.110 Additional data requirements; waiver of requirements.
177.116 Sample of food additive.

Subpart G—Administrative Actions

177.125 Action after review.
177.130 Issuance of proposed rule on Administrator's initiative or in response to petition, and final action on proposal.
177.135 Effective date of regulation.

Subpart H—Judicial Review

177.140 Judicial review.

Authority: 21 U.S.C. 348, 371(a) 331(j); Reorg. Plan No. 3 of 1970.

Subpart A—General Provisions

§ 177.1 Scope and applicability.

(a) This part establishes procedures for the establishment, modification, or revocation by the Administrator of food additive regulations under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348, for food additives which may result in pesticide residues in or on processed food or otherwise affect the characteristics of such food.

(b) Part 178 of this chapter contains procedures for filing objections and requests for hearings under FFDCA section 409(f) on food additive regulations or petition denials issued under this part. Part 179 of this chapter contains rules governing formal evidentiary hearings under FFDCA section 409(f).

(c) Part 180 of this chapter contains regulations establishing tolerances, or exemptions from the necessity for a tolerance, for pesticide residues on raw agricultural commodities under FFDCA section 408. If the use of a pesticide chemical in the production, storage, or transportation of a raw agricultural commodity (RAC) in conformity with such a tolerance or exemption results in the presence of a pesticide residue in or on processed food made from the RAC, FFDCA section 402(a)(2)(C) provides that such pesticide residue shall not be deemed unsafe for the purposes of FFDCA section 409 (despite the absence of a food additive regulation regarding such residue on the processed food) if the residue in or on the RAC has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the RAC. However, a food additive regulation would be required if the level of the pesticide residue in the processed food when ready to eat exceeded the level permitted in the "parent" RAC by the tolerance established under FFDCA section 408. In addition, if a pesticide residue in or on a processed food results from the application of a pesticide during or after processing, the food would be unsafe within the meaning of FFDCA section 409 unless a food additive regulation permitted that residue in or on the processed food.

§ 177.3 Definitions.

For the purposes of this part:

Administrator means the Administrator of the Agency, or an officer or employee of the Agency to whom the Administrator has delegated the authority to perform functions under this part.

Agency means the United States Environmental Protection Agency.

FFDCA means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136–136y.

Food additive means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food (including any such substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food), except that such term does not include:

(1) A pesticide chemical in or on a raw agricultural commodity.

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity.

(3) A color additive.

(4) Any substance used in accordance with a sanction or approval granted prior to September 6, 1958, pursuant to the FFDCA, the Poultry Products Inspection Act, or the Federal Meat Inspection Act.

(5) A new animal drug.

(6) A substance that is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

Food additive regulation means a regulation issued pursuant to FFDCA section 409 that states the conditions under which a food additive may be safely used. A food additive regulation under this part ordinarily establishes a tolerance for pesticide residues in or on a particular processed food or a group of such foods. It may also specify:

(1) The particular food or classes of food in or on which a food additive may be used.

(2) The maximum quantity of the food additive which may be used in or on such food.

(3 The manner in which the food additive may be added to or used in or on such food.

(4) Directions or other labeling or packaging requirements for the food additive.

Pesticide chemical means any substance which alone, or in chemical combination with or in formulation with one or more other substances, is a "pesticide" within the meaning of FIFRA and which is used in the production, storage, or transportation of any raw agricultural commodity or processed food. The term includes any substance that is an active ingredient, intentionally-added inert ingredient, or impurity of such a "pesticide."

Pesticide residue means a residue of a pesticide chemical or of any metabolite or degradation product of a pesticide chemical.

Tolerance means:

(1) The amount of a pesticide residue that legally may be present in or on a raw agricultural commodity under the terms of a tolerance under FFDCA section 408 or a processed food under the terms of a food additive regulation under FFDCA section 409. Tolerances are usually expressed in terms of parts of the pesticide residue per million parts of the food (ppm), by weight.

(2) [Reserved]

Subparts B—D [Reserved]

Subpart E—Procedures for Filing Petitions

§ 177.81 Petition for establishment, modification, or revocation of a food additive regulation.

(a) *Who may submit a petition.* Any person may submit a petition requesting the Agency to issue a regulation to establish, modify, or revoke a food additive regulation.

(b) *Where to submit petition.* A petition shall be submitted to: Office of Pesticide Programs (H7504C), Document Processing Desk - PETN, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(c) *Identification of petitioner.* A petition must be signed by the petitioner or the petitioner's authorized representative, and must state the petitioner's mailing address and telephone number.

(d) *Material to be in English language.* The petition shall be written in the English language. If any part of the accompanying material is written in a language other than English, it shall be accompanied by an accurate and complete English translation.

(e) *Format for data submission.* Data and information submitted in support of a petition shall be on separate sheets or sets of sheets of paper, suitably identified. If an item of data has already been submitted to the Agency, the petitioner may cite it rather than resubmitting it. The data shall be submitted in the manner specified by § 158.32 of this chapter.

(f) *Confidentiality of data and information in petition, amendment, or supplement*—(1) *Asserting confidentiality claims.* A petitioner may assert a claim that data and information in a petition, or any amendment or supplement to a petition, other than the summary described in § 177.102(j), are entitled to confidential treatment under part 2 of this chapter. To assert such a claim, the petitioner must mark those portions of the petition, amendment, or supplement, and those portions of any data and information submitted in support of the petition, amendment, or supplement, with the words "trade secret," "proprietary," or other words that indicate the data or information are claimed to be confidential business information. If the data and information have also been submitted to EPA under FIFRA, the person shall assert the confidentiality claim in accordance with § 158.33 of this chapter.

(2) *Effect of asserting confidentiality claim.* If a petitioner asserts a confidentiality claim in accordance with this paragraph for any data or information in a petition, amendment, or supplement, the Agency will disclose that data or information only in accordance with parts 2, 158, 178, and 179, of this chapter, and FIFRA and FFDCA, as applicable.

(3) *Failure to assert confidentiality claim.* If a petitioner does not assert a claim that specific data and information in a petition, or any amendment or supplement to a petition, are entitled to confidential treatment under part 2 of this chapter in accordance with paragraph (e)(1) of this section at the time of submission of the petition, amendment, or supplement, the Agency will treat that data and information as available for disclosure to the public without further notice to the petitioner.

§ 177.84 Deficient or incomplete petitions.

(a) After a preliminary review of the petition, the Administrator may notify the petitioner that the Agency has found the petition to be incomplete or deficient, i.e., that it does not comply with the requirements of §§ 177.102 or 177.105, and that it will not be accepted for detailed review.

(b) A petitioner who receives a notice under paragraph (a) of this section may supplement the petition, in which case the Agency shall conduct a further preliminary review of the petition as supplemented and take action under paragraph (a) of this section or under § 177.86.

§ 177.86 Acceptance for review.

Unless the Administrator notifies the petitioner under § 177.84 that the petition is incomplete or deficient, the Administrator shall accept the petition for detailed review.

§ 177.88 Publication of notice.

Within 30 days of acceptance of a petition for detailed review, the Administrator shall publish in the **Federal Register** a notice which includes the name of the petitioner and the summary submitted in accordance with § 177.102(j).

§ 177.92 Amendments or supplements to petitions.

After a notice of a petition has been published, the petitioner may submit additional information or data in support of the petition, or may amend the petition. Any such submission or amendment shall be accompanied by an informative summary of its contents that may be published in the **Federal Register**. The Administrator shall publish a notice in the **Federal Register** to supplement the notice published under § 177.88 if:

(a) The petitioner seeks to amend the petition by:

(1) Increasing a requested tolerance, by identifying any additional food additive or additional pesticide residues to which the requested food additive regulation would apply.

(2) Identifying any additional processed food to which the requested food additive regulation would apply.

(3) Changing the method for detecting or measuring pesticide residues to be used for enforcement purposes.

(b) The Administrator finds that publication of such a notice otherwise would be in the public interest.

§ 177.98 Withdrawal of petitions.

A petitioner may withdraw a petition. The Agency may retain a copy of a withdrawn petition and any supporting data and information.

§ 177.99 Demand for action.

A petitioner may demand action on a petition if the Administrator has not acted on the petition within the timeframes in FFDCA section 409(c)(2).

Upon receipt of such a demand, the Administrator shall take appropriate action under FFDCA section 409(c)(1).

Subpart F—Submissions of Scientific and Technical Information

§ 177.102 Data and information required to support petition to establish a food additive regulation, to increase a tolerance, or to remove a condition on use.

A petition to establish a food additive regulation, or to modify a food additive regulation by increasing a tolerance for a pesticide residue in or on a processed food or by removing any other condition of use of a food additive, shall include the following data and information:

(a)(1) The name and composition of the food additive that is a subject of the petition, and the chemical composition of each component of the food additive.

(2) The name, chemical identity, and composition of each pesticide residue that is a subject of the petition.

(3) The identity of the processed food(s) in question.

(b) A statement of any conditions of use proposed for the food additive, including all directions, recommendations, and suggestions proposed regarding the use of the food additive, i.e., the amount, frequency, method, and time of application or other use, and a copy of its proposed labeling.

(c) Full reports of investigations made with respect to the toxicity of the food additive and of its safety for the proposed use, including full information as to the methods and controls used in conducting such investigations.

(d) The results of tests to determine the identity and amount of pesticide residues in or on the processed food resulting from the proposed use of the food additive, including a description of the analytical methods used, and a description of practicable methods for measuring such pesticide residues.

(e) Full reports of investigations made with respect to the toxicity of such pesticide residues, including full information as to the methods and controls used in conducting such investigations.

(f) All relevant data bearing on the physical or other technical effects such food additive is intended to produce, and the quantity of such food additive required to produce such effect.

(g) The terms of each food additive regulation proposed.

(h) Any other information relevant to the approval of the petition known to the petitioner that is unfavorable to the petition.

(i) A statement of why, in the petitioner's opinion, it would be reasonable for the Administrator to approve the petition, taking into account the terms of the FFDCA and FIFRA, this part, the petition, the data and information submitted or cited in support of the petition, and other information available to the Agency.

(j) An informative summary of the petition and of the data, information, and arguments submitted or cited in support of the petition, and a statement that the petitioner agrees that such summary or any information it contains may be published as a part of the notice to be furnished to the public under § 177.88 or as part of a proposal under § 177.130. The summary need not refer to any method or process that is entitled to protection as a trade secret under FFDCA section 301(j).

(Approved by the Office of Management and Budget under the control number 2070-0024)

§ 177.105 Data and information required to support petition to revoke a food additive regulation, to decrease a tolerance, or to add a condition on use.

A petition to revoke a food additive regulation, or to modify such a regulation by decreasing a tolerance for a pesticide residue in or on a processed food or by adding a condition on the use of a food additive, shall include:

(a) The data and information required by § 177.102(a), (b), (g), (h), and (i).

(b) Such data and information of the types described in § 177.102(c), (d), (e), and (f) as the petitioner chooses to submit.

(c) Information showing what changes, if any, petitioner believes would have to be made in associated registrations of pesticides under FIFRA or in associated tolerance regulations issued under FFDCA section 408 if the petition were granted.

(Approved by the Office of Management and Budget under the control number 2070-0024)

§ 177.110 Additional data requirements; waiver of requirements.

(a) The Administrator may require or occasion a petitioner to submit data or information other than that described by this part only if the Administrator finds such data or information to be necessary for the evaluation of the petition.

(b) The Administrator may waive a requirement imposed by this part for the submission of data or information if the Administrator finds such data or information to be unnecessary for the evaluation of the petition.

(Approved by the Office of Management and Budget under the Control Number 2070-0024)

§ 177.116 Sample of food additive.

The Agency may require the petitioner to submit a sample of the food additive or pesticide residue that is a subject of the petition. The Agency shall specify in such request the quantity which it requires.

(Approved by the Office of Management and Budget under the control number 2070-0024)

Subpart G—Administrative Actions

§ 177.125 Action after review.

(a) After a petition has been accepted for detailed review, the Administrator shall review the petition, the accompanying data and information, and other pertinent data or information available to the Administrator.

(b) Upon completion of such review, the Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a food additive regulation (whether or not in accord with the action proposed by the petitioner), whether to issue an order denying the petition, or whether to publish a proposed food additive regulation and request public comment thereon under § 177.130.

(c) The Administrator shall publish in the **Federal Register** such order or proposed regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under part 178 of this chapter.

§ 177.130 Issuance of proposed rule on Administrator's initiative or in response to petition, and final action on proposal.

(a) The Administrator may publish in the Federal Register a proposal to establish a food additive regulation or to modify or revoke an existing food additive regulation, on his or her own initiative or in response to a petition.

(b) The Administrator shall provide a period of not less than 30 days for persons to comment on the proposed regulation.

(c) After reviewing any timely comments made, the Administrator may by order establish, modify, or revoke a food additive regulation, or may by order decide that no final action on the proposal is warranted. Each such order and each such regulation shall be published in the **Federal Register**. An order published under this section shall state that objections and requests for a hearing may be filed as prescribed by part 178 of this chapter.

§ 177.135 Effective date of regulation.

Any final regulation issued under § 177.125 or § 177.130 shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation. The Administrator, in his or her sole discretion, may stay the

effective date of the regulation if an adversely affected person files an objection under part 178 of this chapter.

Subpart H—Judicial Review

§ 177.140 Judicial review.

The FFDCA does not provide for judicial review of an order or regulation issued under this part or of a denial of a petition under this part. However, if an objection to such action is submitted to the Administrator in the manner prescribed by part 178 of this chapter, judicial review may be obtained of the Administrator's action on the objection. (See FFDCA sections 409(f) and (g).)

2. By adding a new part 178 to read as follows:

PART 178—OBJECTIONS AND REQUESTS FOR HEARINGS

Subpart A—General Provisions

Sec.
178.3 Definitions.

Subpart B—Procedures for Filing Objections and Requests for Hearings

178.20 Right to submit objections and requests for a hearing.
178.25 Form and manner of submission of objections.
178.27 Form and manner of submission of request for evidentiary hearing.
178.30 Response by Administrator to objections and to requests for hearing.
178.32 Rulings on requests for hearing.
178.35 Modification or revocation of regulation.
178.37 Order responding to objections on which a hearing was not requested or was denied.

Subpart C—[Reserved]

Subpart D—Judicial Review

178.65 Judicial review.
178.70 Administrative record.

Authority: 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

Subpart A—General Provisions

§ 178.3 Definitions.

For the purposes of this part:

Administrator means the Administrator of the Agency, or any officer or employee of the Agency to whom the Administrator delegates the authority to perform functions under this part.

Agency means the United States Environmental Protection Agency.

Assistant Administrator means the Agency's Assistant Administrator for Pesticides and Toxic Substances, or any officer or employee of the Agency's Office of Pesticides and Toxic Substances to whom the Assistant Administrator delegates the authority to perform functions under this part.

FFDCA means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

Subpart B—Procedures for Filing Objections and Requests for Hearing

§ 178.20 Right to submit objections and requests for a hearing.

(a) On or before the 30th day after the date of publication in the **Federal Register** of an order under part 177 or part 180 of this chapter establishing, modifying, or revoking a regulation, or an order under part 177 of this chapter denying all or any portion of a petition, a person adversely affected by such order or petition denial may submit, in accordance with § 178.25, one or more written objections to the order (or to the action that is the subject of the order).

(b) A person may include with any such objection a written request for an evidentiary hearing on such objection in accordance with § 178.27

(c) A person who submits objections need not request a hearing. For instance, if the person's objections are of a purely legal or policy nature, a hearing request would be inappropriate; the purpose of an evidentiary hearing is to resolve factual disputes. The Administrator will rule on the objections, whether or not a hearing is requested.

(d) As a matter of discretion, the Administrator may order a hearing on an objection even though no person has requested a hearing.

§ 178.25 Form and manner of submission of objections.

(a) To be considered by the Administrator, an objection must:

(1) Be in writing.

(2) Specify with particularity the provision(s) of the order, regulation, or denial objected to, the basis for the objection(s), and the relief sought.

(3) Be signed by the objector.

(4) State the objector's name and mailing address.

(5) Be accompanied by the fee prescribed by § 180.33(i) of this chapter, if the objection is to an order or regulation issued under part 180 of this chapter.

(6) Be submitted to the hearing clerk.

(7) Be received by the hearing clerk not later than the close of business of the 30th day following the date of the publication in the **Federal Register** of the order to which the objection is taken (or, if such 30th day is a Saturday, Sunday, or Federal holiday, not later than the close of business of the next government business day after such 30th day).

(b) Submissions to the hearing clerk shall be made as follows:

(1) Mailed submissions should be addressed to: Office of the Hearing Clerk (A–110), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(2) For personal delivery, the Office of the Hearing Clerk is located at: room M3708, Waterside Mall, 401 M St., SW., Washington, DC.

§ 178.27 Form and manner of submission of request for evidentiary hearing.

To be considered by the Administrator, a request for an evidentiary hearing must met the criteria in § 178.32, and must:

(a) Be submitted as a part of, and specifically request an evidentiary hearing on an objection that complies with the requirements of § 178.25.

(b) Include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue.

(c) Include a copy of any report, article, survey, or other written document (or the pertinent pages thereof) upon which the objector relies to justify an evidentiary hearing, unless the document is an EPA document that is routinely available to any member of the public.

(d) Include a summary of any evidence not described in paragraph (a)(3) of this section upon which the objector relies to justify an evidentiary hearing.

(e) Include a discussion of the relationship between the factual issues and the relief requested by the objection.

§ 178.30 Response by Administrator to objections and to requests for hearing.

The Administrator will respond to objections, and to requests for a hearing on such objections, as set forth in this section.

(a) *Denial of objections that are improperly submitted or that seek an unavailable form of relief.* The Administrator will by order issued under § 178.37 deny each objection and each request for a hearing that is included with such an objection, if:

(1) The objection is found not to conform to § 178.25.

(2) The action requested by the objection is inconsistent with any provision of FFDCA.

(3) The action requested by the objection is inconsistent with any generic, e.g., non-chemical specific, interpretation of a provision of FFDCA in any regulation in this chapter (the proper procedure in such a case is for

the person to petition for an amendment of the regulation involved).

(b) *Denial of improperly submitted requests for hearing.* The Administrator will then determine whether any objection that has not been denied under paragraph (a) of this section was accompanied by a request for an evidentiary hearing that conforms to § 178.27. The Administrator will deny under § 178.37 each request that does not conform to § 178.27.

(c) *Grouping of certain related objections.* If the Administrator then finds (1) That two or more undenied objections are substantially similar, or are related in such a way that any judicial review of the Administrator's action on those objections should occur at the same time, and (2) that one or more of those objections was accompanied by an undenied request for an evidentiary hearing on that objection, the Administrator will treat those objections as a group and will rule on them only after ruling under § 178.32 on the associated request for hearing.

(d) *Rulings on objections for which a request for hearing has been granted.* If the Administrator rules under § 178.32 that an evidentiary hearing should be held on an objection, the Administrator will resolve the issues raised by any other objection grouped with it under paragraph (c) of this section in conjunction with the evidentiary hearing upon which the hearing request was granted, unless the Administrator for good cause determines otherwise.

(e) *Rulings on objections for which no request for hearing was received, or for which each request for hearing was denied.* Except as provided in paragraphs (c) and (d) of this section, if no hearing was requested on an objection, or if each such request that was made is denied under the criteria of paragraphs (a) or (b) of this section or § 178.32(b), the Administrator will rule on the objection under § 178.37.

§ 178.32 Rulings on requests for hearing.

(a) In the case of each request for an evidentiary hearing that was not denied under § 178.30(a) or (b), the Administrator will determine whether such a hearing on one or more of the objections is justified, and will publish in the **Federal Register** the determination in an order issued under § 178.37 or a Notice of Hearing issued under § 179.20 of this chapter. If some requests for a hearing are denied and others pertaining to the same order or regulation are granted, the denial order and the hearing notice may be combined into a single document and shall be issued at the same time unless the Administrator for good cause determines otherwise.

(b) A request for an evidentiary hearing will be granted if the Administrator determines that the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. An evidentiary hearing will not be granted on issues of policy or law.

(2) There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary. An evidentiary hearing will not be granted on the basis of mere allegations, denials, or general descriptions of positions and contentions, nor if the Administrator concludes that the data and information submitted, even if accurate, would be insufficient to justify the factual determination urged.

(3) Resolution of the factual issue(s) in the manner sought by the person requesting the hearing would be adequate to justify the action requested. An evidentiary hearing will not be granted on factual issues that are not determinative with respect to the action requested. For example, a hearing will not be granted if the Administrator concludes that the action would be the same even if the factual issue were resolved in the manner sought.

(c) Where appropriate, the Administrator will make rulings on any issues raised by an objection which are necessary for resolution prior to determining whether a request for an evidentiary hearing should be granted.

§ 178.35 Modification or revocation of regulation.

(a) If the Administrator determines upon review of an objection or request for hearing that the regulation in question should be modified or revoked, the Administrator will by order publish appropriate rulemaking documents in the **Federal Register.**

(b) The Administrator will provide an opportunity for objections and requests for hearing on such rule to the extent required by law. Such objections to the modification or revocation of the regulation, and requests for a hearing on such objections, may be submitted under §§ 178.20 through 178.27.

(c) Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in accordance with this part.

§ 178.37 Order responding to objections on which a hearing was not requested or was denied.

(a) The Administrator will publish in the **Federal Register** an order under FFDCA section 408(d)(5) or 409(f)(1) setting forth the Administrator's determination on each denial of a request for a hearing, and on each objection submitted under § 178.20 on which:

(1) A hearing was not requested.

(2) A hearing was requested, but denied.

(b) Each order published under paragraph (a) of this section must state the reasons for the Administrator's determination. If the order denies a request for a hearing on the objection, the order also must state the reason for that denial (e.g., why the request for a hearing did not conform to § 178.27, or why the request was denied under § 178.32).

(c) Each order published under paragraph (a) of this section must state its effective date, which must not be earlier than the 90th day after the order is published unless the order contains the Administrator's findings as to the existence of emergency conditions that necessitate an earlier effective date.

Subpart C—[Reserved]

Subpart D—Judicial Review

§ 178.65 Judicial review.

An order issued under § 178.37 is final agency action reviewable in the courts as provided by FFDCA sections 408(i) or 409(g)(1), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA section 408(i) or 409(g)(1) of the right to judicial review of the order and of any regulation promulgated by the order.

§ 178.70 Administrative record.

(a) For purposes of judicial review, the record of an administrative proceeding that culminates in an order under § 178.37 consists of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 177.125 of this chapter to which the objection related, and:

(i) Any regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 177.130 of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(4) Any order issued under § 180.7(g) of this chapter to which the objection related, and:

(i) Any regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(5) Any order issued under § 180.29(f) of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(6) Any comments submitted by members of the public in response to the Notice of Filing or Notice of Proposed Rulemaking, any data or information submitted as part of the comments, the Administrator's response to comments and the documents or information relied on by the Administrator in issuing the regulation or order.

(7) All other documents or information submitted to the docket for the rulemaking in question.

(8) The order issued under § 178.37.

(b) The record will be closed as of the date of the Administrator's decision unless another date for closing of the record is specified in the order issued under § 178.37.

3. By adding new part 179 to read as follows:

PART 179—FORMAL EVIDENTIARY PUBLIC HEARING

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Sec.
179.3 Definitions.
179.5 Other authority.

Subpart B—Initiation of Hearing

179.20 Notice of hearing.
179.24 Ex parte discussions; separation of functions.

Subpart C—Participation and Appearance; conduct

179.42 Notice of participation.
179.45 Appearance.
179.50 Conduct at oral hearings or conferences.

Subpart D—Presiding Officer

179.60 Designation and qualifications of presidingofficer.
179.70 Authority of presiding officer.
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179.80 Filing and service.
179.81 Availability of documents.
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Subpart F—Decisions and Appeals

179.101 Interlocutory appeal from ruling of presiding officer.
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Subpart G—Judicial Review

179.125 Judicial Review.
179.130 Administrative record.

Authority: 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

Subpart A—General Provisions

§ 179.3 Definitions.

Administrator means the Administrator of the Agency, or any officer or employee of the Agency to whom the Administrator has delegated the authority to perform functions under this part.

Agency means the United States Environmental Protection Agency.

Assistant Administrator means the Agency's Assistant Administrator for Pesticides and Toxic Substances, or any officer or employee of OPTS to whom the Assistant Administrator has delegated the authority to perform functions under this part.

FFDCA means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136–136y.

Judicial Officer means a person who has been designated by the Administrator under § 179.117 to serve as a judicial officer.

Office of the Administrator means the Agency's Administrator and Deputy Administrator and their immediate staff, including the judicial officer.

OPTS means the Agency's Office of Pesticides and Toxic Substances.

§ 179.5 Other authority.

Questions regarding procedural matters arising under this part or part 178 of this chapter that are not addressed by this part or part 178 of this chapter shall be resolved by the Administrator or presiding officer, as appropriate.

Subpart B—Initiation of Hearing

§ 179.20 Notice of hearing.

(a) If the Administrator determines under § 178.32 of this chapter that a hearing is justified on any issue, the Administrator will file with the hearing clerk and publish in the **Federal Register** a Notice of Hearing. The Notice of Hearing will set forth:

(1) The docket number for the hearing.

(2) Each order, regulation, or petition denial that is the subject of the hearing, and a statement specifying any part of any such regulation or order that has been stayed in the Administrator's discretion.

(3) The identity of each person whose request for a hearing has been granted, and of any other person whose petition under §§ 177.81 or 180.7 of this chapter occasioned the order that the hearing concerns.

(4) A statement of the issues of fact on which a hearing has been found to be justified.

(5) A statement of the objections whose resolution depends on the resolution of those issues of fact.

(6) A statement that the presiding officer will be designated by the Chief Administrative Law Judge.

(7) The time within which notices of participation should be filed under § 179.42.

(8) The date, time, and place of the preliminary conference, or a statement that the date, time, and place will be announced in a later notice, and the place of the hearing.

(9) The time within which parties must submit written information and views under § 179.83.

(10) Designations with respect to separation of functions published under § 179.24(b)(2).

(b) The statement of the issues of fact on which a hearing has been justified

determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A party may obtain interlocutory review by the Administrator of a decision by the presiding officer to revise the issues to include an issue on which the Administrator has not granted a request for a hearing or to eliminate an issue on which a request for a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the Notice of Hearing.

§ 179.24 Ex parte discussions; separation of functions.

(a) Any person may meet or correspond with any officer or employee of the Agency concerning a matter under parts 177, 178, or 180 of this chapter prior to publication of a Notice of Hearing under § 179.20.

(b) Upon publication of a Notice of Hearing, the following separation of function rules apply:

(1) OPTS, as a party to the hearing, is responsible for presentation of its position at the hearing and in any pleading or oral argument before the Administrator. The Pesticides and Toxic Substances Division of the Office of General Counsel shall advise and represent OPTS with respect to the hearing and in any pleading or oral argument before the Administrator. An employee or other representatives of OPTS may not participate in or advise the Administrator or any of his representatives on any decision under this part, other than as witness or counsel in public proceedings, except as provided by paragraph (b)(2) of this section. There is to be no other communication between representatives of OPTS and the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing until after issuance of the decision of the Administrator.

(2) The Administrator may designate persons who otherwise would be regarded as representatives of OPTS, to serve as representatives of the Office of the Administrator on matters pertaining to the hearing, and may also designate persons who otherwise would be regarded as representatives of the Office of the Administrator to serve as representatives of OPTS. Such designations will be included in the Notice of Hearing published under§ 179.20.

(3) The Office of the Administrator is responsible for the final decision of the matter, with the advice and participation of anyone in the Agency other than representatives of OPTS.

(c) Between the date of publication of the Notice of Hearing and the date of the Administrator's final decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(1) No person outside the Agency may have an ex parte communication with the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing. Neither the presiding officer nor any representative of the Office of the Administrator may have any ex parte communication with a person outside the Agency concerning the merits of the hearing.

(2) A written communication contrary to this section must be immediately served on all other participants and filed with the hearing clerk by the presiding officer at the hearing, or by the Administrator, depending on who received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other parties and filed with the hearing clerk. A person, including a representative of a party in the hearing, who is involved in an oral communication contrary to this section, must, to the extent necessary to determine the substance of the communication, be made available for cross-examination during the hearing with respect to the substance of that communication. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted.

(d) The prohibitions specified in paragraph (c) of this section also apply to a person who, in advance of the publication of a Notice of Hearing, knows that the notice has been signed. The prohibitions become applicable to such a person as of the time the knowledge is acquired.

(e) The making of a communication contrary to this section may, consistent with the interests of justice and the policies underlying the FFDCA, result in a decision adverse to the person knowingly making or causing the making of the communication.

Subpart C—Participation and Appearance; Conduct

§ 179.42 Notice of participation.

(a) OPTS shall be a party to a hearing under this part. Any other person may participate as a party in such a hearing to the extent specified by this section.

(b) A person desiring to participate in a hearing must file with the hearing clerk within 30 days after publication of the Notice of Hearing under § 179.20, a Notice of Participation in the following form:

Notice of Participation

Docket No. _____

Under 40 CFR part 179, please enter the participation of: _____

(Name) _____

(Street address)

_____

(City and State)

_____

(Telephone number)

_____

Service on the above will be accepted by:

_____

(Name)

_____

(Street address)

_____

(City and State)

_____

(Telephone number)

_____

Signed:

_____

Date: _____

(c) An amendment to a Notice of Participation must be filed with the hearing clerk and served on all parties.

(d) No person may participate in a hearing who has not filed a written Notice of Participation or whose participation has been stricken under paragraph (f) of this section.

(e) The presiding officer may permit the late filing of a Notice of Participation upon a showing of good cause. Arrangements and agreements previously made in the proceeding shall apply to any party admitted late.

(f) The presiding officer may strike the participation of a person for failure to comply with any requirement of this subpart. Any person whose participation is striken may obtain interlocutory review thereof by the Administrator.

§ 179.45 Appearance.

(a) A party to a hearing may appear in person or by counsel or other representative in the hearing.

(b) The presiding officer may strike a person's right to appear in the hearing for violation of the rules of conduct in § 179.50.

§ 179.50 Conduct at oral hearings or conferences.

The parties and their representatives must conduct themselves with dignity and observe the same standards of practice and ethics that would be required of parties in a judicial proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and

ethical conduct during any hearing constitute grounds for immediate exclusion from the proceeding by the presiding officer.

Subpart D—Presiding Officer

§ 179.60 Designation and qualifications of presiding officer.

The presiding officer in a hearing will be an administrative law judge qualified under 5 U.S.C. 3105 and designated by the Agency's chief administrative law judge.

§ 179.70 Authority of presiding officer.

The presiding officer shall conduct the hearing in a fair and impartial manner subject to the precepts of the Administrative Procedure Act. The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to:

(a) Specify and change the date, time, and place for conferences, and issue and modify a schedule for the hearing.

(b) Establish an orderly manner for developing evidentiary facts at preliminary conferences under § 179.87, for making rulings on oral testimony and cross-examination under § 179.93, and for making other similar evidentiary rulings in accord with these regulations.

(c) Prepare statements of the areas of factual disagreement among the participants.

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing.

(e) Administer oaths and affirmations.

(f) Control the course of the hearing and the conduct of the participants.

(g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions.

(h) Rule on, admit, exclude, or limit evidence.

(i) Set the time for filing pleadings.

(j) Rule on motions and other procedural matters.

(k) Rule on motions for summary decision under § 179.90.

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex.

(m) Strike the participation of any person under § 179.42(f), or exclude any person from the hearing under § 179.50, or take other reasonable disciplinary action.

(n) Take any other action for the fair, expeditious, and orderly conduct of the hearing that is not in conflict with law or these rules.

§ 179.75 Disqualification of deciding officials.

(a) A deciding official in a hearing under this part (including, e.g., the Administrator, judicial officer, or presiding officer) shall not decide any matter in connection with which he or she has a financial interest in any of the parties, or a relationship that would make it otherwise inappropriate for him or her to act.

(b) A party may request that a deciding official disqualify himself/herself and withdraw from the proceeding. The party may obtain interlocutory review by the Administrator of a denial of such a request made to any deciding official other than the Administrator.

(c) A deciding official who is aware of grounds for disqualification shall withdraw from the proceeding.

§ 179.78 Unavailability of presiding officer.

If the presiding officer is unable to act for any reason, his or her powers with respect to the hearing will be assigned by the Chief Administrative Law Judge to another presiding officer. The substitution will not affect the hearing, i.e., the testimony of the witnesses will not be taken anew except as the new presiding officer may order upon the request of a party where the credibility of a witness is of particular importance.

Subpart E—Hearing Procedures

§ 179.80 Filing and service.

(a) All documents required or authorized to be filed by a party to a hearing under this part regarding any matter to be decided by the presiding officer, the judicial officer, or the Administrator shall be filed in triplicate with the hearing clerk, in the manner specified by § 178.25(b) of this chapter. Each filing shall prominently note the docket number. To determine compliance with deadlines in a hearing, a document is considered filed on the date it is actually received by the hearing clerk. When this part allows a response by a party to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

(b) Each notice, order, decision, or other document issued under this part by the presiding officer, the judicial officer, or the Administrator shall be filed with the hearing clerk. The hearing clerk shall immediately serve all parties with a copy of such order, decision, or other document.

(c) At the same time that a party files any document with the hearing clerk, the party shall serve a copy thereof on each other party, unless the presiding officer specifies otherwise. Each filing shall be accompanied by a certificate of service, or a statement that service is not required. Service on a party is accomplished by mailing a submission to the address shown in the Notice of Participation or by personal delivery.

(d) The presiding officer may grant an extension of time for the filing of any pleading, document, or motion (1) Upon timely motion by a party, for good cause shown, and after consideration of prejudice to other parties, or (2) upon the presiding officer's own motion.

(e) A motion by a party for an extension may only be made after serving a copy of the motion on all other parties, unless the movant can show good cause why doing so is impracticable. The motion shall be filed in advance of the date on which the pleading, document, or motion is due to be filed, unless the failure of the party to make a timely motion for an extension was the result of excusable neglect.

§ 179.81 Availability of documents.

(a) All orders, decisions, pleadings, transcripts, exhibits, and other docket entries shall become part of the official docket and shall be retained by the hearing clerk. Except as otherwise provided by paragraph (b) of this section or part 2 of this chapter, all documents that are a part of the official docket shall be made available to the public for reasonable inspection during Agency business hours. Copies of such documents may be obtained by members of the public as provided in part 2 of this chapter.

(b) Whenever any information or data are required to be produced or examined in a hearing and any party makes a business confidentiality claim regarding such information under part 2 of this chapter, the availability of such information to the other parties or to the public shall be determined by EPA in accordance with part 2 of this chapter, including specifically the procedures and principles set forth in § 2.301(g)(3) and (g)(4) of this chapter. The presiding officer shall make the determinations with respect to the matters referred to in § 2.301(g)(3) and (g)(4) to the extent provided, and shall take such steps as are necessary for the protection of information entitled to confidential treatment or otherwise exempt from public disclosure, including issuance of protective orders to parties or taking testimony in a closed hearing.

§ 179.83 Disclosure of data and information.

(a) Within 60 days of the publication of the Notice of Hearing under § 179.20, or, if no party will be prejudiced, within another period set by the presiding officer, the Assistant Administrator shall file with the hearing clerk, in accordance with § 179.80, the following documents numbered and organized in the manner prescribed by the presiding officer:

(1) The portions of the administrative record of the proceeding developed under part 178 of this chapter, and under parts 177 or 180 of this chapter, that are relevant to the issues in the hearing.

(2) All documents in the files of OPTS containing factual information or expert opinion, whether favorable or unfavorable to the position of OPTS, which relate to the issues involved in the hearing. For purposes of this paragraph, "files" means the principal files in OPTS in which documents relating to each of the issues in the hearing are ordinarily kept. Documents that are internal memoranda reflecting the deliberative process, or are attorney work product, or were prepared specifically for use in connection with the hearing, are not required to be submitted.

(3) All other documentary data and information upon which OPTS plans to rely upon in the hearing.

(4) A narrative position statement on the factual issues in the Notice of Hearing and the nature of the supporting evidence that OPTS intends to introduce.

(5) A signed statement that, to the best knowledge and belief of the Assistant Administrator, the submission complies with this section.

(b) Within 70 days of the publication of the Notice of Hearing or, if no party will be prejudiced, within another period of time set by the presiding officer, each party other than OPTS shall submit to the hearing clerk in accordance with § 179.80 the following documents, numbered and organized in the manner prescribed by the presiding officer:

(1) Any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete.

(2) All documents (other than those filed under paragraph (a) of this section) in the party's files containing factual information or expert opinion, whether favorable or unfavorable to the party's position, that relates to the issues involved in the hearing. For purposes of this paragraph, "files" means the party's principal files in which documents relating to each of the issues in the hearing are ordinarily kept. Documents that are attorney work product, or were prepared specifically for use in connection with the hearing, are not required to be submitted.

(3) All other documentary data and information the party plans to rely upon in the hearing.

(4) A narrative position statement on the factual issues in the Notice of Hearing and the nature of the supporting evidence the party intends to introduce.

(5) A signed statement that, to the best knowledge and belief of the party, the submission complies with this section.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material contained in the supplement was not reasonably known by or available to the party when the submission was made or that the relevance of the material contained in the supplement could not reasonably have been foreseen.

(d) If a party fails to comply substantially and in good faith with this section, the presiding officer may infer that such failure was for the purpose of withholding information that is unfavorable to the party's position, and may make such further adverse inferences and findings with respect to such failure as are warranted.

(e) Parties may reference each other's submissions. To reduce duplicative submissions, parties are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

§ 179.85 Purpose of preliminary conference.

The presiding officer will conduct one or more preliminary conferences for the following purposes:

(a) To determine the areas of factual disagreement to be considered at the hearing.

(b) To establish any necessary procedural rules to control the course of the hearing and the schedule for the hearing.

(c) To group parties with substantially similar interests, for purposes of presenting evidence, making objections, cross-examination, and presenting oral argument.

(d) To obtain stipulations and admissions of facts.

(e) To take other action that may expedite the hearing.

§ 179.86 Time and place of preliminary conference.

A preliminary conference will commence at the date, time, and place announced in the Notice of Hearing, or as otherwise specified by the Administrator or presiding officer in a subsequent notice. The preliminary conference may not commence until after expiration of the time for filing notices of participation under § 179.42. The presiding officer may specify that two or more such conferences shall be held.

§ 179.87 Procedures for preliminary conference.

Parties in a hearing must appear at the preliminary conference(s) prepared to present a position on the matters specified in § 179.85. A preliminary conference may be held by telephone, or other electronic means, if appropriate.

(a) To expedite the hearing, parties are encouraged to prepare in advance for the conference. Parties should cooperate with each other and should request information and begin preparation of testimony at the earliest possible time. Failure of a party to appear at the preliminary conference or to raise matters that could reasonably be anticipated and resolved at that time will not delay the progress of the hearing, and constitutes a waiver of the rights of the party regarding such matters as objections to the agreements reached, actions taken, or rulings issued. Such failure to appear may also be grounds for striking the party's participation under § 179.42(f).

(b) Each party shall bring to the preliminary conference the following specific information, which will be filed with the hearing clerk under § 179.80:

(1) Any additional information to supplement the submission which may have been filed under § 179.83, and/or which may be filed if approved under § 179.83(c).

(2) A list setting forth each person who has been identified as a witness whose oral or written testimony will be offered by the party at the hearing, with a full curriculum vitae for each and a summary of the expected testimony (including a list of the principal exhibits on which the witness will rely) or a statement as to when such a summary will be furnished. A party may amend its witness and document list to add, delete, or substitute witnesses or documents.

(c) The presiding officer may hold preliminary conferences off the record in an effort to reach agreement on disputed factual or procedural questions.

(d) The presiding officer shall issue and file under § 179.80 a written order reciting the actions taken at each preliminary conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

§ 179.89 Motions.

A motion, unless made in the course of a preliminary conference or a transcribed oral hearing before the presiding officer, must be filed in the manner prescribed by § 179.80 and include a draft order. A response may be filed within 10 days of service of a motion. The moving party has no right to reply, except as permitted by the presiding officer. The presiding officer shall rule upon the motion.

§ 179.90 Summary decisions.

(a) After the hearing commences, a party may file a written motion, with or without supporting affidavits or brief, for a summary decision on any issue in the hearing. Any other party may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause shown, serve opposing affidavits or brief or countermove for summary decision. The presiding officer may set the matter for argument and call for the submission of briefs if not submitted by the parties.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine disagreement as to any material fact bearing on the issue and that a party is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a party opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must demonstrate specifically that there is a genuine issue of material fact for the hearing.

(d) Should it appear from the affidavits of a party opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, order a continuance to permit affidavits or additional evidence to be obtained, or issue other just order.

(e) If a summary decision is not rendered upon all issues or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A party may obtain interlocutory review by the Administrator of a summary decision of the presiding officer.

§ 179.91 Burden of going forward; burden of persuasion.

(a) The party whose request for an evidentiary hearing was granted has the burden of going forward in the hearing with evidence as to the issues relevant to that request for a hearing.

(b) The party or parties who contend that a regulation satisfies the criteria of section 408 or 409 of the FFDCA has the burden of persuasion in the hearing on that issue, whether the proceeding concerns the establishment, modification, or revocation of a tolerance or food additive regulation.

§ 179.93 Testimony.

(a) The presiding officer will conduct such proceedings as are necessary for the taking of oral direct testimony and for the conduct of oral examination of witnesses by the parties. The presiding officer shall limit oral examination to prevent irrelevant, immaterial or unduly repetitious examination.

(b) Direct testimony shall be submitted in writing, except that the presiding officer may order direct testimony to be presented orally in those unusual cases where the memory or demeanor of the witness is of importance. Written direct testimony shall be in the form of a verified statement of fact or opinion prepared by the witness, in narrative form or in question-and-answer form. Written direct testimony may incorporate exhibits. Such a verified statement or exhibit may not be admitted into evidence sooner than 14 days (or such other reasonable period as the presiding officer may order) after the witness has delivered to the presiding officer and each party a copy of the statement or exhibit. The admissibility of the evidence contained in such a statement is subject to the same rules as if such testimony had been given orally.

(c) Oral cross-examination of witnesses will be permitted. Each exhibit that a party intends to rely upon in cross-examining a witness shall be furnished to the other parties not later than 3 days (or such other reasonable period as the presiding officer may order) before such exhibit is used in the cross-examination.

(d) Witnesses shall give testimony under oath or affirmation.

§ 179.94 Transcripts.

(a) The hearing clerk shall make arrangements to have all oral testimony stenographically reported or recorded and transcribed, with evidence that is admitted in the form of written testimony or exhibits attached or incorporated as appropriate.

(b) Unless the presiding officer orders otherwise, parties shall have 15 days from the date that the transcript of particular oral testimony first becomes available to propose corrections in the transcript of that testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

(c) As soon as practicable after the taking of the last evidence, the presiding officer shall certify:

(1) That the original transcript is a true transcript of the oral testimony offered or received at the hearing, except in such particulars as the presiding officer specifies.

(2) That the written testimony and exhibits accompanying the transcript are all the written testimony and exhibits introduced at the hearing, with such exceptions as the presiding officer specifies.

(3) The transcript with attached or incorporated material, as so certified by the presiding officer, shall be submitted to and filed by the hearing clerk under § 179.80.

(d) Copies of the transcript shall be available to the public in accordance with § 179.81; parties may make special arrangements through the hearing clerk to obtain copies on an ongoing, expedited basis.

§ 179.95 Admission or exclusion of evidence; objections; offers of proof.

(a) Written material identified as direct testimony or as an evidentiary exhibit and offered by a party in a hearing, and oral testimony, whether on direct or on cross-examination, is admissible as evidence unless the presiding officer excludes it (on objection of a party or on the presiding officer's own initiative) because it is irrelevant, immaterial, or unduly repetitive, or because its exclusion is necessary to enforce a specific requirement of this part relating to the admissibility of evidence.

(b) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, the party shall state briefly the grounds for such objection. The transcript shall include any argument or debate thereon, unless the presiding officer, with the consent of all the parties, orders that such argument not be transcribed. The ruling and the reasons given therefor by the presiding officer on any objection shall be a part of the transcript. An automatic exception to that ruling will follow.

(c) Whenever evidence is deemed inadmissible, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence consists of a document or exhibit, it shall be inserted in the record in total. If the Administrator in reviewing the record under § 179.112 decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence, or, where appropriate, the Administrator may evaluate the evidence and proceed to a final decision.

(d) Official notice may be taken of Agency proceedings, any matter that might be judicially noticed by the courts of the United States, or any other fact within the knowledge and experience of the Agency as an expert agency. Any party shall be given adequate opportunity to show that such facts are erroneously noticed by presenting evidence to the contrary.

§ 179.97 Conferences during hearing.

The presiding officer may schedule and hold conferences as needed to monitor the progress of the hearing, narrow and simplify the issues, and consider and rule on motions, requests, or other matters concerning the development of the evidence.

§ 179.98 Briefs and arguments.

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs must include a statement of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

Subpart F—Decisions and Appeals

§ 179.101 Interlocutory appeal from ruling of presidingofficer.

(a) Except as provided in paragraph (b) of this section and in §§ 179.20(b), 179.42(f), 179.75(b), and 179.90(f), rulings of the presiding officer may not be appealed to the Administrator before the Administrator's consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Administrator if the presiding officer certifies on the record or by document submitted under § 179.80 that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any party or substantial harm to the public interest. When an order or ruling is not certified by the presiding officer, it shall be reviewed by the Administrator only upon appeal from the initial decision except when the Administrator determines upon the request of a party and in exceptional circumstances, that delaying review would be deleterious to vital public or private interests. Except in extraordinary circumstances, proceedings will not be stayed pending an interlocutory appeal. Where a stay is granted, a stay of more than 30 days must be approved by the Administrator.

(c) Ordinarily, the interlocutory appeal will be decided on the basis of the submission made to the presiding officer, but the Administrator may allow further briefs and oral arguments. Any oral argument will be transcribed and the transcript will be prepared and certified in the same manner as provided in § 179.94.

§ 179.105 Initial decision.

(a) After the filing of briefs and any oral argument, the presiding officer shall prepare and file an initial decision on the issues of fact in the hearing and the objections relating to those issues.

(b) The initial decision must be based on a fair evaluation of the entire record, and must contain:

(1)(i) A conclusion that no change is warranted in the order or regulation to which objection was taken; or

(ii) A conclusion that changes in the order or regulation are warranted, the language of the order or regulation as changed, and an effective date for the order or regulation as changed, which date must not be earlier than the 90th day after it is published unless the order contains findings as to the existence of emergency conditions that necessitate an earlier effective date.

(2) Findings of fact supported by reliable, probative and substantial evidence that has been found admissible by the presiding officer, and adequate citations to the record supporting those findings.

(3) Conclusions on legal and policy issues, if such conclusions are necessary to resolve the objections.

(4) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any party.

(c) Except as otherwise provided by order of the Administrator filed in accordance with § 179.80, after the initial decision is filed, the presiding officer has no further jurisdiction over the matter and any motions or requests filed with the hearing clerk will be decided by the Administrator.

(d) The initial decision becomes the final decision of the Administrator by operation of law unless a party files exceptions with the hearing clerk under § 179.107 or the Administrator files a notice of review under § 179.110.

§ 179.107 Appeal from or review of initial decision.

(a) A party may appeal an initial decision to the Administrator by filing exceptions with the hearing clerk, and serving them on the other parties, within the period specified in the initial decision. The period may not exceed 30 days, unless extended by the Administrator under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law or policy in the initial decision and, if errors in the findings of fact are alleged, must provide supporting citations to evidence of record. Oral argument before the Administrator may be requested in the exceptions.

(c) Any reply to the exceptions is to be filed and served within the timeperiod specified in the initial decision. The timeperiod may not exceed 30 days after the end of the period (including any extensions) for filing exceptions, unless extended by the Administrator under paragraph (d) of this section.

(d) The Administrator may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Administrator decides to hear oral argument, the parties will be informed of the date, time, and place; the amount of time allotted to each party, and the issues to be addressed.

§ 179.110 Determination by Administrator to review initial decision.

Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Administrator may file with the

hearing clerk, and serve on the parties, a notice of the Administrator's determination to review the initial decision. The Administrator may invite the parties to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.

§ 179.112 Decision by Administrator on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Administrator shall have the same powers as did the presiding officer in making the initial decision. On the Administrator's own initiative or on motion, the Administrator may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues on appeal to, or on review by the Administrator is the same as the scope of the issues before the presiding officer, unless the Administrator specifies otherwise.

(c) After the filing of briefs and any oral argument, the Administrator will issue a final decision on the issues of fact in the hearing and the objections related to those issues. A final decision must contain the elements required for an initial decision by § 179.105(b).

(d) The Administrator may adopt the initial decision as the final decision.

(e) The Administrator's decision, or a summary of the decision and a notice of its availability, will be published in the **Federal Register**.

§ 179.115 Motion to reconsider a final order.

A party may file a motion requesting the Administrator to reconsider a final decision under this part. Any such motion must be filed within 10 days after service of the final decision, and must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such a motion shall not stay the effective date of the final decision unless specifically so ordered by the Administrator.

§ 179.117 Designation and powers of judicial officer.

(a) One or more judicial officers may be designated by the Administrator. A judicial officer shall be an attorney who is a permanent or temporary employee of the Agency or of another Federal agency. A judicial officer may perform other duties. A judicial officer who performs any duty under this part may not be employed by OPTS, by the Pesticides and Toxic Substances Division of the Office of General Counsel, or by any other person who is a representative of OPTS in the hearing. A person may not be designated as a judicial officer in a hearing if he or she performed any prosecutorial or investigative functions in connection with that hearing or any other factually related hearing.

(b) The Administrator may delegate to the judicial officer all or part of the Administrator's authority to act in a given proceeding under this part. Such a delegation does not prevent the judicial officer from referring any motion or case to the Administrator when appropriate.

Subpart G—Judicial Review

§ 179.125 Judicial review.

(a) The Administrator's final decision is final agency action reviewable in the courts as provided by FFDCA section 408(i) or 409(g)(1), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure of a person to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA sections 408(i) or 409(g)(1) of the right to judicial review of the order and of any regulation promulgated by the order.

(b) The record for judicial review of a final decision under this part consists of the record described in § 179.130.

§ 179.130 Administrative record.

(a) For purposes of judicial review, the record of a hearing that culminates in a final decision of the Administrator under §§ 179.105(d) or 179.112(c) ruling on an objection shall consist of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 177.125 of this chapter to which the objection related, and:

(i) The regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 177.130 of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(4) Any order issued under § 180.7(g) of this chapter to which the objection related, and:

(i) The regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(5) Any order issued under § 180.29(f) of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(6) The comments submitted by members of the public in response to the Notice of Filing or Notice of Proposed Rulemaking, and the information submitted as part of the comments, the Administrator's response to comments and the documents or information relied on by the Administrator in issuing the regulation or order.

(7) All other documents or information submitted to the docket for the rulemaking in question under parts 177 or part 180 of this chapter.

(8) The Notice of Hearing published under § 179.20.

(9) All notices of participation filed under § 179.42.

(10) Any **Federal Register** notice issued under this part that pertains to the proceeding.

(11) All submissions filed under § 179.80.

(12) Any document of which official notice was taken under § 179.95.

(b) The record of the administrative proceeding is closed:

(1) With respect to the taking of evidence, when specified by the presiding officer.

(2) With respect to pleadings, at the time specified in § 179.98(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.

4. In part 180 as follows:

PART 180—[AMENDED]

a. By revising the authority citation to read as follows:

Authority: 21 U.S.C. 346a, 371a; Reorg. Plan No. 3 of 1970.

b. In § 180.7 by revising paragraph (g) to read as follows:

§ 180.7 Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities.

* * * * *

(g) If the petition is not referred to an advisory committee, or upon receipt of the report of an advisory committee under § 180.12(c) if such a referral occurred, the Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a tolerance regulation (whether or not in

accord with the action proposed by the petitioner), or whether to publish a proposed tolerance regulation and request public comment thereon under § 180.29. The Administrator shall publish in the **Federal Register** such order or proposed regulation. After receiving comments on any proposed regulation, the Administrator may issue an order that establishes modifies, or revokes a tolerance regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under part 178 of this chapter. A regulation issued under this section shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation.

§§ 180.13–180.28 [Removed]

c. By removing §§ 180.13 through 180.28 and the heading "Procedure for filing Objection and Holding a Public Hearing".

§ 180.29 [Amended]

d. In § 180.29, paragraph (a) by removing the period at the end of the first sentence and adding in its place the words ", or a regulation modifying or revoking an existing tolerance or exemption.".

e. In § 180.29 by adding paragraphs (e), (f), (g), (h) and (i) to read as follows:

§ 180.29 Adoption of tolerances on initiative of Administrator or on request of an interested person.

* * * *

(e) The Administrator shall provide a period of not less than 30 days for persons to comment on the proposed regulation.

(f) After reviewing any timely comments received, the Administrator may by order establish, modify, or revoke a tolerance regulation, which order and regulation shall be published in the **Federal Register**. An order published under this section shall state that persons may submit objections and requests for a hearing in the manner described in part 178 of this chapter.

(g) Any final regulation issued under this section shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation.

(h) In ruling on a request under paragraph (a) of this section, the Administrator may publish a **Federal Register** notice requesting information and views on the request, or provide other procedures as a matter of discretion.

(i) When a request is denied under this section,the administrative record consists of:

(1) The request, including all data and information submitted in support of the request.

(2) Any **Federal Register** notice requesting information and views.

(3) Any comments submitted by members of the public in response to the **Federal Register** notice requesting information and views.

(4) If the request resulted in any other procedures, the order of the Administrator providing the procedures and the administrative record of the procedure provided.

(5) All other documents or information submitted to the record.

(6) The Administrator's order and decision on the request, including all information identified by the Administrator as part of the record.

f. By revising § 180.30 to read as follows:

§ 180.30 Judicial review.

(a) It is the Agency's view that the Act does not allow a person to obtain direct judicial review of a regulation issued under this part that establishes, amends, or revokes a tolerance regulation or a regulation exempting a pesticide chemical from the need for a tolerance. However, if an objection to such action is submitted to the Administrator in the manner prescribed by part 178 of this chapter, judicial review may be obtained of the Administrator's action on the objections (see sections 408(d)(5) and 408(i) of the Act).

(b) A decision under §§ 180.29 and 180.32 that a request does not warrant the issuance of a proposed regulation is final agency action. Although the Act makes no special provision for review of such final agency action, the action may be reviewable under other provisions of the United States Code (see e.g., 5 U.S.C. 701–706, 28 U.S.C. 1331).

g. In § 180.32, by adding paragraphs (d) and (e) to read as follows:

§ 180.32 Procedures for amending and repealing tolerances or exemptions from tolerances.

* * * * *

(d) In ruling on a request under paragraph (a) of this section, the Administrator may publish a **Federal Register** notice requesting information and views on the request or providing other procedures as a matter of discretion.

(e) When a request is denied under this section, the administrative record consist of:

(1) The request, including all data and information submitted in support of the request.

(2) Any **Federal Register** notice requesting information and views.

(3) Any comments submitted by members of the public in response to the **Federal Register** notice requesting information and views.

(4) If the request resulted in any other procedures, the order of the Administrator providing the procedures and the administrative record of the procedure provided.

(5) All other documents or information submitted to the record.

(6) The Administrator's order and decision on the request, including all information identified by the Administrator as part of the record.

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December 5, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Suspension of Certain Aircraft From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement, Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26242, SFAR No. 62]

RIN 2120-AD52

Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR) suspends, until December 30, 1993, certain provisions of the regulation which require the installation and use of automatic altitude reporting (Mode C) transponders (Mode C rule). This suspension provides access to specified outlying airports within 30 miles of a terminal control area (TCA) primary airport (Mode C veil) for aircraft without Mode C transponders. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within air traffic control (ATC) radar coverage and not predominantly used by aircraft required to install and use traffic alert and collision avoidance systems (TCAS) equipment. This rule identifies approximately 300 airports at which operations by aircraft not equipped with Mode C transponders can be conducted at and below a specified altitude: (1) Within a 2-nautical mile radius of a listed airport; and (2) along a direct route between that airport and the outer boundary of the Mode C veil. The FAA expects that radar coverage in some Mode C veil airspace will improve as a result of scheduled radar system upgrades. After new radar systems are in service, the FAA may conduct field evaluations to reassess the actual radar coverage in appropriate areas. Based on those reassessments, the FAA, after further rulemaking, may extend the period that the Mode C transponder requirement will be suspended for operations at certain airports on a case-by-case basis.

DATES: December 5, 1990. SFAR No. 62 expires December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 1988, the FAA published a final rule which requires aircraft operating within Mode C veil airspace to be equipped with an operable Mode C transponder (53 FR 23356). Aircraft not originally certificated with an engine-driven electrical system or not subsequently certified with such a system installed, balloons, and gliders are excluded from this requirement. The Mode C transponder requirement resulted from regulatory proceedings initiated under Notice 88-2 (53 FR 4306; February 12, 1988.)

On May 25, 1990, the FAA published a Notice of Proposed Rulemaking (NPRM) which proposed to suspend, until December 30, 1993, the Mode C transponder equipment requirements for certain aircraft operations in the vicinity of approximately 300 airports in the outlaying area of Mode C veils (55 FR 21722; Notice No. 90-16). The FAA had determined that operations of aircraft without Mode C transponders could be accommodated safely provided such operations are conducted in areas not currently within ATC radar coverage. The proposal identified those airports: (1) At which operations within a 1.5-nautical mile radius of the airport, and along the most direct route between that airport and the outer boundary of the Mode C veil, at or below a specified altitude, cannot be detected by ATC radar; and (2) are not served by aircraft required to be equipped with TCAS.

Comments to the NPRM

The comment period for Notice No. 90-16 expired on July 24, 1990. The FAA received 81 comments to the proposal, the majority of which were favorable. However, most commenters believed that the proposal did not go far enough with regard to providing access to airports and locations within Mode C veil airspace. The Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EEA), the Air Line Pilots Association (ALPA), the Soaring Society of America (SSA), the Department of the Air Force, the Ohio Department of Transportation, local aviation organizations and businesses, and private citizens were in general support of the proposal but provided suggestions and comments. The Department of the Army, although generally in support of the concept of providing access for aircraft without Mode C transponder equipment to certain airports within the Mode C veil, opposed the proposal on the basis that Army airports and locations should be included in the list of airports. Seven of the comments to Docket No. 26242 did not address any issue related to the proposal.

Issues

The commenters identified the following issues in response to the proposals:

(a) The relief proposed is not adequate. The commenters favored a general exclusion of aircraft operations from the Mode C transponder equipment requirement in the airspace from the surface up to 2,500 or 3,500 feet above ground level (AGL) underneath Mode C veil airspace.

(b) The specified altitudes should be uniform. These commenters believed that a common altitude should be specified for all of the listed airports.

(c) Other airports within the TCA veil should be listed. A few commenters stated that certain additional airports should be included in the list of airports.

(d) A list of airports for certain TCA's were omitted from the proposal.

(e) Operations between two excluded airports within the same TCA Mode C veil should be permitted.

(f) The specified altitudes and the 1.5-nautical mile radius from excluded airport is too restrictive. Some commenters believed that limiting the exclusion to a 1.5-nautical mile radius from a listed airport would be too restrictive for a pilot and that determining a distance of 1.5 miles from an airport would be difficult. Other commenters were concerned that the specified altitudes, such as 1,000 feet AGL, would not afford pilots sufficient margin for maneuvering.

(g) The proximity of Hernando County Airport (Tampa veil) to a military training route may compromise safety. The Air Force commented that the exclusion of the Mode C transponder equipment requirement for operations in the vicinity of Hernando County Airport, Brooksville, FL, would impact the quality of traffic advisory service its pilots routinely receive from Tampa Approach Control.

Discussion of Issues

(a) The relief proposed is not adequate. Most of the commenters believed that the FAA should provide access for aircraft without Mode C transponders to all airports or locations within Mode C veil airspace, and that the FAA should therefore exclude the airspace from the surface up to 2,500 or 3,500 feet AGL from the Mode C transponder requirement. The FAA has maintained that safety is enhanced by the Mode C rule because the operation of Mode C transponders results in the

display of an enhanced radar target on air traffic controllers' radar scopes; facilities the radar identification of aircraft; facilities computer-assisted tracking of aircraft; and provides altitude information for each aircraft. Further, the availability of associated altitude information for all radar targets and computer-assisted radar identification and tracking reduces the controller workload. Radio communications are also reduced by the use of Mode C transponders since the display of altitude information eliminates unnecessary traffic advisories. Because of the numerous benefits and the increase in safety derived from the use of transponders with automatic altitude reporting equipment, the FAA believes that aircraft operating in the vicinity of TCA primary airports should be equipped with Mode C transponder equipment, to the maximum extent practicable.

In the preamble to Notice No. 90-16, the FAA stated that the issue of access to airports within a Mode C veil would be considered, but only to the extent that the safety of operations within and in the vicinity of a TCA are not compromised. The FAA acknowledged that certain safety benefits derived from the use of Mode C transponders may not be realized if such operations are not detected by ATC radar systems. Therefore, the FAA determined that operation conducted by aircraft without Mode C transponders could be safely accommodated if those operations are limited to areas and are conducted below altitudes that are not within current ATC radar coverage. The FAA further stated that the safety benefits attributed to the use of TCAS equipment should not be derogated. Consequently, the FAA concluded that the applicability of the suspension of the Mode C transponder requirement must be further limited to aircraft operations in the vicinity of airports that are not served by scheduled air carrier operations using aircraft that will be required to install TCAS.

By limiting the applicability of the Mode C transponder suspension to those areas outside ATC radar coverage, the possibility of unenhanced radar targets without associated altitude information being displayed on the radar scopes of air traffic controllers is minimized. A genenral exclusion of the Mode C transponder requirement for operations within a Mode C veil at and below 2,500 or 3,500 feet AGL would be inconsistent with the FAA's desire to limit operations of aircraft without Mode C transponder equipment to areas outside current ATC radar coverage and would derogate the level of safety to be provided to operations to, from, and in the vicinity of the TCA primary airport.

(b) The specified altitudes should be uniform. ATC radar coverage is dependent on a number of variables including terrain, electromagnetic interference, and other obstructions to radar signals. Consequently, radar coverage does not extend down to a uniform altitude throughout Mode C veil airspace. Similar to the discussion regarding a shelf or a general exclusion of the airspace underneath the Mode C veil, a uniform altitude would not be consistent with the requirement that excluded operations be conducted in areas not within ATC radar coverage.

(c) Other airports within the TCA veil should be listed. In response to comments that operations in the vicinity of other airports should be excluded from the Mode C transponder requirement, the extent of ATC radar coverage in the areas that were the subject of the comments was reexamined. As a result, five additional airports will be added to the list of airports at which operations by aircraft without Mode C transponder equipment will be permitted. Those airports are Ziermann Airport, Mayer, MN; Aero Country Airport, McKinney, TX; Kentmorr Airpark Airport, Stevensville, MD; Bay Bridge Airport, Stevensville, MD; and Castle Mariana Airport, Chester, MD.

With regard to the Army's comments about the absence of Army airports on the proposed list of airports, the FAA notes that the proposal did list the following airports: Moore Army Air Field (AAF), Ayer/Fort Devens, MA; Phillips AAF, Aberdeen, MD; and Weide AAF, Edgewood Arsenal, MD.

(d) A list of airports for certain TCA's were omitted from the proposal. The FAA determined that current radar coverage within the Los Angeles, Miami, Pittsburgh, Orlando, San Diego, and San Francisco TCA Mode C veils extends down to an altitude which would preclude the exclusion of operations in the vicinity of airports within these TCA Mode C veil locations from the Mode C transponder equipment requirement. Consequently, airports within the Mode C veils for these TCA's were not listed. However, based on a reevaluation of the radar coverage for the Orlando TCA Mode C veil, the FAA has determined that two airports should be included in the list of airports for that Mode C veil. Those airports are: (1) Arthur Dunn Air Park Airport, Titusville, FL; and (2) Space Center Executive Airport, Titusville, FL. Although there were no specific comments regarding the inclusion of airports for the Orlando TCA Mode C veil received during the comment period, the FAA believes that the exclusion of operations in the vicinity of the two airports from the Mode C transponder equipment requirement can be accommodated safely and is in the public interest.

(e) Operations between two excluded airports within the same TCA Mode C veil should be permitted. The FAA proposed to suspend the Mode C transponder requirement to provide access to and from outlying airports within a Mode C veil for operators of aircraft based at those airports who have no intention or desire of operating within any other airspace having a Mode C transponder requirement. The FAA has maintained that operators desiring or having need to operate within other areas in which Mode C transponders are required, must so equip their aircraft. Permitting operation from point to point within a Mode C veil is inconsistent with the intent of this regulation.

(f) The specified altitudes and the 1.5-nautical mile radius from excluded airport is too restrictive. While the FAA believes that a 1.5-nautical mile radius from a listed airport provides sufficient maneuvering airspace, the FAA concedes that it may be difficult for a pilot to accurately determine a distance of 1.5 nautical miles from an airport and that a 2-nautical mile distance from the airport would be easier to determine. In the interest of simplification and the marginal increase in safety attributable to a more consistent and accurate determination of a distance of 2 miles as opposed to 1.5 miles, the FAA is revising the area surrounding an airport within which operations will be excluded from the Mode C transponder equipment requirement to a 2-nautical-mile radius from a listed airport. Further, the area surrounding a listed airport within which operations by aircraft without Mode C transponders will be permitted is increased to a 5-nautical-mile radius, when directed or instructed by ATC. A 5-nautical-mile radius around a listed airport coincides with established airspace areas within which ATC routinely exercises control jurisdiction at airports with operating control towers. ATC may need to direct aircraft to operate beyond a 2-nautical-mile radius of a listed airport due to traffic or other operating procedures. The 5-nautical-mile provision is intended to eliminate any uncertainty as to whether an operator of an aircraft without a Mode C transponder, operating to or from an airport listed in this SFRA, should comply with any ATC instruction

which would result in an operation beyond a 2-nautical-mile radius of the airport. Similarly, the FAA is adding clarifying language to allow an aircraft operator to proceed on other than the most direct and expeditious routing between a listed airport and the outer boundary of the Mode C veil when so directed by ATC.

With regard to the altitudes for each airport, the FAA believes that the specified altitudes provide sufficient maneuvering room and allow for operation in compliance with the minimum safe altitude provisions of § 91.119. However, should the pilot of an aircraft determine that the operation at or below the specified altitude is unsafe due to meteorological conditions, aircraft operating characteristics, or other factors, then the pilot should seek relief from the Mode C transponder requirement via the ATC authorization process.

(g) The proximity of Hernando County Airport (Tampa veil) to a military training route may compromise safety. The Air Force commented that the exclusion of the Mode C transponder equipment requirement for operations in the vicinity of Hernando County Airport would impact the quality of the traffic advisory service its pilots routinely receive from Tampa Approach Control. The FAA does not agree with this comment because only those operations at, to, and from Hernando County Airport that are: (1) Within 30 miles of Tampa International Airport; and (2) not within ATC radar coverage, will be excluded from the Mode C transponder equipment requirement. Therefore, the FAA does not believe that the Air Force is routinely receiving traffic advisories with respect to these aircraft since such aircraft would not be detected by ATC radar. Excluding operations in the vicinity of Hernando County Airport from the Mode C transponder requirement should have no impact on the quality of traffic advisory service provided by ATC.

ATC Radar System Improvements

The FAA expects the radar coverage in some Mode C veil airspace to improve as a result of the scheduled upgrading of radar systems at each TCA location. After new radar systems are in service, the FAA may conduct field evaluations to reassess actual radar coverage on a site-by-site basis. Those reassessments may result in future proposed rulemaking to: (1) Extend the period that the Mode C transponder requirement is to be suspended if the evaluations indicate that aircraft operations at a designated airport are still not within radar coverage; or (2) designate other airports at which operations may be suspended from the Mode C transponder requirements if those evaluations determine that such operations are not within radar coverage.

Proposed and Future TCA's

A list of airports and specified altitudes below which aircraft operations will be excluded from the Mode C transponder requirement for the proposed Washington Tri-Area TCA Mode C veils is included in this SFAR. Should the proposed Washington Tri-Area TCA be established, the effective date of the suspension of the Mode C transponder requirements for operations in the vicinity of the listed airports will be coincident with the effective date of the establishment of that TCA. The list of airports within the proposed Washington Tri-Area TCA Mode C veil at which operations will be excluded from the Mode C transponder requirement contains a number of airports which are also included in the list of airports for the current Washington TCA Mode C veil. However, should the Washington Tri-Area TCA be adopted, the current Washington TCA would be revoked and replaced by the Washington Tri-Area TCA. The suspension of the Mode C transponder requirement for aircraft operations at the airports specified for the proposed Washington Tri-Area TCA will coincide with the effective date of the Washington Tri-Area TCA, should that TCA become effective.

With regard to future proposed TCA's, a list of airports and specified altitudes below which aircraft operations would be excluded from the Mode C transponder requirement will accompany any notice of proposed rulemaking for each proposed TCA. The inclusion of the list of airports in the NPRM for the proposed TCA will allow the public to fully consider the impact of the proposed TCA and Mode C veil on aircraft operations; provide the public with the opportunity to comment on the list of airports and specified altitudes; and allow for full consideration of such comments along with other comments to the proposed TCA. If the proposed TCA is adopted, then a final rule amending this SFAR will be published with an effective data coincident with the effective date of the new TCA. The final rule amendment to this SFAR will list those airports within the new TCA Mode C veil at which aircraft operations at and below the specified altitude within a 2-nautical mile radius of an airport and along a direct route between that airport and the outer boundary of the Mode C veil will be suspended from the Mode C transponder equipment requirement until December 30, 1993.

The Special Federal Aviation Regulation

This SFAR permits the operation of an aircraft to and from designated airports within the Mode C veil without a Mode C transponder. A list of airports at which operations without a Mode C transponder will be permitted is contained in this SFAR. The Mode C transponder requirement will be reinstated for aircraft operations to and from the designated airports after December 30, 1993. However, the FAA may conduct field evaluations to reassess the radar coverage within certain TCA Mode C veils on a site-by-site basis after new radar systems are in service. Based on those reassessments, the FAA may extend the period that the Mode C transponder requirement will be suspended for operations at certain airports on a case-by-case basis through further rulemaking.

Aircraft operations without a Mode C transponder will be permitted within a 2-nautical mile radius of a designated airport from the surface up to a specified altitude. Additionally, aircraft operations without a Mode C transponder will be permitted along the most direct route between that designated airport and the boundary of the Mode C veil, at and below the specified altitude. The routing must be consistent with established traffic patterns, noise abatement procedures, and safety. This SFAR and the designation of altitudes for each airport, however, are not intended to supersede the provisions of § 91.119, Minimum safe altitudes. Routings to and from each airport are intentionally unspecified to permit the pilot, complying with § 91.119, to avoid operating over obstructions, noise-sensitive areas, etc. Further, should the pilot of an aircraft intending to operate into or out of an airport listed in this SFAR determine that the operation at or below the specified altitude is unsafe due to meteorological conditions, aircraft operating characteristics, or other factors, the pilot should seek relief from the Mode C transponder requirement via the ATC authorization process.

Aircraft operations at, to, or from the listed airports will be suspended from the Mode C transponder requirement until December 30, 1993. This time period will accommodate the scheduled upgrading of present ATC radar systems at each TCA airport and an evaluation period to determine the extent of radar coverage within each Mode C veil as a result of radar system enhancements. Based on the results of these

evaluations, the period that the Mode C transponder requirement will be suspended for operations at certain airports may be extended on a site-by-site basis by further rulemaking.

Operations of aircraft without Mode C transponders at airports not listed by this rule will continue to be safely accommodated in accordance with existing provisions for individual ATC authorizations.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation prepared by the FAA which provides more detailed information on estimates of the potential economic consequences of this final rule. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or highly controversial.

The FAA has determined that this rule will not be "major" as defined in the executive order. Therefore, a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to the final rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he/she should consult the full regulatory evaluation contained in the docket.

Benefit and Cost Analysis

Costs. This final rule is not expected to impose costs on either the FAA or society. In addition, this rule will not impose significant costs on the aviation community (namely, fixed based operators). This assessment is based on rationale contained in the following discussion for each of these groups.

For the FAA, this rule will not impose additional costs for either personnel or equipment. The acquisition of new radar tracking systems is a routine cost of upgrading FAA equipment and will not occur as a result of this rule. In addition, this rule will not require the FAA to hire additional personnel. This is because the temporary suspension of the Mode C transponder requirement is expected to enhance air traffic control (ATC) operation efficiency by eliminating the need for ATC authorizations at the subject designated airports. This action will reduce the demand on ATC personnel and equipment resources.

This rule will not have an adverse impact on aviation safety. The FAA believes that access to certain outlying GA airports by aircraft without Mode C transponders can be accommodated without diminishing Mode C safety benefits, provided the operation is conducted outside radar coverage. When aircraft operations are confined exclusively to areas of no radar coverage, many of the safety benefits of the Mode C rule cannot be realized. Future enhancement of the radar tracking system is expected to increase radar coverage, thus extending the Mode C benefits to more areas outside of the current radar coverage. The scheduled installation of the new radar tracking systems at all TCA primary airports is expected to be completed in about three years. The Mode C transponder requirement will be reinstated for aircraft operations to and from the designated airports after December 30, 1993. After new radar systems are in service, the FAA may conduct field evaluations to reassess actual radar coverage. Those reassessments may result in future proposed rulemaking to amend the suspension period for operation at certain airports.

For the aviation community, the FAA anticipates no significant costs will be incurred by fixed base operators (FBOs) as the result of this rule. Fixed base operators represent the most likely group to potentially incur costs. These costs will be in the form of lost revenues from the relocation of GA aircraft without Mode C transponders as a result of this action. However, it is the informed opinion of FAA personnel that any potential cost impact on FBOs will be insignificant. The FAA believes that GA aircraft operators based at non-designated airports within a Mode C veil and currently authorized to operate without a Mode C transponder will have little incentive to relocate since: (1) The ATC authorization contains those conditions and provisions necessary for safe operation and the operator has agreed to comply with those provisions; and (2) the renewal process for an existing authorization is less cumbersome than the first-time authorization process. Furthermore, the FAA does not believe that significant numbers of GA aircraft without Mode C transponders will relocate from outside a Mode C veil to a designated airport within a Mode C veil. This is because this rule will only allow aircraft without Mode C transponders to operate from the surface up to a specified altitude within a 2.0 nautical mile radius of a designated airport and along the most direct route between that airport and the boundary of the Mode C veil. Although this rule will provide greater access to a Mode C veil, the FAA believes that this action will not provide much of an incentive for GA aircraft operators to relocate. This assessment is further supported by the belief that the vast majority of GA aircraft operators required to have Mode C transponders will have acquired them by December 30, 1990. This is when the requirement for such equipment at Airport Radar Service Areas goes into effect.

The FAA recognizes the possibility that lost revenues incurred by some FBOs outside of the Mode C veil could be offset by revenue gains on the part of FBOs inside the veil. However, there is much uncertainty associated with this possibility due to a lack of information concerning the level of competition among FBOs inside and outside of the Mode C veils throughout the United States. For example, in any given state, the market structure inside of the Mode C veil could resemble a spatial monopoly, in which unit prices for services rendered by FBOs will be higher than that of a more competitive market structure located outside of the veil. If some aircraft operators were to relocate from areas of higher competition to areas of lower competition among FBOs those operators may incur higher charges for services rendered. For those operators who elect to relocate, it can be assumed to be in their best interest to do so. Thus, any additional higher FBO charges aircraft operators incur as the result of relocating will be at least offset by those factors that prompted their decision to relocate. The net change in revenue among FBOs may not be offsetting because of differences in unit prices charged. While it is not known to what

extent revenue gains and losses will be offset among FBOs. the FAA, nonetheless, believes that the cost impacts on FBOs will not be significant for those reasons stated in the previous paragraphs.

Benefits. This final rule is expected to generate potential benefits in the form of increased convenience to GA aircraft operators (without Mode C transponders) and enhanced operation efficiency to FAA air traffic control.

For GA aircraft operators, this rule is expected to generate potential benefits in the form of increased convenience. Prior to this rule, GA aircraft operators, without Mode C transponders, could operate at an airport within the Mode C veil but outside of ATC radar coverage only after receiving ATC authorization. However, certain aspects of the authorization process are inefficient and time consuming because authorizations can only be granted on a case-by-case basis. This undesirable situation was true for both affected GA operators and the FAA. The convenience of this rule will be the temporary relief from the burden of obtaining ATC authorizations that sometimes confronts GA aircraft operators who wish to fly to and from the designated airports without Mode C transponders.

For FAA air traffic control (ATC), this rule will provide benefits in the form of enhanced operation efficiency. Such enhanced efficiency will be the temporary relief on ATC from assigning authorizations during busy periods. This action will better allow ATC to temporarily allocate its personnel and equipment resources to more productive functions.

Although the benefits of this rule have not been quantified, they are expected to be substantial for both the flying public and the FAA.

Conclusion

This rule is not expected to impose costs on either the FAA or society. In addition, this rule will not impose significant costs on the aviation community (FBOs). The FAA estimates that this rule will potentially generate substantial benefits such as increased convenience to some GA aircraft operators and increased operation efficiency to FAA air traffc control. Thus, the FAA firmly believes that this rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." This small entities that could be potentially affected by the implementation of the rule are air taxi operators and fixed based operators (FBOs).

In terms of air taxi operators, no cost impact are anticipated by this rule. This assessment is based on the FAA's estimation that these operators are already equipped with Mode C transponders. They are, in all likelihood, based at airports within the Mode C veil which fall within the radar coverage of ATC.

In terms of FBOs, the FAA estimates that this rule will not impose significant costs. This assessment is based on the belief that GA aircraft operators are not likely to impose lost revenues on FBOs by relocating from airports outside of the Mode C veil or undesignated airports within the Mode C veil to designated airports specified in this rule. Although the rule provides greater access to a Mode C veil, the FAA believes that this rule does not provide GA aircraft operators with much of an incentive to relocate. This assessment is further supported by the belief that the vast majority of those GA aircraft operators required to have Mode C transponders will acquire them by December 30, 1990 (Phase II of the Mode C rule for Airport Radar Service Areas). Therefore, the FAA believes that this rule will not have a significant economic impact on substantial number of small entities.

International Trade Impact Assessment

This rule will not have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because this rule will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that will result in a competitive disadvantage to either.

Federalism Determination

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

Environmental Effects

This SFAR relieves the requirement for an aircraft to be equipped with a Mode C transponder when operating at/to/from certain airports within a Mode C veil. This action does not establish specific operating procedures, nor does it limit the operation of an aircraft to a specific route. Routings to and from each airport are intentionally unspecified to permit the pilot to avoid operating over obstructions, noise-sensitive areas, etc. and remain in compliance with § 91.119. Therefore, this SFAR accommodates the operation of an aircraft in compliance with existing safety and environmental requirements and procedures and does not alter or supersede those requirements. The FAA's experience with the granting of authorizations since the adoption of the Mode C transponder requirement indicates that there will not be a large number of aircraft operating at any one airport under the authority of this rule. For these reasons, the FAA concludes that the adoption of this rule is categorically excluded from the requirement for further environmental review or assessment pursuant to FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation 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. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 91

Aircraft, Air traffic control, Automatic altitude reporting equipment, Aviation safety, Mode C veil, Terminal control area, Transponder.

The Amendment

For the reasons set forth in the preamble, the Federal Aviation Administration amends part 91 of the Federal Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. 62 to read as follows:

SFAR No. 62—Suspension of Certain Aircraft Operations from the Transponder with Automatic Pressure Altitude Reporting Capability Requirement.

Section 1. For purposes of this SFAR:

(a) The airspace within 30 nautical miles of a terminal control area primary airport, from the surface upward to 10,000 feet MSL, excluding the airspace designated as a terminal control area is referred to as the Mode C veil.

(b) Effective until December 30, 1993, the transponder with automatic altitude reporting capability requirements of FAR § 91.215(b)(2) do not apply to the operation of an aircraft:

(1) In the airspace at or below the specified altitude and within a 2-nautical-mile radius, or, if directed by ATC, within a 5-nautical mile radius, of an airport listed in section 2 of this SFAR; and

(2) In the airspace at or below the specified altitude along the most direct and expeditious routing, or on a routing directed by ATC, between an airport listed in section 2 of this SFAR and the outer boundary of the Mode C veil airspace overlying that airport, consistent with established traffic patterns, noise abatement procedures, and safety.

Section 2. Effective until December 30, 1993. Airports at which the provisions of § 91.215(b)(2) do not apply.

(1) Airports within a 30-nautical-mile radius of The William B. Hartsfield Atlanta International Airport.

Airport name	Arpt ID	Alt. (AGL)
Air Acres Airport, Woodstock, GA.	5GA4	1,500
B & L Strip Airport, Hollonville, GA.	GA29	1,500
Camfield Airport, McDonough, GA.	GA36	1,500
Cobb County-McCollum Field Airport, Marietta, GA.	RYY	1,500
Covington Municipal Airport, Covington, GA.	9A1	1,500
Diamond R Ranch Airport, Villa Rica, GA.	3GA5	1,500
Dresden Airport, Newnan, GA..	GA79	1,500
Eagles Landing Airport, Williamson, GA.	5GA3	1,500
Fagundes Field Airport, Haralson, GA.	6GA1	1,500
Gable Branch Airport, Haralson, GA.	5GA0	1,500
Georgia Lite Flite Ultralight Airport, Acworth, GA.	31GA	1,500
Griffin-Spalding County Airport, Griffin, GA.	6A2	1,500
Howard Private Airport, Jackson, GA.	GA02	1,500
Newnan Coweta County Airport, Newnan, GA.	CCO	1,500
Peach State Airport, Williamson, GA.	3GA7	1,500
Poole Farm Airport, Oxford, GA.	2GA1	1,500
Powers Airport, Hollonville, GA.	GA31	1,500
S & S Landing Strip Airport, Griffin, GA.	8GA6	1,500
Shade Tree Airport, Hollonville, GA.	GA73	1,500

(2) Airports within a 30-nautical-mile radius of the General Edward Lawrence Logan International Airport.

Airport name	Arpt ID	Alt. (AGL)
Berlin Landing Area Airport, Berlin, MA.	MA19	2,500
Hopedale Industrial Park Airport, Hopedale, MA.	1B6	2,500
Larson's SPB, Tyngsboro, MA.	MA74	2,500
Moore AAF, Ayer/Fort Devens, MA.	AYE	2,500
New England Gliderport, Salem, NH.	NH29	2,500
Plum Island Airport, Newburyport, MA.	2B2	2,500
Plymouth Municipal Airport, Plymouth, MA.	PYM	2,500
Taunton Municipal Airport, Taunton, MA.	TAN	2,500
Unknown Field Airport, Southborough, MA.	1MA5	2,500

(3) Airports within a 30-nautical-mile radius of the Charlotte/Douglas International Airport.

Airport name	Arpt ID	Alt. (AGL)
Arant Airport, Wingate, NC	1NC6	2,500
Bradley Outernational Airport, China Grove, NC.	NC29	2,500
Chester Municipal Airport, Chester, SC.	9A6	2,500
China Grove Airport, China Grove, NC.	76A	2,500
Goodnight's Airport, Kannapolis, NC.	2NC8	2,500
Knapp Airport, Marshville, NC..	3NC4	2,500
Lake Norman Airport, Mooresville, NC.	14A	2,500
Lancaster County Airport, Lancaster, SC.	LKR	2,500
Little Mountain Airport, Denver, NC.	66A	2,500
Long Island Airport, Long Island, NC.	NC26	2,500
Miller Airport, Mooresville, NC..	8A2	2,500
U S Heliport, Wingate, NC.....	NC56	2,500
Unity Aerodrome Airport, Lancaster, SC.	SC76	2,500
Wilhelm Airport, Kannapolis, NC.	6NC2	2,500

(4) Airports within a 30-nautical-mile radius of the Chicago-O'Hara International Airport.

Airport name	Arpt ID	Alt. (AGL)
Aurora Municipal Airport, Chicago/Aurora, IL.	ARR	1,200
Donald Alfred Gade Airport, Antioch, IL.	IL11	1,200
Dr. Joseph W. Esser Airport, Hampshire, IL.	7IL6	1,200
Flying M. Farm Airport, Aurora, IL.	IL20	1,200
Fox Lake SPB, Fox Lake, IL.....	IS03	1,200
Graham SPB, Crystal Lake, IL..	IS79	1,200
Herbert C. Mass Airport, Zion, IL.	IL02	1,200
Landings Condominium Airport, Romeoville, IL.	C49	1,200
Lewis University Airport, Romeoville, IL.	LOT	1,200
McHenry Farms Airport, McHenry, IL.	44IL	1,200
Olson Airport, Plato Center, IL.	LL53	1,200
Redeker Airport, Milford, IL.....	IL85	1,200
Reid RLA Airport, Gilberts, IL...	6IL6	1,200
Shamrock Beef Cattle Farm Airport, McHenry, IL.	49LL	1,200
Sky Soaring Airport, Union, IL..	55LL	1,200
Waukegan Regional Airport, Waukegan, IL.	UGN	1,200
Wormley Airport, Oswego, IL....	85LL	1,200

(5) Airports within a 30-nautical-mile radius of the Cleveland-Hopkins International Airport.

Airport name	Arpt ID	Alt. (AGL)
Akron Fulton, International Airport, Akron, OH.	AKR	1,300
Bucks Airport, Newbury, OH.....	40OH	1,300
Derecsky Airport, Auburn Center, OH.	6OI0	1,300
Hannum Airport, Streetsboro, OH.	69OH	1,300
Kent State University Airport, Kent, OH.	1G3	1,300
Lost Nation Airport, Willoughby, OH.	LNN	1,300
Mills Airport, Mantua, OH.....	OH06	1,300
Portage County Airport, Ravenna, OH.	29G	1,300
Stoney's Airport, Ravenna, OH.	OI32	1,300
Wasdworth Municipal, Airport, Wadsworth, OH.	3G3	1,300

(6) Airports within a 30-nautical-mile radius of the Dallas/Fort Worth International Airport.

Airport name	Arpt. ID	Alt. (AGL)
Beggs Ranch/Aledo Airport, Aledo, TX.	TX15	1,800
Beicher Airport, Sanger, TX	TA25	1,800
Bird Dog Field Airport, Krum, TX.	TA48	1,800
Boe-Wrinkle Airport, Azle, TX	28TS	1,800
Flying V Airport, Sanger, TX	71XS	1,800
Graham Ranch Airport, Celina, TX.	TX44	1,800
Haire Airport, Bolivar, TX	TX33	1,800
Hartlee Field Airport, Denton, TX.	1F3	1,800
Hawkin's Ranch Strip Airport, Rhome, TX.	TA02	1,800
Horseshoe Lake Airport, Sanger, TX.	TE24	1,800
Ironhead Airport, Sanger, TX	T58	1,800
Kezer Air Ranch Airport, Springtown, TX.	61F	1,800
Lane Field Airport, Sanger, TX.	58F	1,800
Log Cabin Airport, Aledo, TX	TX16	1,800
Lone Star Airpark Airport, Denton, TX.	T32	1,800
Rhome Meadows Airport, Rhome, TX.	TS72	1,800
Richards Airport, Krum, TX	TA47	1,800
Tallows Field Airport, Celina, TX.	79TS	1,800
Triple S Airport, Aledo, TX	42XS	1,800
Warshun Ranch Airport, Denton, TX.	4TA1	1,800
Windy Hill Airport, Denton, TX	46XS	1,800
Aero Country Airport, McKinney, TX.	TX05	1,400
Bailey Airport, Midlothian, TX	7TX8	1,400
Bransom Farm Airport, Burleson, TX.	TX42	1,400
Carroll Air Park Airport, De Soto, TX.	F66	1,400
Carroll Lake-View Airport, Venus, TX.	70TS	1,400
Eagle's Nest Estates Airport, Ovilla, TX.	2T36	1,400
Flying B Ranch Airport, Ovilla, TX.	TS71	1,400
Lancaster Airport, Lancaster, TX.	LNC	1,400
Lewis Farm Airport, Lucas, TX.	6TX1	1,400
Markum Ranch Airport, Fort Worth, TX.	TX79	1,400
McKinney Municipal Airport, McKinney, TX.	TKI	1,400
O'Brien Airpark Airport, Waxahachie, TX.	F25	1,400
Phil L. Hudson Municipal Airport, Mesquite, TX.	HQZ	1,400
Plover Heliport, Crowley, TX	82Q	1,400
Venus Airport, Venus, TX	75TS	1,400

(7) Airports within a 30-nautical-mile radius of the Stapleton International Airport.

Airport name	Arpt. ID	Alt. (AGL)
Athanasiou Valley Airport, Blackhawk, CO.	CO07	1,200
Boulder Municipal Airport, Boulder, CO.	1V5	1,200
Bown Farms No. 2 Airport, Strasburg, CO.	3CO5	1,200
Carrera Airpark Airport, Mead, CO.	93CO	1,200
Cartwheel Airport, Mead, CO	0CO8	1,200
Colorado Antique Field Airport, Niwot, CO.	8CO7	1,200
Comanche Airfield Airport, Strasburg, CO.	3CO6	1,200
Comanche Livestock Airport, Strasburg, CO.	59CO	1,200
Flying J Ranch Airport, Evergreen, CO.	27CO	1,200
Frederick-Firestone Airport Strip Airport, Frederick, CO.	CO58	1,200
Frontier Airstrip Airport, Mead, CO.	84CO	1,200
Hoy Airstrip Airport, Bennett, CO.	76CO	1,200
J & S Airport, Bennett, CO	CD14	1,200
Kugel-Strong Airport, Platteville, CO.	27V	1,200
Land Airport, Keenesburg, CO.	CO82	1,200
Lindys Airpark Airport, Hudson, CO.	7CO3	1,200
Marshdale STOL, Evergreen, CO.	CO52	1,200
Meyer Ranch Airport, Conifer, CO.	5CO6	1,200
Parkland Airport, Erie, CO	7CO0	1,200
Pine View Airport, Elizabeth, CO.	02V	1,200
Platte Valley Airport, Hudson, CO.	18V	1,200
Rancho D Aereo Airport, Mead, CO.	05CO	1,200
Spickard Farm Airport, Byers, CO.	5CO4	1,200
Vance Brand Airport, Longmont, CO.	2V2	1,200
Yoder Airstrip Airport, Bennett, CO.	CD09	1,200

(8) Airports within a 30-nautical-mile radius of the Detroit Metropolitan Wayne County Airport.

Airport name	Arpt. ID	Alt. (AGL)
Al Meyers Airport, Tecumseh, MI.	3TE	1,400
Brighton Airport, Brighton, MI	45G	1,400
Cackleberry Airport, Dexter, MI.	2MI9	1,400
Erie Aerodome Airport, Erie, MI.	05MI	1,400
Ham-A-Lot Field Airport, Petersburg, MI.	MI48	1,400
Merillat Airport, Tecumseh, MI.	34G	1,400
Rossettie Airport, Manchester, MI.	75G	1,400
Tecumseh Products Airport, Tecumseh, MI.	0D2	1,400

(9) Airport within a 30-nautical-mile radius of the Honolulu International Airport.

Aiport name	Arpt. ID	Alt. (AGL)
Dillingham Airfield Airport, Mokuleia, HI.	HDH	2,500

(10) Airports within a 30-nautical-mile radius of the Houston Inter-continental Airport.

Airport name	Arpt. ID	Alt. (AGL)
Ainsworth Airport, Cleveland, TX.	0T6	1,200
Biggin Hill Airport, Hockley, TX.	0TA3	1,200
Cleveland Municipal Airport, Cleveland, TX.	6R3	1,200
Fay Ranch Airport, Cedar Lane, TX.	0T2	1,200
Freeman Property Airport, Katy, TX.	61T	1,200
Gum Island Airport, Dayton, TX.	3T6	1,200
Harbican Airpark Airport, Katy, TX.	9XS9	1,200
Harold Freeman Farm Airport, Katy, TX.	8XS1	1,200
Hoffpauir Airport, Katy, TX	59T	1,200
Horn-Katy Hawk International Airport, Katy, TX.	57T	1,200
Houston-Hull Airport, Houston, TX.	SGR	1,200
Houston-Southwest Airport, Houston, TX.	AXH	1,200
King Air Airport, Katy, TX	55T	1,200
Lake Bay Gall Airport, Cleveland, TX.	0T5	1,200
Lake Bonanza Airport, Montgomery, TX.	33TA	1,200
R W J Airpark Airport, Baytown, TX.	54TX	1,200
Westheimer Air Park Airport, Houston, TX.	5TA4	1 200

(11) Airports within a 30-nautical-mile radius of the Kansas City International Airport.

Airport name	Arpt. ID	Alt. (AGL)
Amelia Earhart Airport, Atchison, KS.	K59	1,000
Booze Island Airport, St. Joseph, MO.	64MO	1,000
Cedar Air Park Airport, Olathe, KS.	51K	1,000
D'Field Airport, McLouth, KS	KS90	1,000
Dorei Airport, McLouth, KS	K69	1,000
East Kansas City Airport, Grain Valley, MO.	3GV	1,000
Excelsior Springs Memorial Airport, Excelsior Springs, MO.	3EX	1,000
Flying T Airport Oskaloosa, KS.	7KS0	1,000
Hermon Farm Airport, Gardner, KS.	KS59	1,000
Hillside Airport, Stilwell, KS	63K	1,000
Independence Memorial Airport, Independence, MO.	3IP	1,000
Johnson County Executive Airport, Olathe, KS.	OJC	1,000
Johnson County Industrial Airport, Olathe, KS.	IXD	1,000
Kimray Airport, Plattsburg, MO.	7MO7	1,000
Lawrence Municipal Airport, Lawrence, KS.	LWC	1,000
Martins Airport, Lawson, MO	21MO	1,000
Mayes Homestead Airport, Polo, MO.	37MO	1,000
McComas-Lee's Summit Municipal Airport, Lee's Summit, MO.	K84	1,000
Mission Road Airport, Stilwell, KS.	64K	1,000
Northwood Airport, Holt, MO	2MO2	1 000

Airport name	Arpt ID	Alt. (AGL)
Plattsburg Airpark, Airport, Plattsburg, MO.	MO28	1,000
Richards-Gebaur Airport, Kansas City, MO.	GVW	1,000
Rosecrans Memorial Airport, St. Jospeh, MO.	STJ	1,000
Runway Ranch Airport, Kansas City, MO.	2MO9	1,000
Sheller's Airport, Tonganoxide, KS.	11KS	1,000
Shomin Airport, Oskaloosa, KS.	0KS1	1,000
Stonehenge Airport, Williamstown, KS.	71KS	1,000
Threshing Bee Airport, McLouth, KS.	41K	1,000

(12) Airport within a 30-nautical-mile radius of the McCarran International Airport.

Airport name	Arpt ID	Alt. (AGL)
Sky Ranch Estates Airport, Sandy Valley, NV.	3L2	2,500

(13) Airports within a 30-nautical-mile radius of the Memphis International Airport.

Airport name	Arpt ID	Alt. (AGL)
Bernard Manor Airport, Earle, AR.	M65	2,500
Holly Springs-Marshall County Airport, Holly Springs, MS.	M41	2,500
McNeely Airport, Earle, AR	M63	2,500
Price Field Airport, Joiner, AR	80M	2,500
Tucker Field Airport, Hughes, AR.	78M	2,500
Tunica Airport, Tunica, MS	30M	2,500
Tunica Municipal Airport, Tunica, MS.	M97	2,500

(14) Airports within a 30-nautical-mile radius of the Minneapolis-St. Paul International Wold-Chamberlain Airport.

Airport name	Arpt ID	Alt. (AGL)
Belle Plaine Airport, Belle Plaine, MN.	7Y7	1,200
Carleton Airport, Stanton, MN	SYN	1,200
Empire Farm Strip Airport, Bongards, MN.	MN15	1,200
Flying M Ranch Airport, Roberts, WI.	78WI	1,200
Johnson Airport, Rockford, MN.	MY86	1,200
River Falls Airport, River Falls, WI.	Y53	1,200
Rusmar Farms Airport, Roberts, WI.	WS41	1,200
Waldref SPB, Forest Lake, MN.	9Y6	1,200
Ziermann Airport, Mayer, MN	MN71	1,200

(15) Airports within a 30-nautical-mile radius of the New Orleans International/Moisant Field Airport.

Airport name	Arpt ID	Alt. (AGL)
Bollinger SPB, Larose, LA	L38	1,500
Clovelly Airport, Cut Off, LA	LA09	1,500

(16) Airports within a 30-nautical-mile radius of the John F. Kennedy International Airport, the La Guardia Airport, and the Newark International Airport.

Airport name	Arpt ID	Alt. (AGL)
Allaire Airport, Belmar/Farmingdale, NJ.	BLM	2,000
Cuddihy Landing Strip Airport, Freehold, NJ.	NJ60	2,000
Ekdahl Airport, Freehold, NJ	NJ59	2,000
Fla-Net Airport, Netcong, NJ	ONJ5	2,000
Forrestal Airport, Princeton, NJ.	N21	2,000
Greenwood Lake Airport, West Milford, NJ.	4N1	2,000
Greenwood Lake SPB, West Milford, NJ.	6NJ7	2,000
Lance Airport, Whitehouse Station, NJ.	6NJ8	2,000
Mar Bar L Farms, Englishtown, NJ.	NJ46	2,000
Peekskill SPB, Peekskill, NY	7N2	2,000
Peters Airport, Somerville, NJ	4NJ8	2,000
Princeton Airport, Princeton/Rocky Hill, NJ.	39N	2,000
Solberg-Hunterdon Airport, Readington, NJ.	N51	2,000

(17) Airports within a 30-nautical-mile radius of the Orlando International Airport.

Airport name	Arpt ID	Alt. (AGL)
Arthur Dunn Air Park Airport, Titusville, FL.	X21	1,400
Space Center Executive Airport, Titusville, FL.	TIX	1,400

(18) Airports within a 30-nautical-mile radius of the Philadelphia International Airport.

Airport name	Arpt ID	Alt. (AGL)
Ginns Airport, West Grove, PA.	78N	1,000
Hammonton Municipal Airport, Hammonton, NJ.	N81	1,000
Li Calzi Airport, Bridgeton, NJ	N50	1,000
New London Airport, New London, PA.	N01	1,000
Wide Sky Airpark Airport, Bridgeton, NJ.	N39	1,000

(19) Airports within a 30-nautical-mile radius of the Phoenix Sky Harbor International Airport.

Airport name	Arpt ID	Alt. (AGL)
Ak Chin Community Airfield Airport, Maricopa, AZ.	E31	2,500
Boulais Ranch Airport, Maricopa, AZ.	9E7	2,500
Estrella Sailport, Maricopa, AZ.	E68	2,500
Hidden Valley Ranch Airport, Maricopa, AZ.	AZ17	2,500
Millar Airport, Maricopa, AZ	2AZ4	2,500
Pleasant Valley Airport, New River, AZ.	AZ05	2,500
Serene Field Airport, Maricopa, AZ.	AZ31	2,500b
Sky Ranch Carefree Airport, Carefree, AZ.	E18	2,500
Sycamore Creek Airport, Fountain Hills, AZ.	0AS0	2,500
University of Arizona, Maricopa Agricultural Center Airport, Maricopa, AZ.	3AZ2	2,500

(20) Airports within a 30-nautical-mile radius of the Lambert/St. Louis International Airport.

Airport name	Arpt ID	Alt. (AGL)
Blackhawk Airport, Old Monroe, MO.	6MO0	1,000
Lebert Flying L Airport, Lebanon, MO.	3H5	1,000
Shafer Metro East Airport, St. Jacob, IL.	3K6	1,000
Sloan's Airport, Elsberry, MO	0MO8	1,000
Wentzville Airport, Wentzville, MO.	MO50	1,000
Woodliff Airpark Airport, Foristell, MO.	98MO	1,000

(21) Airports within a 30-nautical-mile radius of the Salt Lake City International Airport.

Airport name	Arpt ID	Alt. (AGL)
Bolinder Field-Tooele Valley Airport, Tooele, UT.	TVY	2,500
Cedar Valley Airport, Cedar Fort, UT.	UT10	2,500
Morgan County Airport, Morgan, UT.	42U	2,500
Tooele Municipal Airport, Tooele, UT.	U26	2,500

(22) Airports within a 30-nautical-mile radius of the Seattle-Tacoma International Airport.

Airport name	Arpt ID	Alt. (AGL)
Firstair Field Airport, Monroe, WA.	WA38	1,500
Gower Field Airport, Olympia, WA.	6WAZ	1,500
Harvey Field Airport, Snohomish, WA.	S43	1,500

(23) Airports within a 30-nautical-mile radius of the Tampa International Airport.

Airport name	Arpt ID	Alt. (AGL)
Hernando County Airport, Brooksville, FL.	BKV	1,500
Lakeland Municipal Airport, Lakeland, FL.	LAL	1,500
Zephyrhills Municipal Airport, Zephyrhills, FL.	ZPH	1,500

(24) Effective until the establishment of the Washington Tri-Area TCA or December 30, 1993, whichever occurs first: Airports within a 30-nautical-mile radius of the Washington National Airport and Andrews Air Force Base Airport.

Airport name	Arpt ID	Alt. (AGL)
Barnes Airport, Lisbon, MD	MD47	2,000
Bay Bridge Airport, Stevensville, MD.	W29	2,000
Castle Marina Airport, Chester, MD.	0W6	2,000
Davis Airport, Laytonsville, MD.	W50	2,000
Fremont Airport, Kemptown, MD.	MD41	2,000
Kentmorr Airpark Airport, Stevensville, MD.	3W3	2,000
Montgomery County Airpark Airport, Gaithersburg, MD.	GAI	2,000
Waredaca Farm Airport, Brookeville, MD.	MD16	2,000
Aqua-Land/Cliffton Skypark Airport, Newburg, MD.	2W8	1,000
Buds Ferry Airport, Indian Head, MD.	MD39	1,000
Burgess Field Airport, Riverside, MD.	3W1	1,000
Chimney View Airport, Fredericksburg, VA.	5VA5	1,000
Holly Springs Farm Airport, Nanjemoy, MD.	MD55	1,000
Lanseair Farms Airport, La Plata, MD.	MD97	1,000
Nyce Airport, Mount Victoria, MD.	MD84	1,000
Parks Airpark Airport, Nanjemoy, MD.	MD54	1,000
Pilots Cove Airport, Tompkinsville, MD.	MD06	1,000
Quantico MCAF, Quantico, VA.	NYG	1,000
Stewart Airport, St. Michaels, MD.	MD64	1,000
U.S. Naval Weapons Center, Dahlgren Lab Airport, Dahlgren, VA.	NDY	1,000

(25) Effective upon the establishment of the Washington Tri-Area TCA: Airports within a 30-nautical-mile radius of the Washington National Airport, Andrews Air Force Base Airport, Baltimore-Washington International Airport, and Dulles International Airport.

Airport name	Arpt ID	Alt. (AGL)
Albrecht Airstrip Airport, Long Green, MD.	MD48	2,000
Armacost Farms Airport, Hampstead, MD.	MD38	2,000
Barnes Airport, Lisbon, MD	MD47	2,000
Bay Bridge Airport, Stevensville, MD.	W29	2,000
Carroll County Airport, Westminster, MD.	W54	2,000
Castle Marina Airport, Chester, MD.	OW6	2,000
Clearview Airpark Airport, Westminster, MD.	2W2	2,000
Davis Airport, Laytonsville, MD.	W50	2,000
Fallston Airport, Fallston, MD	W42	2,000
Faux-Burhans Airport, Frederick, MD.	3MD0	2,000
Forest Hill Airport, Forest Hill, MD.	MD31	2,000
Fort Detrick Helipad Heliport, Fort Detrick (Frederick), MD.	MD32	2,000
Frederick Municipal Airport, Frederick, MD.	FDK	2,000
Fremont Airport, Kemptown, MD.	MD41	2,000
Good Neighbor Farm Airport, Unionville, MD.	MD74	2,000
Happy Landings Farm Airport, Unionville, MD.	MD73	2,000
Harris Airport, Still Pond, MD	MD69	2,000
Hybarc Farm Airport, Chestertown, MD.	MD19	2,000
Kennersley Airport, Church Hill, MD.	MD23	2,000
Kentmorr Airpark Airport, Stevensville, MD.	3W3	2,000
Montgomery County Airpark Airport, Gaithersburg, MD.	GAI	2,000
Phillips AAF, Aberdeen, MD	APG	2,000
Pond View Private Airport, Chestertown, MD.	OMD4	2,000
Reservoir Airport, Finksburg, MD.	1W8	2,000
Scheeler Field Airport, Chestertown, MD.	OW7	2,000
Stolcrest STOL, Urbana, MD	MD75	2,000
Tinsely Airstrip Airport, Butler, MD.	MD17	2,000
Walters Airport, Mount Airy, MD.	OMD6	2,000
Waredaca Farm Airport, Brookeville, MD.	MD16	2,000
Weide AAF, Edgewood Arsenal, MD.	EDG	2,000
Woodbine Gliderport, Woodbine, MD.	MD78	2,000
Wright Field Airport, Chestertown, MD.	MD11	2,000
Aviacres Airport, Warrenton, VA.	3VA2	1,500
Birch Hollow Airport, Hillsboro, VA.	W60	1,500
Flying Circus Aerodrome Airport, Warrenton, VA.	3VA3	1,500
Fox Acres Airport, Warrenton, VA.	15VA	1,500
Hartwood Airport, Somerville, VA.	8W8	1,500
Horse Feathers Airport, Midland, VA.	53VA	1,500
Krens Farm Airport, Hillsboro, VA.	14VA	1,500
Scott Airpark Airport, Lovettsville, VA.	VA61	1,500
The Grass Patch Airport, Lovettsville, VA.	VA62	1,500
Walnut Hill Airport, Calverton, VA.	58VA	1,500
Warrenton Air Park Airport, Warrenton, VA.	9W0	1,500
Warrenton-Fauquier Airport, Warrenton, VA.	W66	1,500
Whitman Strip Airport, Manassas, VA.	OV5	1,500
Aqua-Land/Cliffton Skypark Airport, Newburg, MD.	2W8	1,000
Buds Ferry Airport, Indian Head, MD.	MD39	1,000
Burgess Field Airport, Riverside, MD.	3WI	1,000
Chimney View Airport, Fredericksburg, VA.	5VA5	1,000
Holly Springs Farm Airport, Nanjemoy, MD.	MD55	1,000
Lanseair Farms Airport, La Plata, MD.	MD97	1,000
Nyce Airport, Mount Victoria, MD.	MD84	1,000
Parks Airpark Airport, Nanjemoy, MD.	MD54	1,000
Pilots Cove Airport, Tompkinsville, MD.	MD06	1,000
Quantico MCAF, Quantico, VA.	NYG	1,000
Stewart Airport, St. Michaels, MD.	MD64	1,000
U.S. Naval Weapons Center, Dahlgren Lab Airport, Dahlgren, VA.	NDY	1,000

Issued in Washington, DC on November 29, 1990.

James B. Busey,

Administrator.

[FR Doc. 90-28502 Filed 11-30-90; 4:05 pm]

BILLING CODE 4910-13-M

federal register

Wednesday
December 5, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Amendment of Compliance Date for Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots With Fewer Than 400 Hours of Flight Time; Final Rule; Request for Comments

DEPARTMENT OF TRANSPORTATION

14 CFR Part 61

[Docket No. 24695; Amdt. No. 61-89]

RIN 2120-AA54

Amendment of Compliance Date for Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots With Fewer Than 400 Hours of Flight Time

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule extends, until August 31, 1991, the compliance date for the requirement that recreational pilots and non-instrument-rated private pilots with fewer than 400 hours of flight time receive an annual flight review consisting of a minimum of 1 hour each of flight and ground instruction. This amendment is necessary to provide the Federal Aviation Administration adequate time in which to evaluate the petitions of the Aircraft Owners and Pilots Association and the Experimental Aircraft Association requesting deletion of the annual flight review. This amendment suspends the annual flight review requirement during the petition review period. It also precludes the necessity for large numbers of pilots to conduct this additional ground and flight instruction while the FAA conducts its review.

EFFECTIVE DATE: This final rule is effective November 30, 1990. Comments must be received on or before January 4, 1991.

ADDRESSES: Comments on this final rule may be delivered to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24695, 800 Independence Avenue SW., room 915G, Washington, DC 20591. Comments submitted on the final rule must be marked: Docket No. 24695. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Clista, Regulations Branch (AFS-850), General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, ATTN: APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267-3484. Communications must identify the docket number (Docket No. 24695) of this final rule. Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The requirement for an annual flight review for recreational and non-instrument-rated private pilots with fewer than 400 hours of flight time was issued in the final rule entitled "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots With Fewer Than 400 Flight Hours" (54 FR 13028; March 29, 1989). That final rule resulted, in part, from a petition for rulemaking submitted by the National Association of Flight Instructors (NAFI) (47 FR 11026; March 15, 1982). The final rule was based upon Notice of Proposed Rulemaking No. 85-13 (50 FR 26286; June 25, 1985).

The effective date for the recreational pilot final rule, which contains the annual flight review requirement, at § 61.56(d), was August 31, 1989. This would mean that as of August 31, 1990, those affected recreational pilots and non-instrument-rated private pilots would have to complete the additional ground and flight instruction.

By letter dated May 22, 1989, the Aircraft Owners and Pilots Association (AOPA) petitioned the FAA to revise § 61.56(d) of the Federal Aviation Regulations (FAR) by deleting the annual flight review requirement. AOPA based its request for deletion of the annual flight review requirement on accident data which accompanied its petition.

By letter dated July 25, 1989, the Experimental Aircraft Association (EAA) also petitioned the FAA to delete the annual flight review requirement for recreational pilots and non-instrument-rated private pilots with fewer than 400 hours of flight time as a pilot.

On July 30, 1989, Secretary of Transportation Samuel Skinner spoke at EAA's annual convention at Oshkosh, WI. In response to requests from the aviation community, he promised that the FAA would review the data that was the basis for issuing the annual flight review rule.

As a result of these and other numerous inquiries questioning the sufficiency of the data used to justify the annual flight review requirement, the FAA intitiated a review of the documents and data that were used to justify adoption of the requirement. On March 27, 1990, the FAA completed a preliminary study of these documents and data. As a result of this review the FAA has determined that the documents and data sources used by the agency in the development of the annual flight review requirement may have been insufficient.

In further consideration of the data presented in the AOPA petition, representatives of AOPA and EAA met with FAA representatives July 13, 1990. In that meeting AOPA representatives stated that the annual flight review requirement singles out one particular segment for training that, for various reasons, they do not believe the safety data supports. EAA noted the continuing decline in general aviation and commented that the public feels burdened by additional rules. At the conclusion of the meeting, the FAA agreed that an extension of the compliance period for the annual flight review is warranted to allow additional time to consider the data presented by AOPA and EAA and to evaluate the need for the annual flight review. A copy of the record of this meeting is located in Docket No. 24695.

For the reasons stated above, the FAA is extending the compliance date for the annual flight review requirement until a satisfactory determination can be made as to the need for it. Additional time is required to update and analyze the data pertinent to the annual flight review requirement and to consider other related factors.

General Discussion of this Final Rule

Upon preliminary review of the documents and data used in development of the annual flight review requirement, the FAA recognizes the need for further analysis. Therefore, the FAA has determined that it is in the public interest to delay the compliance date of the requirement for an annual flight review under § 61.56(d) of the FAR until August 31, 1991.

Economic Statement

This final rule extends, until August 31, 1991, the compliance date for the requirement that recreational pilots and non-instrument-rated private pilots with fewer than 400 hours of flight time recieve an annual flight review consisting of a minimum of 1 hour each of flight and ground instruction.

The FAA has not been able to identify any economic impact of this action on either society or pilots because the data

relied upon to promulgate the original annual flight review requirement may have been insufficient. The FAA does not desire to impose the annual flight review requirement until additional data and analysis support its need.

Reason for No Notice and Immmediate Adoption

This amendment is being adopted without notice and public comment procedure because delay would have a significant economic impact on the general aviation community. Large numbers of recreational and private pilots would be required to receive 2 hours, at a minimum, of ground and flight instruction on a yearly basis at an estimated annual cost of $6.4 million. Because the FAA needs more time to determine if this additional requirement for instruction is warranted or should be modified in some manner, requiring these persons to complete an annual review in the interim would constitute an undue burden.

The FAA finds that notice and public comment for this amendment are impracticable and contrary to the public interest because compliance with the current rule may be an undue burden on the general aviation public. In addition, because the date has already passed on which the one-year requirement would have taken effect, the FAA finds that good cause exists to make this rule effective in fewer than 30 days.

If the FAA determines that the annual review is not necessary or that it should be modified in some manner, a period of time will be required to draft a revision to the recreational pilot rule, to allow time for comment, and then to respond to those comments in a final rule.

Interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communciations received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Federalism Impact

The amendment adopted herein does 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 amendment does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

This amendment delays the compliance date, until August 31, 1991, of the annual flight review requirement for recreational pilots and non-instrument-rated private pilots with fewer than 400 hours of flight time as a pilot that was established in the "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Pilots with Fewer than 400 Hours" final rule. (FAR 61.56(d))

The FAA has determined that this amendment is not a major regulation under the criteria of Executive Order No. 12291 but is significant, because of the number of persons affected and public interest in this issue, under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 61

Aviation safety, Student pilots, Eligibility requirements, Aeronautical knowledge, Operational experience, Cross-country flight privileges, Limitations.

The Amendment

Accordingly, part 61 of the Federal Aviation Regulations (14 CFR part 61) is amended as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449; January 12, 1983).

2. By amended § 61.56 by revising the introductory text of paragraph (d) to read as follows:

§ 61.56 Flight review.

* * * * *

(d) Except as provided in paragraph (e) of this section, after August 31, 1991—* * *

* * * * *

Issued in Washington, DC, on November 30, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–28501 Filed 12–4–90; 8:45 am]

BILLING CODE 4910–13–M

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Vol. 55, No. 234

Wednesday, December 5, 1990

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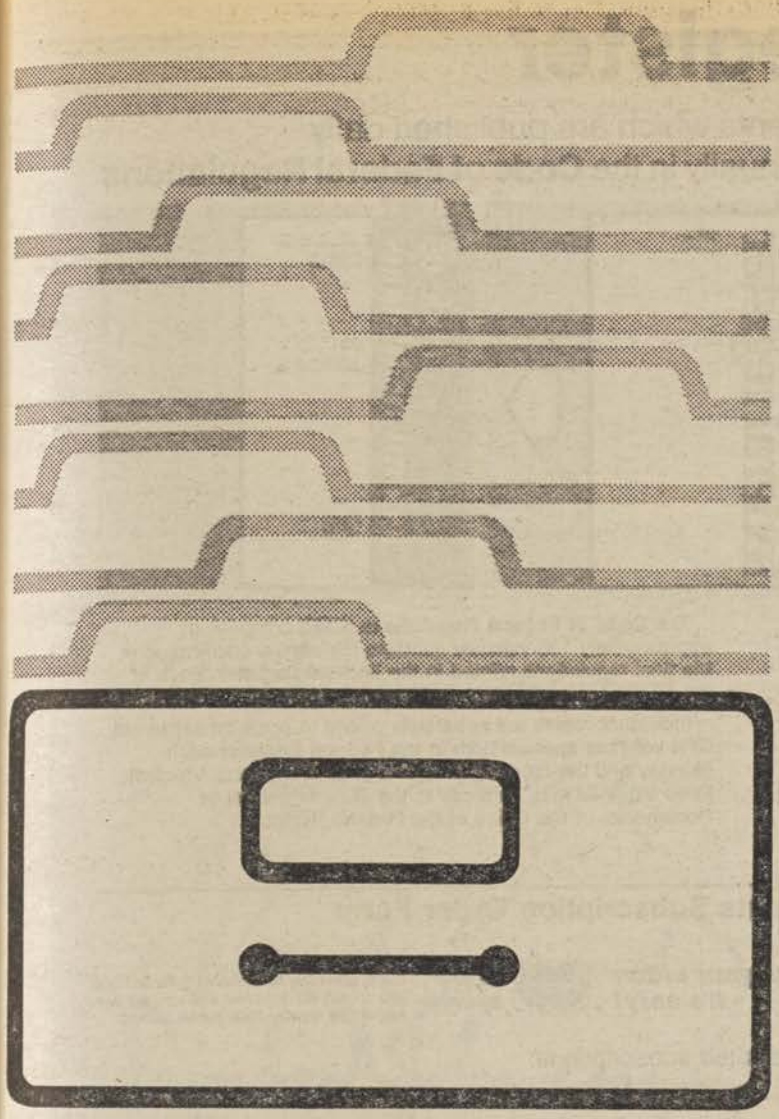
S. 303/Pub. L. 101-648

Negotiated Rulemaking Act of 1990. (Nov. 29, 1990; 104 Stat. 4969; 9 pages) Price: $1.00

S. 358/Pub. L. 101-649

Immigration Act of 1990. (Nov. 29, 1990; 104 Stat. 4978; 111 pages) Price: $3.00



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in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1990

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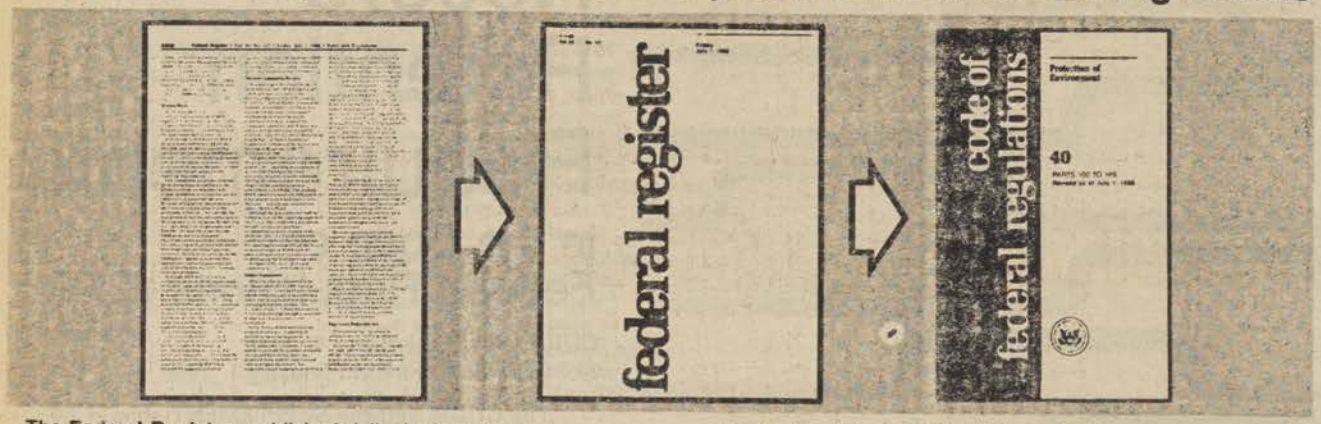

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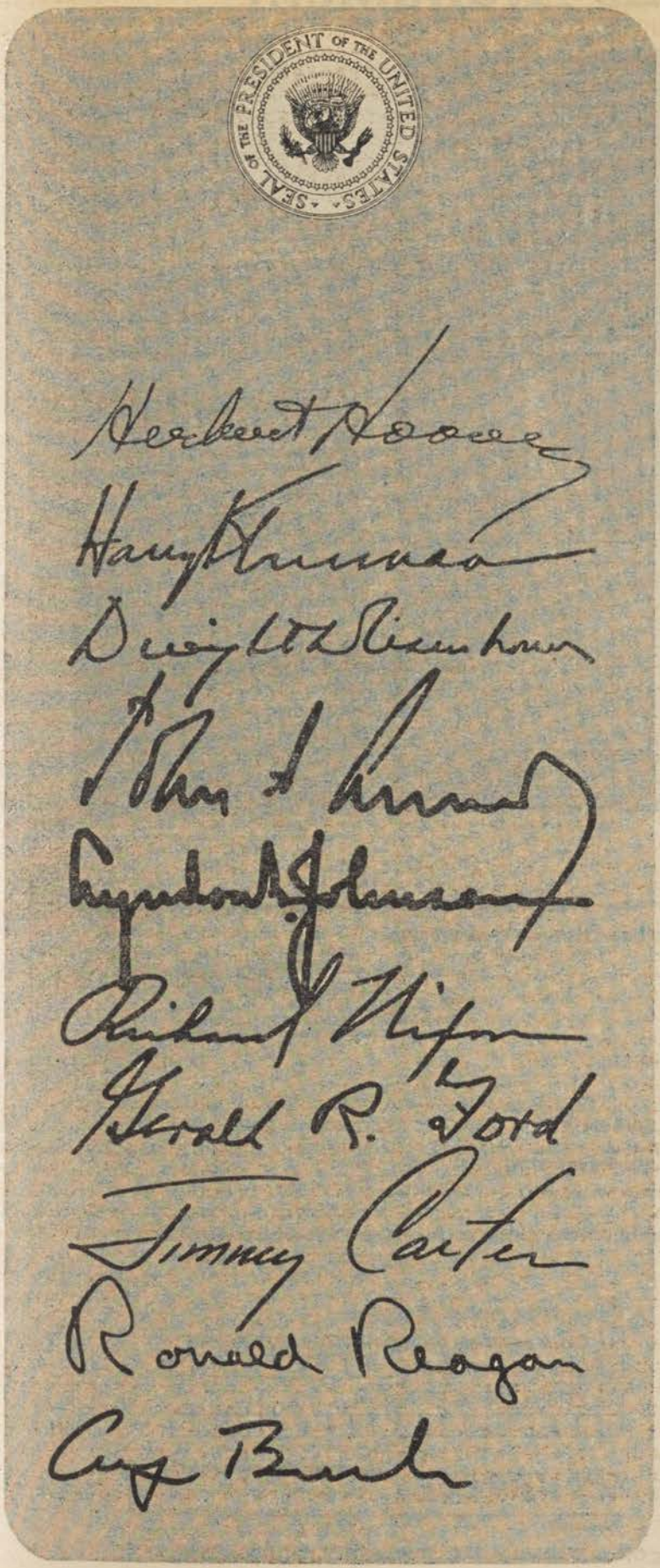

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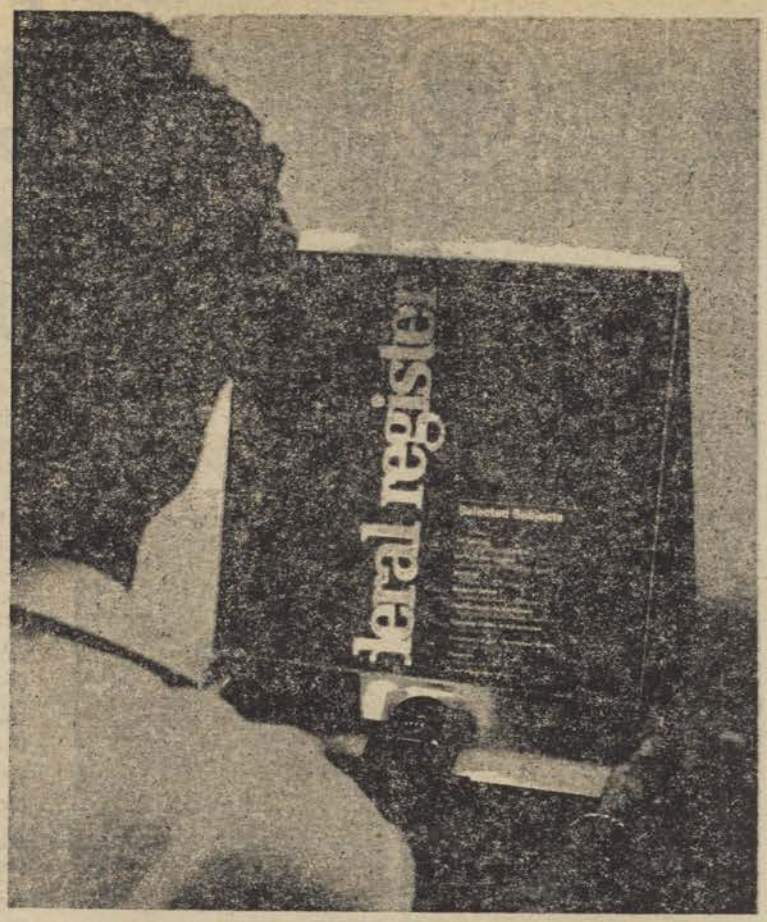

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