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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-88-107]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the designation of the consolidated flue-cured tobacco markets of Stoneville and Madison, North Carolina. A mail referendum was conducted during the period of June 5–9, 1989, among tobacco growers who sell their tobacco at auction in Stoneville and Madison, North Carolina, to determine producer approval of the designation of these two markets as one consolidated market. Eligible producers voted in favor of the designation. Therefore, for the 1989 and succeeding flue-cured marketing seasons, the Stoneville and Madison, North Carolina, tobacco markets shall be designated as and be called Stoneville-Madison. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Room 502 Annex, Washington, DC 20090–6456, telephone (202) 447–2567.

SUPPLEMENTARY INFORMATION: A notice was published in the June 1, 1989, issue of the **Federal Register** (54 FR 23629) advising that a referendum would be conducted among flue-cured producers who market their tobacco on the Stoneville and Madison, North Carolina, markets to ascertain if such producers favored the designation of the consolidated market. Stoneville and Madison had been officially and separately designated on June 26, 1942 under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

The referendum was conducted among producers who were engaged in the production of flue-cured tobacco which they marketed in Stoneville and Madison, North Carolina, during the calendar year 1988. Ballots for the June 5–9 referendum were mailed to 1,155 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 397 responses: 381 eligible producers voted in favor of the consolidation of the Stoneville and Madison markets; 15 eligible producers voted against the consolidation; and 1 ballot was determined to be invalid.

The notice of referendum announced the determination by the Secretary that the consolidated market of Stoneville-Madison, North Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory, Federal grading of tobacco sold at auction for the 1989 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Madison, North Carolina, on November 9, 1988, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule because it does not meet any of the criteria established for major rules under the executive order.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. It has been determined that this action will not have a significant impact on a substantial number of small entities, and will not substantially affect the normal movement of the commodity in the marketplace. Good cause has been found for not postponing the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). In order to facilitate the scheduling of sales, the designation of the combined market should be in effect during the entire sales season, which will begin in late July this year. Further, other requirements associated with designation are already in place because the markets being consolidated were previously designated separately.

List of Subjects in 7 CFR Part 29

Administrative practices and procedure, Tobacco.

For the reason set forth in the preamble, 7 CFR Part 29, Subpart D, is amended as follows:

PART 7—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732 as amended by sec. 157 (a)-(i), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.8001 [Amended]

2. In § 29.8001, the table is amended by removing under item (t) in the column Auction Markets the words Madison, North Carolina and Stoneville, North Carolina and by adding a new entry (ccc) to read as follows:

Territory	Type of tobaccos	Action markets	Order of designation	Citation
•	•	•	•	•
(ccc) North Carolina	Flue-cured	Stoneville-Madison	Aug. 2, 1989	

Dated: July 28, 1989.
Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 89-18035 Filed 8-1-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 945

[Docket No. FV-89-065]

Idaho-Eastern Oregon Potatoes; Expenses and Assessment Rate

AGENCY: Agricultrual Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 945 for the 1989-90 fiscal period. Authorization of this budget allows the Idaho-Eastern Oregon Potato Committee to incure expenses necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1989 through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 98 and Marketing Order No. 945 (7 CFR Part 945) both as amended, regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Ageement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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 rule on small entities.

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

There are approximately 70 handlers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 3,650 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989-90 fiscal year was prepared by the Idaho-Eastern Oregon Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

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

The committee met on May 24, 1989, and unanimously recommended a budget for the 1989-90 fiscal period of $78,180 and an assessment rate of $0.0026 per hundredweight of potatoes handled. This compares to the 1988-89 budget of $82,200. The assessment rate is the maximum permitted under the order and has remained the same for over two decades. The budget is $4,020 less than last year, reflecitng decreases of $2,320 for computer purchases and $5,400 for the purchase of an automobile for the manager's use. These decreases are partially offset by a five percent increase in committee staff salaries as well as increases in rent, postage, telephone and gasoline. With the assessment rate of $0.0026, anticipated fresh market shipments of 21 million hundredweight will yield $54,600 in assessment income. This, along with approximately $3,600 in fees, $1,000 in interest and $18,980 from the reserve, will be adequate for budgeted expenses. At the end of the fiscal period , the reserve fund is expected to approximate $22,000.

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

Notice was given in the June 28, 1989 **Federal Register** (54 FR 27178) affording interested persons until July 10, 1989, to file written comments. None were received.

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

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** in that the 1989-90 fiscal period begins August 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during that period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 945

Marketing agreements, potatoes (Idaho and Oregon).

For the reasons set forth in the preamble, 7 CFR Part 945 is amended as follows:

PART 945—POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OR

1. The authority citation for 7 CFR Part 945 continues to read as follows:

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

2. A new § 945.242 is added to read as follows:

Note:—This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 945.242 Expenses and assessment rate.

Expenses of $78,180 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 28, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-18031 Filed 8-1-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1076

[AMS-89-022]

Milk in the Eastern South Dakota Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the months of August 1989 through February 1990 certain provisions of the Eastern South Dakota milk order. The provisions suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market. The suspension is needed to prevent uneconomic movements of milk.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 13, 1989; published June 19, 1989 (54 FR 25726).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Eastern South Dakota marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on June 19, 1989 (54 FR 25726), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1989 through February 1990 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1076.13, paragraphs (c) (2) and (3).

Statement of Consideration

This action removes for the months of August 1989 through February 1990 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The suspension was requested by Land O'Lakes, Inc. (LOL), an association of producers that handles most of the market's reserve milk supplies.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

The suspension is necessary to assure the continued participation in the marketwide pool of producers historically associated with the Eastern South Dakota market. Operation of the 35 percent diversion limit during August through February would require LOL to deliver 65 percent of its milk to pool plants. According to the cooperative's estimates, only 45 to 53 percent of its milk will be needed at distributing plants. Without suspension of the diversion limit, the balance of LOL's members' milk would have to be delivered to a supply plant, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL and its member producers, with no offsetting benefits to other market participants.

In comments filed in support of the proposed suspension, LOL stated that requiring the full 65 percent of its milk to be delivered to pool plants would serve no useful purpose other than demonstrating the availability of a reserve supply of milk for Class I use. The cooperative argued that because the reserve milk will not be needed for Class I use, the requirement should be suspended.

In view of these circumstances, it is concluded that the diversion limits in the Eastern South Dakota milk order should be suspended for the months of August 1989 through February 1990 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

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

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that, without extensive unnecessary and expensive hauling and handling, substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

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

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1076

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1076.13 of the Eastern South Dakota order are hereby suspended for the months of August 1989 through February 1990, as follows:

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. The authority citation for Part 1076 continues to read as follows:

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

§ 1076.13 [Amended]

2. In § 1076.13, paragraphs (c) (2) and (3) are suspended for the months of August 1989 through February 1990.

Signed at Washington, DC, on July 27, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-18036 Filed 8-1-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89-014]

Temporary Importation of Horses; Horses From Countries Affected With Contagious Equine Metritis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow horses from countries affected with contagious equine metritis (CEM) to be imported into the United States for no more than 60 days to compete in specified events, when specified requirements are met to prevent the horses from introducing CEM into the United States. This action is warranted to allow these horses to be imported into the United States when this can be done without undue risk to livestock in the United States.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Chester A. Gipson, Senior Staff Veterinarian, SPMDS, VS, APHIS, USDA, Room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8954.

SUPPLEMENTARY INFORMATION: On December 16, 1988, we published a document in the **Federal Register** (53 FR 50539-50544, Docket Number 86-037), in which we proposed to amend the regulations in 9 CFR Part 92 (referred to below as the regulations), which contain provisions concerning the importation into the United States of specified animals and animal products, and which are designed to prevent the introduction into the United States of various diseases, including contagious equine metritis (CEM). CEM is a venereal disease of horses that affects fertility and breeding.

Specifically, we proposed provisions for the importation of horses from CEM-affected countries for no more than 60 days to compete in specified events. This amendment is warranted because it provides an additional means of importing these horses into the United States without undue risk of transmitting CEM to horses in the United States.

We solicited comments concerning the proposal for a 30-day period ending January 17, 1989, and received two comments. One of the comments was from the American Veterinary Medical Association (AMVA) and the other was from a private individual.

We have carefully considered the comments submitted in response to the proposal, and discuss below the issues raised by the comments. Based on the rationale set forth in the proposal and in this document, we have adopted the provisions of the proposal as a final rule with the changes discussed below.

Both commenters expressed concern that sufficient APHIS personnel might not be available to carry out the supervision required by the proposed rule. We agree that it is essential that APHIS personnel be available before a horse is imported and entered under the proposed rule. It was our implicit intent in proposing the changes to the regulations that an import permit would not be issued for a horse if sufficient personnel were not available to carry out the required APHIS functions. To clarify this intent, we are specifying in a new § 92.4(a)(1)(iii) that approval of an application for a permit to import a horse on a temporary basis for competition is contingent upon the Administrator determining that sufficient APHIS personnel are available to perform the required services. In the event that more than one application is received, APHIS personnel will be assigned in the order that we receive applications that otherwise meat the import permit application requirements in § 92.4.

One commenter stated that the proposed rule would increase the risk of horses from CEM-affected countries spreading disease, but that the increased risk would not be significant if the horses are tested prior to entry. We agree that, with certain exceptions, testing requirements are necessary to ensure that horses imported into the United States do not spread diseases to livestock in the United States. Such testing requirements already exist in the regulations, and are already applicable to horses imported from countries affected with CEM. Therefore, we are making no changes based on this comment.

Miscellaneous

The proposed rule included a definition of "Animal and Plant Health Inspection Service." However, we have since added a definition of "Animal and Plant Health Inspection Service" to Part 92 as part of another document. Therefore, it is not necessary to add that definition as part of this final rule.

Executive Order 12291 and Regulatory Flexibility Act

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

The regulations already allow the importation of thoroughbred horses from specified CEM-affected countries, provided certain testing for CEM is done and provided specific requirements regarding the horses' histories are met. The regulations also allow the importation of all other horses over 731 days of age from CEM-affected countries, provided specified testing and treatment for CEM is carried out. The primary effect of this rule will be to shorten the time necessary to prepare a horse for temporary importation by eliminating the CEM testing and treatment requirements. This will enable foreign horses to stay in training longer and to compete in more events in their own country before being imported into the United States. The costs to owners or importers for our required inspection and supervision will be largely offset by expenses saved because the horses will not have to undergo the treatment and testing we currently require.

Further, the impact on United States horse owners from increased foreign competition for prize monies will be insignificant. In most cases, the horses that will be imported under this rule would otherwise have been imported under the regulations as they stand prior to the effective date of this rule. In those few cases where the increased competition will have some impact, the impact will be largely offset by increased purses due to the participation of foreign horses.

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

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0040.

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

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

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

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—[AMENDED]

1. The authority citation for Part 92 continues to read as follows:

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

2. Section 92.1 is amended by adding a definition of "APHIS representative" to read as follows:

§ 92.1 Definitions.

* * * * *

APHIS representative. A veterinarian or other individual employed by the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the services required by this part.

* * * * *

3. In § 92.2, paragraph (i)(2)(vii) is redesignated as (i)(2)(viii), and a new paragraph (i)(2)(vii) is added to read as follows:

§ 92.2 General prohibitions; exceptions.

* * * * *

(i) * * *

(2) * * *

(vii) Horses over 731 days of age imported into the United States for no more than 60 days to compete in specified events if the following conditions are met:

(A) The horse remains in the United States for no more than 60 days following the horse's release from the port of entry and, while in the United States, is moved according to the itinerary and methods of transport specified in the import permit provided for in § 92.4(a) of this part;

(B) While the horse is in the United States, the following conditions are met:

(1) Except when in transit, the horse is kept on a premises approved, orally or in writing, by an APHIS representative as being *(i)* not a breeding premises, and *(ii)* one that is or that contains a building in which the horse can be kept in a stall that is separated from other stalls containing horses either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. If approval is oral, it will be confirmed in writing by the Administrator as soon as circumstances permit.

(2) While at the premises at which the horse competes, the horse is monitored by an APHIS representative to ensure that the provisions of paragraphs (i)(2)(vii)(B) *(1)*, *(4)*, and *(5)* of this section are met.

(3) While in transit, the horse is moved in either an aircraft or a sealed van or trailer; and, if the horse is moved in a sealed van or trailer, the seal is broken only by an APHIS representative at the horse's destination, except in situations where the horse's life is in danger;

(4) Except when actually competing or being exercised, the horse is kept in a stall that is separated from other stalls containing horses either by an empty stall, an open area, or a solid wall that is at least 8 feet high.

(5) The horse is not used for breeding purposes (including artificial insemination), does not have any other sexual contact with other horses, and does not undergo any genital examinations;

(6) After the horse is transported anywhere in the United States, any vehicle in which the horse is transported is cleaned and disinfected in the presence of an APHIS representative, according to the procedures specified in §§ 71.7 through 71.12 of this chapter, before any other horse is transported in the vehicle;

(7) The cleaning and disinfection specified in paragraph (i)(2)(vii)(B)*(6)* of this section is completed before the vehicle is moved from the place where the horse is unloaded (however, in those cases where the facilities or equipment for cleaning and disinfection are inadequate at the place where the horse is unloaded, the Administrator may allow the vehicle to be moved to another location for cleaning and disinfection, when the move will not pose a disease risk to other horses in the United States); and

(8) The owner or importer of the horse complies with any other provisions of this part applicable to him or her.

(C) All costs associated with the supervision and maintenance of the horse while in the United States will be borne by the horse's owner or importer in accordance with the provisions of paragraph (i)(2)(vii)(G) of this section.

(D) If the owner or importer wishes to change the horse's itinerary or the methods by which the horse is transported from that which he or she specified in the application for the import permit, the owner or importer must make the request for change in writing to the Administrator. Requests should be sent to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. The change in itinerary or method of transport may not be made without the written approval of the Administrator, who may grant the request for change when he or she determines that granting the request will not endanger other horses in the United States and that sufficient APHIS personnel are available to provide the services required by the owner or importer. If more than one application for an import permit is received, APHIS personnel will be assigned in the order that the applications that otherwise meet the requirements of this section are received.

(E) The Administrator may cancel, orally or in writing, the import permit provided for under § 92.4 of this part, whenever the Administrator finds that the owner or importer of the horse has not complied with the provisions of paragraphs (i)(2)(vii) (A), (B), (C), or (D) of this section or any conditions imposed under those provisions. If the cancellation is oral, the Administrator will confirm in writing the decision and the reasons for the decision, as soon as circumstances permit. Any person whose import permit is cancelled may appeal the decision in writing to the Administrator within 10 days after receiving oral or written notification of the cancellation, whichever is earlier. If the appeal is sent by mail, it must be postmarked within 10 days after the owner or importer receives oral or written notification of the cancellation, whichever is earlier. The appeal must include all of the facts and reasons upon which the person relies to show that the

import permit was wrongfully cancelled. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(F) Except in those cases where an appeal is in process, any person whose import permit is cancelled must move the horse identified in the import permit out of the United States within 10 days after receiving oral or written notification of cancellation, whichever is earlier. The horse is not permitted to enter competition, from the date the owner or importer receives the notice of cancellation until removal of the horse from the United States or until resolution of an appeal in favor of the owner or importer. Except when being exercised, the horse must be kept, at the expense of the owner or importer, in a stall either on the premises at which the horse is located when the notice of cancellation is received, or, if the horse is in transit when the notice of cancellation is received, on the premises at which it is next scheduled to compete according to the import permit. The stall in which the horse is kept must be separated from other stalls containing horses either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. In cases where the owners of the above specified premises do not permit the horse to be kept on those premises, or when the Administrator determines that keeping the horse on the above specified premises will pose a disease risk to horses in the United States, the horse must be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator.

(G) A horse imported under paragraph (i)(2)(vii) of this section must be maintained in the United States in accordance with a trust fund agreement executed by the horse's owner or importer. In accordance with the trust fund agreement for the importation of a horse under paragraph (i)(2)(vii) of this section, the horse's owner or importer must deposit with APHIS an amount equal to the estimated cost, including travel, salary, subsistence, administrative expenses, and incidental expenses, as determined by APHIS, for an APHIS representative *(1)* to inspect the premises at which the horse will compete; *(2)* to conduct the monitoring required by paragraph (i)(2)(vii)(B)*(2)* of this section; and *(3)* to supervise the cleaning and disinfection required by paragraph (i)(2)(vii)(B)*(6)* of this section. The amounts will be determined as explained in paragraph (i)(2)(vii)(H) of this section. If, during the horse's stay in the United States, APHIS determines that the amount deposited will be insufficient to cover services APHIS is scheduled to provide during the remainder of the horse's stay, APHIS will issue to the horse's owner or importer a bill to restore the deposited amount to a level sufficient to cover the estimated cost to APHIS for the remainder of the horse's stay in the United States. The horse's owner or importer must pay the amount billed within 14 days after receiving the bill. If the bill is not paid within 14 days after its receipt, APHIS will cease to perform the services provided for in paragraph (i)(2)(vii)(B) of this section, until the bill is paid. The Administrator will inform the owner or importer of the cessation of services orally or in writing. If the notice of cessation is oral, the Administrator will confirm, in writing, the notice of cessation and the reason for the cessation of services as soon as circumstances permit. In such a case, the horse must be kept, at the expense of the owner or importer and until the bill is paid, in a stall either on the premises at which the horse is located when the notice of cessation of services is received, or, if the horse is in transit when the notice of cessation of services is received, on the premises at which it is next scheduled to compete according to the import permit. The stall in which the horse is kept must be separated from other stalls containing horses either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. In cases where the owners of the above specified premises do not permit the horse to be kept on those premises, or when the Administrator determines that keeping the horse on the above specified premises will pose a disease risk to other horses in the United States, the horse must be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator. Until the bill is paid, the horse is not permitted to enter competition. Any amount deposited in excess of the costs to APHIS to provide the required services will be refunded to the horse's owner or importer within 30 days after the horse is moved from the United States.

(H) The cost for APHIS to conduct the inspection and supervision required by paragraph (i)(2)(vii)(B) of this section is based on the following factors:

(1) Number of hours needed for an APHIS representative to conduct the required inspection and monitoring;

(2) For services provided during regular business hours (8 a.m. to 4:30 p.m., Monday through Saturday, except holidays), the average salary, per hour, for an APHIS representative;

(3) For services provided outside regular business hours, the applicable rate for overtime, night differential, or Sunday or holiday pay, based on the average salary, per hour, for an APHIS representative;

(4) Number of miles from the premises at which the horse competes to the APHIS office or facility that is monitoring the activities;

(5) Government rate per mile for automobile travel or, if appropriate, cost of other means of transportation between the premises at which the horse competes and the APHIS office or facility;

(6) Number of trips between the premises at which the horse competes and the APHIS office or facility that APHIS representatives are required to make in order to conduct the required inspection and monitoring;

(7) Number of days the APHIS representative conducting the inspection and monitoring must be in "travel status;"

(8) Applicable government per diem rate; and

(9) Cost of related administrative support services.

* * * * *

4. In § 92.4, paragraph (a)(1) is redesignated as paragraph (a)(1)(i), and new paragraphs (a)(1)(ii) and (a)(1)(iii) are added to read as follows:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes; [1] and reservation fees for space at quarantine facilities maintained by Veterinary Services.

(a) * * *

(1) * * *

(ii) Horses intended for importation under § 92.2(i)(2)(vii) of this part must

[1] For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (Part 17, Title 50, Code of Federal Regulations) and the regulations issued by the U.S. Department of Health and Human Services (Subpart J-1 of Part 71, Title 42, Code of Federal Regulations) should be consulted.

meet the permit requirements of paragraph (a)(1)(i) of this section. Additionally, for horses intended for importation under § 92.2(i)(2)(vii) of this part, the horse's owner or importer must include the following information with the application for permit that is required by paragraph (a)(1)(i) of this section:

(A) That the application is being made for a horse that will remain in the United States for no more than 60 days;

(B) The names, dates, and locations of the events in which the horse will compete while in the United States;

(C) The names and locations of the premises on which the horse will be kept while in the United States, and the dates the horse will be kept on each premises; and

(D) The methods and routes by which the horse will be transported while in the United States.

(iii) Approval of an application for a permit to import a horse under § 92.2(i)(2)(vii) of this part is contingent upon a determination by the Administrator that sufficient APHIS personnel are available to provide the services required. If more than one application for an import permit is received, APHIS personnel will be assigned in the order that applications that otherwise meet the requirements of this section are received.

* * * * *

§ 92.17 [Amended]

5. Section 92.17 is amended by removing the phrase in the first sentence that currently reads "and, except as provided in § 92.2(i)(2) (i), (ii), (iii), (iv), (v), and (vi), the horses have not been in any country listed in § 92.2(i)(1) as affected with CEM during the 12 months immediately prior to their importation into the United States;" and adding in its place a phrase that reads "and, except as provided in § 92.2(i)(2) (i) through (viii), the horses have not been in any country listed in § 92.2(i)(1) as affected with CEM during the 12 months immediately prior to their importation into the United States;".

Done in Washington, DC, this 27th day of July 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-18008 Filed 8-1-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-137-AD; Amdt. 39-6291]

Airworthiness Directives; Boeing of Canada, Ltd., De Havilland Division, Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) T89-14-52, which was previously made effective as to all known U.S. owners and operators of Boeing of Canada, Ltd., De Havilland Division, Model DHC-8 series airplanes by individual telegrams. This AD requires a visual inspection of the flap-drive primary torque tubes for signs of wear/damage due to chafing against the cooling ducts, and replacement of the torque tubes, if necessary. This action is prompted by one report of asymmetric flap deployment. This condition, if not corrected, could result in the flaps failing to deploy symmetrically and could result in a dangerous landing/takeoff configuration.

DATES: Effective August 21, 1989, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T89-14-52, issued July 7, 1989, which contained this amendment.

ADDRESSES: This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, New York Aircraft Certification Office, ANE-173, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: On July 7, 1989, the FAA issued telegraphic AD T89-14-52, applicable to certain Boeing of Canada, Ltd., De Havilland Division, Model DHC-8 series airplanes, which requires a visual inspection of the flap-drive primary torque tubes for signs of wear/damage due to chafing against the cooling ducts, and replacement of the torque tubes, if necessary; repositioning and replacement or repair of the cooling ducts, if necessary; and an operational check of the torque sensor is also required. Additionally, operators are required to report their inspection results to the FAA.

That action was prompted by one report of asymmetric flap deployment on a Model DHC-8 series airplane. The condition was indicated to the flight crew by the tendency of the airplane to roll upon flap extension. The flap-drive caution light did not indicate the condition and the flap position indicator remained at zero degrees. Investigation revealed a broken primary drive shaft between the inboard and outboard left-hand flaps, a broken splined coupling between the flap power unit and the right-hand primary drive shaft, and a malfunctioning secondary drive torque sensor. The left drive shaft failed due to chafing on a cooling duct. The torque sensor failed to detect shaft failure. This condition, if not corrected, could result in the flaps failing to deploy symmetrically and could result in a dangerous landing/takeoff configuration.

This airplane model is manufactured in Canada 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 the FAA determined that the unsafe condition could exist or develop on other airplanes of this same type design, it was found that immediate corrective action was required, that notice and public procedure thereon were impracticable and contrary to the public interest, and that good cause existed to make the AD effective immediately by individual telegrams issued on July 7, 1989, to all known U.S. owners and operators of De Havilland Model DHC-8 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

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

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

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 Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document 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 regulatory 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 of Canada, Ltd., de Havilland Division: Applies to De Havilland Model DHC-8 series airplanes, Serial Numbers 3 and subsequent, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent asymmetric flap deployment, accomplish the following:

A. Within the next 25 hours time-in-service after the effective date of this AD:

1. Visually inspect the flap drive primary torque tubes in the vicinity of Station YW 170 of the left and right wing where it enters the outboard side of each nacelle for signs of damage/wear due to chafing. Torque tubes must be replaced prior to further flight if wear exceeds either 0.010 inch in depth or 180 degrees of the circumference of the shafts.

2. Inspect cooling ducts (Part Number DSC 287-12-70/60) in the vicinity of Station YW 170 of the left and right wing where it enters the outboard side of each nacelle for possible interference with the primary flap drive torque tube. Reposition cooling duct as necessary to provide a minimum clearance of 0.3 inch with the primary flap drive torque tube. If reinforcement wires of the cooling duct are broken due to chafing, the cooling duct must be repaired prior to further flight and replaced within 30 days.

3. Perform an operational check of the torque sensor, and take any indicated corrective actions, in accordance with Maintenance Program Task 2750/11. Refer to "Maintenance Program, Supplementary Information, PSM 1-8-7/1-83-7, Volume 2, Procedures—27, Page 15, dated 15 July 1988."

B. Within 7 days after the completion of the inspections required by paragraph A., above, submit a report of findings, positive or negative, to the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581. Reports must include the airplane serial number.

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, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, New York Aircraft Certification Office.

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.

These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective August 21, 1989 as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T89-14-52, issued July 7, which contained this amendment.

Issued in Seattle, Washington, on July 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18009 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-138-AD; Amdt. 39-6292]

Airworthiness Directives; Fairchild Industries, Inc., Model F-27 and FH-227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 89-15-01, which was previously made effective as to all known U.S. owners and operators of Fairchild Industries, Inc., Model F-27 and FH-227 series airplanes by individual letters. This AD requires a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary. This action is prompted by a recent report of a cracked wing outer panel upper surface stringer splice fitting at Station 167. Undetected cracks could result in structural failure of the wing and inability of the airplane structure to carry required loads.

DATES: Effective August 21, 1989, as to all persons except those persons to whom it was made immediately effective by priority letter AD 89-15-01, issued July 13, 1989, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from Maryland Air Industries, Inc., Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

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

SUPPLEMENTARY INFORMATION: On July 13, 1989, the FAA issued priority letter AD 89-15-01, applicable to Fairchild Model F-27 and FH-227 series airplanes, which requires a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary.

That action was prompted by a recent report of a cracked wing outer panel upper surface stringer splice fitting at

Station 167. These fittings attach the wing outer panel to the wing center section, and are fabricated from 7079T6 aluminum alloy material, which is known to be susceptible to stress corrosion cracking. Undetected cracks could result in structural failure of the wing and inability of the airplane structure to carry required loads.

The FAA has reviewed and approved Maryland Air Industries, Inc. Alert Service Letters F27–681 and FH227–57–6, both dated June 29, 1989; Fairchild Service Bulletin F27–51–8, dated April 22, 1974 (reference paragraph 2A(6)(e), page 5; and Figure 14, page 24); and Fairchild Service Bulletin FH227–51–4, dated January 17, 1979 (reference paragraph 2A(6)(e), page 5; and Figure 14, page 23); which describe procedures for a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary, in accordance with the service bulletins and alert service letters previously described.

This AD also requires that all inspection results be reported to the FAA. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

This is considered to be interim action. Based on the information received from the operators' reports, the FAA will be able to determine the extent and nature of the addressed damage, and develop an appropriate repetitive inspection schedule and/or modification that will preclude the need for repetitive inspections. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 13, 1989 to all known U.S. owners and operators of Fairchild Model F–27 and FH–227 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

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 Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document 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 regulatory 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 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:

Fairchild Industries, Inc.: Applicable to all Model F–27 and FH–227 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent structural failure of the wing due to undetected fatigue cracks, accomplish the following:

A. Within 25 hours time-in-service after the effective date of this AD, perform a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fittings, in accordance with Fairchild Industries Service Bulletin F27–51–8, dated April 22, 1974 (reference paragraph 2A(6)(e), page 5; and Figure 14, page 24) or Fairchild Industries Service Bulletin FH227–51–4, dated January 17, 1979 (reference paragraph 2A(6)(e), page 5; and Figure 14, page 23), as appropriate, and Maryland Air Industries Alert Service Letters F27–681 and FH227–57–6, both dated June 29, 1989.

B. If cracks are found in the wing outer panel upper surface stringer splice fittings, remove and replace with serviceable parts prior to further flight.

C. Within 10 days after completion of the inspection required by paragraph A., above, submit a report of results of all inspections, positive or negative, to the Manager, New York Aircraft Certification Office, ANE–170, FAA, 181 South Franklin Avenue, Valley Stream, New York 11581.

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, New York Aircraft Certification Office, ANE–170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE–170, FAA, New England Region

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 Maryland Air Industries, Inc., Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York.

This amendment becomes effective August 21, 1989 as to all persons, except those persons to whom it was made immediately effective by priority letter AD 89–15–01, issued July 13, 1989, which contained this amendment.

This amendment becomes effective August 21, 1989.

Issued in Seattle, Washington, on July 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–18010 Filed 8–1–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89-NM-117-AD; Amdt. 39-6285]

Airworthiness Directives; McDonnell Douglas Model DC-8F-54, -55, DC-8-61F, -62F, -63F, -71F, -72F, and -73F Series Airplanes; Model DC-8-33 Airplanes With STC Number SA3403WE Incorporated; and Model DC-8-43 Airplanes With STC Number SA3749WE Incorporated

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain Model DC-8 series airplanes, which currently require inspection and modification of the main cargo door hydraulic control valve and control panel access door, and visual inspection of the main cargo door to ensure that the door is locked prior to each takeoff. This amendment requires (1) inspection and modification of the main cargo door hydraulic control valve and control panel access door, (2) visual inspection of the main cargo door to ensure the door is locked prior to each takeoff, (3) inspection and modification of the exterior markings on the main cargo door, and (4) functional checks of the door-open indicating system. This amendment is prompted by a recent accident in which the main cargo door on a Model DC-9 series airplane opened in flight. Similar incidents of the Model DC-8 main cargo door opening in flight have been reported. This condition, if not corrected could result in loss of pressurization and control of the airplane.

EFFECTIVE DATE: August 18, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5341.

SUPPLEMENTARY INFORMATION: In 1975, FAA issued AD 75-03-02, Amendment 39-2075, to require inspection, modification, and replacement, if necessary, of the main cargo door hydraulic control valve and control panel access door plate on McDonnell Douglas Model DC-8 series airplanes. That action was prompted by the inadvertent opening of the main cargo door on a McDonnell Douglas DC-8 series airplane during flight. This condition, if not corrected, could lead to loss of pressurization and control of the airplane.

In 1984, FAA issued AD 84-23-02, Amendment 39-4953, applicable to both Model DC-8 and DC-9 series airplanes, to require visual inspection of the main cargo door to ensure it is closed, latched, and locked prior to each takeoff; or modification of the original door-open indicating system and installation of a second door-open indicating system.

Since the issuance of those two AD's, a recent accident involving a Model DC-9 series airplane occurred, in which the main cargo door inadvertently opened during takeoff or shortly thereafter. This has prompted the FAA to further review the Model DC-8 main cargo door, since the design is similar to that of the Model DC-9. The review examined the main cargo door design, prior incidents of main cargo door inadvertent openings in flight, maintenance of the door, all available service information, and the existing airworthiness directives concerning the Model DC-8 main cargo door.

The FAA has determined that some Model DC-8 airplanes may not have proper exterior markings on the main cargo door, which are necessary to determine visually that the door is properly closed, latched, and locked. Also, the FAA has been advised that some crew members are leaning outside the main entrance door to visually check that the latch controls on the cargo door are in the locked position. Door locked indication can not be properly ascertained from the main entrance door.

The airplane involved in the accident described above did not have the dual door-open indicating system installed; its operator opted to rely on the visual inspection method of AD compliance. Aircraft which do not have the dual door-open indicating system (described in McDonnell Douglas DC-8 Service Bulletin 52-76) installed could have a latent failure condition in the original door-open indicating system such that the door-open annunciating light can extinguish with the cargo door merely resting on the door jamb in the closed, but not latched and locked, position. Also, properly securing the main cargo door hydraulic control panel access door can prevent inadvertent movement of the hydraulic control valve operating handle which is used to activate (open) the main cargo door. Based on the FAA review of the main cargo door design, operation, and maintenance, the FAA has determined that additional inspections, modifications, and checks are necessary to ensure that the Model DC-8 main cargo door is properly closed, latched, and locked prior to flight.

The FAA has reviewed and approved McDonnell Douglas All Operators Letter (AOL) 8-669, dated April 19, 1974; AOL 8-669A, dated April 30, 1974; and DC-8 Service Bulletin 52-76, Revision 3, dated January 29, 1976; which describe inspections, modifications, and checks of the main cargo door hydraulic control valve and control panel access door, the original door-open indicating system, and the new redundant door-open indicating system. The FAA has also approved the exterior markings on the main cargo door which are used when visually determining that the door is closed, latched, and locked.

McDonnell Douglas has also developed additional safety features to prevent the door from opening in flight. The FAA has approved McDonnell Douglas DC-8 Service Bulletins 52-74, Revision 2, dated November 19, 1975, which describes installation of a hydraulic isolation valve to shut off the hydraulic pressure to the control valve when the system is not in use; Service Bulletin 52-75, Revision 1, dated August 9, 1974, which describes installation of a viewing window in the exterior skin of the door for visual inspection of the lockpin position; and Service Bulletin 52-80, dated March 23, 1977, which describes installation of a vent door to improve the positive lock feature of the cargo door latching and locking system and to limit pressurization of the airplane.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 75-03-02 and AD 84-23-02, and requires additional inspections, modifications, and checks of the main cargo door in accordance with the service bulletins previously described. All requirements currently imposed by AD 75-03-02 are incorporated into this AD.

The requirements of this AD supersede the requirements of AD 84-23-02 by requiring the operator to document compliance with the visual check requirement to ensure that the door is closed, latched, and locked prior

to takeoff; deleting the requirement that a flight crew member, a mechanic, or a ramp supervisor ensure that the main cargo door is closed, latched, and locked prior to takeoff, placing that responsibility on the operator; requiring that the visual check of the exterior manual latch controls be accomplished from outside the airplane. In addition, the operator must provide qualified personnel and training on the door closing, latching, and locking procedures, as well as documentation of compliance with this AD.

This AD also requires additional inspection, modification, and checks by requiring initial and repetitive checks of the original door-open indicating system; initial and repetitive inspections of the main cargo door control panel access door and "T" handle clip; and inspection and remarking, if necessary, of the main cargo door exterior lockpin handle and latch actuating shaft markings.

Accomplishment of the modifications specified in McDonnell Douglas DC-8 Service Bulletins 52-74 R2, 52-75, 52-76 R3, and 52-80 will terminate certain inspections and checks required by this AD.

The requirements of this AD are considered to be interim measures. The FAA is currently evaluating all available modifications to the main cargo door system, as well as other actions, and may propose additional mandatory corrective actions to ensure that the Model DC-8 main cargo door will not inadvertently open in flight.

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 Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined 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 regulatory 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 § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) 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 AD 75-03-02, Amendment 39-2075, and AD 84-23-02, Amendment 39-4953, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-8F-54, -55, DC-8-61F, -62F, -63F, -71F, -72F, and -73F series airplanes; Model DC-8-33 airplanes with STC Number SA3403WE incorporated; and Model DC-8-43 airplanes with STC Number SA3749WE incorporated; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of the main cargo door in flight, a condition which could result in loss of pressurization and control of the aircraft, accomplish the following:

A. Within 14 days after the effective date of this AD, ensure that the main cargo door is closed, latched, and locked prior to takeoff following each operation of the door, in accordance with the procedures specified below. The procedures required by this paragraph must be accomplished by qualified and trained personnel, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI). The method for documentation of compliance must also be approved by the FAA PMI.

1. From the outside of the airplane, perform a visual check of the exterior manual latch controls, to ensure that the latch actuating shaft and the lockpin handle are in the LOCK position; or

2. Perform a visual check of the latches and lockpins, located on the inside of the main cargo door, to ensure that the latches are in the closed position and the lockpins are in the locked position.

3. Prior to taxi, communicate to the flight crew that the main cargo door has been closed, latched, locked, and checked.

B. Unless the modifications described in paragraph E. of this AD have previously been accomplished, within the next 30 days after the effective date of this AD, and thereafter at intervals not to exceed 45 days, conduct a main cargo door-open indicating system functional check in accordance with paragraph 1 of McDonnell Douglas All Operators Letter (AOL) 8-669, dated April 19, 1974. If the main cargo door-open indicating system functional check is not successfully accomplished, repair the main cargo door-open indicating system prior to further flight, in accordance with AOL 8-669.

C. For airplanes with the hydraulic cargo door latch system, accomplish the following:

1. Within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 45 days, inspect the main cargo door control panel access door plate and "T" handle stowage clip, in accordance with paragraph 2 of McDonnell Douglas AOL 8-669, dated April 19, 1974. In addition, inspect the control panel access door to ensure the door can be secured in the down and locked position. If the control panel access door can not be secured in the down and locked position, repair prior to further flight.

2. Unless previously accomplished in accordance with paragraph (2) of AD 75-03-02, Amendment 39-2075, within the next 30 days after the effective date of this AD, verify that the main cargo door hydraulic control valve shaft operates freely, without binding, between the operate neutral and neutral lock positions. This shall be accomplished by opening the main cargo door hydraulic control valve control panel access door; raising the "T" handle, Douglas P/N 4777688-1; and pulling the "T" handle vertically upward to its maximum travel (operate neutral position). When the vertical force on the "T" handle is relieved, the main cargo door hydraulic control valve shaft should return to the neutral lock (down) position without binding. Replace the main cargo door hydraulic control valve, Douglas P/N 5777869-5001 or 5919985-5001, prior to further flight, if the valve shaft does not return freely to the neutral lock position.

D. Within 30 days after the effective date of this AD, inspect the main cargo door exterior lockpin handle and latch actuating shaft markings, in accordance with Paragraph 7 of McDonnell Douglas AOL 8-669, dated April 19, 1974, and with one of the following McDonnell Douglas Drawings: 7718621-59 and -61, Revision "AV"; or 5633828, Revision "E"; or 5633939, Revision "C"; or 5804421, Revision "A/H". If the exterior markings are not correct, mark in accordance with any of the above McDonnell Douglas drawings prior to further flight.

E. Compliance with the requirements of paragraph B., above, may be terminated upon the installation of the main cargo door-oper indicating circuit that utilizes a proximity switch, revision of the existing main cargo door-open indicating circuit, and the

installation of a main cargo door indicating system test circuit, as outlined in the Accomplishment Instructions of McDonnell Douglas DC-8 Service Bulletin 52-76, Revision 3, dated January 29, 1986.

F. Compliance with the requirements of paragraphs A., B., and E., above, may be terminated upon installation of the following modifications to the main cargo door systems:

1. Installation of a hydraulic isolation valve and control system in accordance with McDonnell Douglas DC-8 Service Bulletin 52-74, Revision 2, dated November 19, 1975;

2. Installation of a lock mechanism view window in accordance with McDonnell Douglas DC-8 Service Bulletin 52-75, dated August 9, 1974;

3. Installation of a new and modification of the existing main cargo door-open indicating system in accordance with McDonnell Douglas DC-8 Service Bulletin 52-76, Revision 3, dated January 29, 1986; and

4. Installation of a forward upper cargo door vent system in accordance with McDonnell Douglas DC-8 Service Bulletin 52-80, dated March 23, 1977.

G. The checks and modifications specified in paragraphs A. through F. of this AD are not required on airplanes which have the main cargo door deactivated and secured in the closed and locked position in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, until that door is reactivated.

H. 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, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1-LOO (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-2075, AD 75-03-02; and Amendment 39-4953, AD 84-23-02.

This amendment becomes effective August 18, 1989.

Issued in Seattle, Washington, on July 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18013 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-129-AD; Amdt. 39-6284]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Fokker Model F-28 series airplanes, which currently requires a one-time visual inspection for cracks of the fuselage lap joint at stringer 73 between frame 4900 and frame 9805, and repair, if necessary. This amendment requires repetitive eddy current inspections for cracks of the fuselage lap joint at stringer 73 between frame 5305 and frame 9305, and repair, if necessary. This amendment is prompted by further examinations which revealed that, in addition to the visual cracks, cracks extended from the dimpled rivet holes for relatively long distances. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

EFFECTIVE DATE: August 18, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113, telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On March 8, 1989, FAA issued AD 89-07-01, Amendment 39-6157 (54 FR 11171; March 17, 1989), to require a one-time visual inspection of the fuselage lap joint at stringer 73 between frame 4900 and frame 9805 for cracks, and repair, if necessary. That action was prompted by reports of cracks in non-bonded fuselage lap joints; this cracking was due to fatigue cracking of the dimpled rivet holes. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

Since issuance of that AD, further examinations by the manufacturer revealed cracks in the non-bonded fuselage lap joint at stringer 73 between frames 7805 and 8805. In addition to the visual cracks, cracks extended from the dimpled rivet holes for relatively long distances and were not visible from the outside. Some of these cracks appeared to be "under-surface" cracks. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

Fokker has issued Service Bulletin F28/53-A94, Revision 1, dated July 5, 1989, which describes procedures to perform an eddy current inspection of the fuselage lap joint at stringer 73 between frame 5305 and frame 9305, to ensure that cracks in the dimpled rivet holes are detected at an early stage, and repair, if necessary. The Rijksluchtvaardienst (RLD), which is the airworthiness authority of the Netherlands, has classified this service bulletin as mandatory, and has issued the Netherlands Airworthiness Directive BLA No. 89-50 addressing this subject.

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 supersedes AD 89-07-01, Amendment 39-6157, to require a periodic high frequency eddy current inspection for cracks in the area of the fuselage lap joint at stringer 73, and the installation of a temporary repair, if necessary, in accordance with the service bulletin previously described.

Fokker intends to supersede the shielded pencil probe procedure specified in Service Bulletin F28/53-A94 (Revision 1) by revising the Structural Integrity Program Part 1 and the Non-Destructive Testing Manual to specify a more sensitive phase analyzing high frequency eddy current inspection procedure using a sliding probe. Additionally, Fokker is currently

developing a service bulletin that will describe procedures for permanent repair of the lap joint at stringer 73, which will terminate the need for repetitive inspections. When these revisions and the service bulletin are developed and available, the FAA may consider further rulemaking action to address these subjects.

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 Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined 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 regulatory 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 Part 39 of the Federal Aviation Regulations as follows:

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 39-6157 (54 FR 11171; March 17, 1989), AD 89-07-01, with the following new airworthiness directive:

Fokker: Applies to Model F-28 series airplanes, Serial Numbers 11008 to 11241, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage and subsequent decompression of the airplane, accomplish the following:

A. Inspect the fuselage lap joint at stringer 73 between frames 5305 and 9305 in accordance with Part 1 of Fokker Service Bulletin F-28/53-A94, Revision 1, dated July 5, 1989, and with the following schedule:

1. For airplanes that have accumulated 32,000 landings or more as of the effective date of this AD, inspect within 2 days after the effective date of this AD.

2. For airplanes that have accumulated fewer than 32,000 landings as of the effective date of this AD, inspect within 60 days after the effective date of this AD or prior to the accumulation of 20,000 landings, whichever occurs later.

B. Repeat the inspections required by paragraph A., above, at intervals not to exceed 1,000 landings.

C. If cracks are found, repair prior to further flight, in accordance with Part 2 of Fokker Service Bulletin F28/53-A94, Revision 1, dated July 5, 1989. After repair, continue to inspect in accordance with Part 1 of the service bulletin, at intervals not to exceed 1,000 landings.

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, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it 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. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes Amendment 39-6157, AD 89-07-01.

This amendment becomes effective August 18, 1989.

Issued in Seattle, Washington, on July 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-18011 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-171-AD; Amdt. 39-6290]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes Equipped With LH or RH Nose Landing Gear Upper Drag Link Assembly, Part Numbers (P/N) 5716882-1, -501, -503, 5717011-1, -501, or -503

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of final rule.

SUMMARY: This action certifies an existing airworthiness directive (AD), applicable to certain McDonnell Douglas DC-8 series airplanes, which currently requires inspections of the left (LH) and right (RH) nose landing gear upper drag link assembly for fatigue cracking and undersized drag link lug stiffening web, and modification or replacement, as necessary. This action clarifies paragraph C. of the AD by referencing the specific modification of the drag link assemblies subject to the inspections required by that paragraph.

EFFECTIVE DATE: August 2, 1989.

ADDRESSES: All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION: On April 17, 1989, the FAA issued AD 89-10-03, Amendment 39-6203 (54 FR 18276; April 28, 1989), which requires inspection of the LH and RH nose landing gear (NLG)

upper drag link assembly for fatigue cracking and undersized drag link lower lug stiffening web, and modification or replacement, as necessary. That action was prompted by three reported failures of the link assembly which resulted in the collapse of the NLG and damage to the NLG and its adjacent structure. This condition, if not corrected, could result in collapse of the NLG during ground handling, takeoff, or landing.

The inspection requirements of paragraph C. of that AD are applicable to airplanes with drag link assemblies "modified in accordance with McDonnell Douglas DC-8 Service Bulletin 32-178, dated May 22, 1987." The FAA has received requests to clarify paragraph C. to specify what constitutes the applicable "modification" of the drag link assembly and what inspections are required to be accomplished on that modified assembly.

Accordingly, the FAA has revised paragraph C. of this rule to clarify that the applicable modified drag link assemblies are those that are partially modified in accordance with the McDonnell Douglas Service Bulletin, without shot peen and polish in accordance with Steps 9 and 10, Figure 1, of that service bulletin. The inspections are required, initially, upon the accumulation of 800 landings on the modified assembly, and thereafter at intervals of 200 landings (these inspection requirements are unchanged from the existing AD).

Since this action only clarifies information in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Air transportation, Safety.

Adoption of the Clarification

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration clarifies 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 amended by clarifying paragraph C. of AD 89-10-03, Amendment 39-6203 (54 FR 18276; April 28, 1989), as follows:

McDonnell Douglas: Applies to Model DC-8 series airplanes, equipped with left (LH) or right (RH) nose landing gear (NLG) upper drag link assembly, P/N 5716882-1, -501, -503, 5717011-1, -501, or -503, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of nose landing gear during ground handling, takeoff, or landing, due to fatigue failure of the LH or RH nose landing gear (NLG) upper drag link lower lug, accomplish the following:

A. Within the next 400 landings after the effective date of this AD, unless already accomplished within the last 400 landings, conduct a magnetic particle or dye penetrant inspection of the LH and RH nose landing gear upper drag link assembly, and measure the lower lug stiffening web for minimum thickness, in accordance with McDonnell Douglas DC-8 Service Bulletin 32-178, dated May 22, 1987.

1. If cracks are found, or if the minimum web thickness measures .100" or less, before further flight, remove and replace the assembly in accordance with paragraph B. or D. of this AD.

2. If no cracks are found and the minimum web thickness measures greater than .100", repeat the inspection in accordance with paragraph A. of this AD at intervals not to exceed 200 landings, unless reworked in accordance with paragraph C. of this AD, or replaced in accordance with paragraph B. or D. of this AD.

B. If the drag link assembly is replaced with a new assembly not modified in accordance with McDonnell Douglas DC-8 Service Bulletin 32-178, dated May 22, 1987, upon the accumulation of 4,000 landings on the new assembly, perform the initial inspections in accordance with paragraph A. of this AD, and repeat these inspections at intervals not to exceed 200 landings.

C. If the drag link assembly is partially modified in accordance with McDonnell Douglas DC-8 Service Bulletin 32-178, issued May 22, 1987, without shot peen and polish in accordance with Steps 9 and 10, Figure 1, of the Service Bulletin, upon the accumulation of 800 landings on the modified assembly, perform the initial inspection in accordance with paragraph A. of this AD, and repeat the inspection at intervals not to exceed 200 landings.

D. Replacement of both LH and RH nose landing gear upper drag link assemblies with P/N 5716882-505 and 5717011-505, or modification of the drag link assembly in accordance with McDonnell Douglas DC-8 Service Bulletin 32-178, dated May 22, 1987, and reidentification of the drag link assembly as SR08328002-3, -5, -7, -9, -11, or -13, as applicable, constitutes terminating action for the inspection requirements of this AD.

E. 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, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This clarification becomes effective.

Issued in Seattle, Washington, on July 25, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18012 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

14 CFR Parts 217 and 241

[Docket No. 44999]

RIN 2137-AA97, 2137-AB01

Aviation Economic Regulations; Report of Traffic, and Capacity Statistics; Collection of Service Segment and Charter Data; the "T-100 System"

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule; change of effective date; partial grant of petitions for reconsideration.

SUMMARY: This action responds to issues raised in petitions for reconsideratoin of the final rule amending 14 CFR Parts 217 and 241 (Docket 44999) published in the **Federal Register** on November 16, 1988 (53 FR 46284). Petitions are granted to the extent that the effective date for foreign air carrier reporting requirements in 14 CFR Part 217 is extended to January 1, 1990, the same date as U.S. air carrier reporting requirements in 14 CFR Part 241. That portion of American's petition for rulemaking in Docket 46101 (a copy of which is in Docket 44999 as Exhibit 1 to the carrier's comment) pertaining to the release of data for international

operations of U.S. or foreign air carriers is denied.

EFFECTIVE DATE: January 1, 1990, for foreign air carriers (14 CFR Part 217).

FOR FURTHER INFORMATION CONTACT: Donald W. Bright or Richard J. King, Office of Aviation Information Management, DAI-10, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4384, or 366-4375, respectively.

SUPPLEMENTARY INFORMATION: Four petitions for reconsideration and eight answers have been filed with the Department concerning its issuance of a final rule amending 14 CFR Parts 217 and 241. The rule established a new traffic reporting system known as the "T-100 System" for U.S. and foreign air carriers. The pleadings encompass individual or consolidated petitions and answers filed by or on behalf of seventeen foreign air carriers, as follows.

Comments were filed by: Air Afrique, Air Canada, Air France, Alitalia, All Nippon Airways and Nippon Cargo Airlines (jointly), Avensa, BWIA International, Korean Air, Lan Chile, Thai Airways and JAT-Yugoslav Airlines. A single consolidated comment was filed on behalf of Air Canada; Air Jamaica; Balair Limited; Cathay Pacific Airways Limited; Lloyd Aereo Boliviano, SA; and Philippine Airlines. American Airlines also filed a comment.

Alitalia contended that assurance of confidentiality for its data was lacking, foreign air carriers would bear a greater burden than U.S. air carriers, and application of the rule to foreign air carriers would violate the spirit of bilateral agreements. American Airlines filed a comment in support of Alitalia's contention that there was burden for foreign air carriers and that additional time was needed to comply; American also urged prompt disclosure of T-100 data as opposed to holding the data confidential for three years. The confidentiality issues raised by American regarding the U.S. air carriers' domestic data are being considered under Docket 46101.

In their joint petition for reconsideration and for stay, Air Canada; Air Jamaica; Balair Limited; Cathay Pacific Airways Limited; Lloyd Aereo Boliviano, SA; and Philippine Airlines argue that the Department failed to consider adequately the costs and burdens associated with the new rule. They argue that those costs and burdens would be substantial and that, accordingly, the Department should reconsider whether to promulgate the rule. If, however, the Department were to proceed with promulgation, they argue that the rule's effective date for foreign air carriers should be stayed so as to give those carriers time to comply. All Nippon Airways and Nippon Cargo Airlines (jointly), and Avensa, Lan Chile, BWIA International, Air Afrique, and Korean Air answered in support of the joint petition.

A number of the foreign air carriers also requested either repeal or delay in the effective date of the rule, saying essentially that foreign air carriers (a) would be greatly burdened by the rule, (b) needed time to comply, and (c) should be placed on no worse footing than U.S. air carriers in terms of their data-filing obligations. The requests of the carriers may be summarized as follows: Thai Airways—Petition for repeal or, alternatively, for amendment to postpone the effective date as to foreign air carriers until January 1, 1990; JAT-Yugoslav Airlines—Request for waiver from immediate compliance; Air France—Motion for postponement of effective date; Alitalia—Petition for repeal or amendment of final rule. Alitalia argues that the exess burden on foreign air carriers would violate bilateral provisions on fair and equal opportunity to compete, and also raises concerns over confidential treatment of submissions. The European Civil Aviation Conference, in a letter (copy of which has been placed in Docket 44999) to Jeffrey Shane, then the Deputy Assistant Secretary of State for Transportation Affairs, requested deferral of the rule, stating that the confidentiality of the data could not be assured.

In essence, petitions of some foreign air carriers suggested that sec. 19-6 of 14 CFR Part 241, the portion of the final rule pertaining to public disclosure of traffic data, is inconsistent with the Department's obligations under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and that, because of those obligations, the Department will be unable to protect their sensitive data. The Department disagrees. It is the Department's view that detailed air carrier on-flight market and nonstop segment data on international operations by both U.S. and foreign air carriers is exempt from the mandatory release requirements of the FOIA.

Under exemption 3 of the FOIA, 5 U.S.C. 552(b)(3), information in agency records may be withheld if it is specifically exempted from disclosures by a statute, provided that the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." Section 1104 of the Federal Aviation Act (49 U.S.C. 1504) is an exemption 3 statute, because it requires that information be withheld by the Department if its release "would prejudice the formulation and presentation of positions of the United States in international negotiations or adversely affect the competitive position of any air carrier in foreign air transportation." The Department believes that the premature release of international data submitted pursuant to the final rule would produce the harm specified in section 1104. Accordingly, public access to such data will be denied based on exemption 3 of the FOIA as long as the danger of such harm persists.

Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), permits agencies to withhold commercial or financial information obtained from a person and privileged or confidential. Information is considered "confidential" for purposes of exempton 4 if its release would be likely either to impair the government's ability to obtain necessary information in the future or cause substantial harm to the competitive position of the person from whom the information was obtained (submitter). The Department believes that premature release of international data submitted pursuant to the final rule would be likely to impair the government's ability to obtain necessary information in the future. Accordingly, the Department will deny public access to international data pursuant to exemption 4 of the FOIA. Further, no discretionary public release will be made of data submitted pursuant to the final rule that appears to be "confidential" because its release would be likely to cause substantial competitive harm to the submitter unless the Department's regulations implementing Executive Order 12600 have been complied with. These regulations (§ 7.57 of 49 CFR Part 7) require written notice to the submitter concerning a request for the submitter's confidential commercial information, and consideration of the submitter's objections to release of that information. They also require that the submitter be given prior written notice of any decision to release any of the information over the submitter's objections.

As the above indicates, the Department intends to protect international data submitted pursuant to the final rule to the maximum extent permissible pursuant to exemptions 3 and 4 of the FOIA. In addition, in appropriate circumstances, other

exemptions may also be invoked by the Department to protect international data. For example, under some circumstances, data provided to the United States on a confidential basis by a foreign government, including information on a foreign air carrier owned by a foreign government, can be classified to protect national defense or foreign policy interests and withheld pursuant to exemption 1, 5 U.S.C. 552(b)(1).

As previously mentioned, confidentiality of U.S. air carrier's domestic data will be addressed in Docket 46101. This docket will address American Airlines' petition (supported by United Air Lines and British Airways and opposed by Thai Airways) concerning the confidential treatment of T-100 data. As to American's petition, the issue of the release of domestic data of U.S. air carriers warrants further consideration, and we have decided to examine that issue in Docket 46101. However, based on our review and conclusions regarding the issue of confidentiality and release of international data as discussed above, that portion of American's petition for rulemaking in Docket 46101 (a copy of which is in Docket 44999 as Exhibit 1 to the carrier's comment) pertaining to the release of data for international operations of U.S. or foreign air carriers is denied.

We have already decided, by separate action, to suspend the effective date of the rule for foreign air carriers (53 FR 52404, December 28, 1988). By our action today, we establish a new effective date of January 1, 1990, for the foreign air carrier provisions in 14 CFR Part 217, i.e., the same date as that for the U.S. air carrier provisions in 14 CFR Part 241. We regard this grant of a one year reporting extension as a positive response to the widely voiced request for relief expressed by the foreign air carriers.

Moreover, we reiterate what we said in the Final Rule (53 FR at 46286), namely: that the Department is sensitive to foreign air carrier concerns as regards reporting burdens and wants to minimize any potential reporting burden on air carriers as much as possible. We are prepared to work with the foreign air carriers to ensure a smooth transition to the new T-100 system. We have already begun this process by notifying foreign air carriers of our willingness to hold public workshops to facilitate their T-100 system reporting. We have conducted a survey of carrier interest in holding T-100 workshops. Based upon carrier responses, we anticipate conducting several workshops during 1989.

Against this background, we see no basis for repeal of the final rule or for any exemptions or waivers. Contrary to the assertions of some of the petitioners and commentors, we fully considered all of the submissions received before issuance of the rule last November. We specifically reviewed the allegations concerning foreign air carrier costs and burdens (53 FR at 46285–86 and 46288–89). We noted that based on a cross section survey of foreign air carriers, the average number of data lines for the group was about 20. We concluded that "twenty lines of data per month for a foreign air carrier is not an unreasonable burden in view of the Department's need for the data." In terms of burden hours, the final rule estimated that each T-100 submission would range from 1 to 20 hours to complete (53 FR at 46286). On the average, it is further estimated that the amount of hours per U.S. air carrier submission would average 7 hours (for the monthly T-100 reports) and 10 hours (for the T-100 quarterly reports, including supplementary Schedule T-1, T-2 and T-3). In contrast, foreign air carrier burden is estimated to average 1.5 hours (from a range of 1 to 3 hours per foreign air carrier). Finally, it is clear from the number of data elements (eleven for foreign air carriers as against a maximum of twenty-four for U.S. air carriers) that the Department has exerted a serious effort to limit the number of data items requested from foreign air carriers.

Thus, we adhere to our conclusion that foreign air carriers would not be unduly burdened. We also reiterate our belief that most foreign air carriers already generate the data for their own business purposes. This means that their burden emanates from conforming their data to the DOT rule, and as indicated in the final rule, that burden is justified in light of the benefits to be derived from aviation information collection and program use.

In addition, it is important to recall that we did not evaluate the foreign air carrier burden issue in isolation. We also considered the burdens faced by U.S. air carriers in complying with the numerous filing requirements that exist abroad. In these circumstances, we found that the obligations established by the T-100 system were well within the limits of common international reporting practices and were not unduly burdensome. In this light, the T-100 reporting system cannot represent in any way a denial of fair and equal opportunity to compete. We have seen nothing in any of the petitions or other post-rule pleadings that would persuade us to the contrary.

Further, we are not convinced by Air Canada's arguments that the U.S.-Canada data exchange program justifies an exemption or waiver for Canadian carriers. The Canadian reporting requirements for non-national carriers, including U.S. airlines, are among the most extensive in the world—many times more detailed and burdensome than the T-100 system. For example, Statement 6 pursuant to section 268 of the Canadian National Transportation Act provides for a daily airport activity report for each scheduled flight arriving at and departing from a Canadian airport. The Canadian information collection includes the following data elements which are not required to be reported in the T-100 system: flight number; identification of flights diverted from another point; available seats and available weight for revenue goods; and date and time of flight arrival or departure. Against this background, we conclude that the T-100 system filing requirements are entirely justified as to Canadian air carriers and that no exemption or waiver is warranted.

All other arguments made in the recent petitions and filings have either been fully discussed and acted upon here and in our previous decision, or present no basis for the Department to alter the decision in the final rule.

Accordingly, foreign air carriers have been granted a full year extension in their originally scheduled compliance date, and they shall begin complying with 14 CFR Part 217 effective January 1, 1990, the same date as U.S. air carriers begin complying with the T-100 system provisions in 14 CFR Part 241.

Issued in Washington, DC on July 27, 1989.

Travis P. Dungan,

Administrator, Research and Special Programs Administration, DOT.

[FR Doc. 89-18006 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 773

[Docket No. 90646-9146]

Export Licenses; Revision to Instructions for Form BXA-622P

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On February 14, 1989 (54 FR 6643), the Bureau of Export Administration published a final rule that revised the forms necessary to apply for export licenses (BXA–622P, BXA–622P–A, BXA–622P–B, formerly ITA–622P). The new forms allow use of Optical Character Recognition (OCR) for direct recording of export license information into the Commerce Department computer data base, thus eliminating the need for manual entry. In addition, the rule provided the revision of these forms to carry the "BXA" designation (e.g., BXA–622P) in order to reflect the Bureau of Export Administration as a separate entity from the International Trade Administration within the U.S. Department of Commerce.

This rule amends Supplement No. 5 to Part 773, establishing new instructions for Distribution License applicants when completing the new Form BXA–622P.

EFFECTIVE DATE: This rule is effective August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule contains collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0015. Public reporting for this collection of information is estimated to average 45 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 Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project (0694–0015), Washington, DC 20503.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603 *et seq.*) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are always welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 773

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 773 of the Export Administration Regulations (15 CFR Parts 730–799) is amended as follows:

PART 773—[AMENDED]

1. The authority citation for 15 CFR Part 773 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*) and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Supplement No. 5 to Part 773 is revised to read as follows:

Supplement No. 5 to Part 773—Instructions for Distribution License Applicants When Completing Form BXA–622P

(a) *Items 1, 5, 10 and 16:* See instructions in Supplement No. 1 to Part 772.

(b) *Item 2:* Enter "X" in the appropriate field to indicate which forms are attached. In the field marked OTHER enter "6052's", preceded by the number of consignees for whom forms were submitted.

(c) *Item 3:* If this is a resubmission of a previous application indicate the previous application control number, otherwise leave blank.

(d) *Item 4:* Enter, "Distribution License, Initial" or, if appropriate "Distribution License, Renewal." Include the six digit case number and "V" number of the previous license.

(e) *Items 7, 8, 13, 14:* Enter "N.A."

(f) *Item 6:* Enter "See Attached List" and label the attached list as "Attachment Item 6". When submitting an initial application, the list must include each consignee alphabetically by country. Complete addresses (city, street, etc.) must be furnished for each consignee. Post Office boxes are not acceptable. When submitting a renewal application, the consignees must be listed numerically by the consignee number previously assigned to them. This number should appear to the left of the name. This list must be submitted in duplicate. A separate list of those consignees being dropped from the renewal distribution license should also be included. Government agencies that meet the definition in § 775.2(b)(3) should be designated by the symbol (G) beside the name. Controlled-in-fact consignees should be designated by the symbol (A) next to their name, and independent consignees subject to written arrangements should be designated by the symbol (B) next to their names.

Also, if the application covers commodities listed in Supplement Nos. 1 or 4 to Part 773, the applicant shall prepare a list containing the end-user(s) of the commodities. Street and city addresses for each end-user must be furnished.

(g) Item 9 (a), (c), and (d) are all left blank. Item 9(b): List separately on the face of Form BXA–622P the Export Control Commodity Numbers (ECCN's) from the Commodity Control List (CCL) for the commodities proposed for coverage, with a summary description in estimated descending order of the anticipated export volume by value (e.g., 1565A computers; 1355A manufacturing machinery). Do not list more than the projected top six numbers. To the right of the commodity description put the estimated percentage of total exports under the license each such number is expected to represent in the first year following validation. Enter only the top six ECCN's on the face of the application.

(1) A separate list should be created (labeled "Attachment Item 9(b) Product Description") with a description of each type of commodity to be exported and the appropriate Export Control Commodity Number in the designated column. When the intent is to ship only certain types of goods within a CCL entry, the applicable paragraph

designations should be listed. No entries totally excluded by Supplement No. 1 to Part 773 may be listed. Brochures or product literature may be supplied at the option of the applicant; this may expedite processing of applications involving potentially sensitive products.

(2) Listings on the attachment of entries that are partially excluded by Supplement Nos. 1 or 4 to Part 773 must have the notation "except (insert paragraph number or description)" after the entry.

(3) Only commodities included in a CCL entry (or paragraph, if applicable) specifically listed on the application or attachment and approved by OEL may be exported under a Distribution License.

(4) Spare or replacement parts for listed commodities may be included without specifying a CCL entry if such parts shipments will not exceed 20% of the value of the total exports under the license and the applicant lists on the application—"Spare and replacement parts for commodities included in CCL entries (list entries)."

(5) The listing of the CCL entries by Export Control Commodity Number (and sub-paragraph designation, if applicable) will generally constitute a sufficient description of the commodities to be shipped.

(h) Enter the following statement at the bottom of the attachment to Item 9(b):

"Description of Commodity or Technical Data"

No commodity excluded from the Distribution License Procedure under the Export Administration Regulations or under this license will be exported to any consignee in any destination under this Distribution License if this application is approved.

(i) *Item 11:* Enter "self" or name of manufacturing company. If more than one enter "various" and describe in the comprehensive narrative statement.

(j) *Item 12:* Enter "see attached 6052's".

(k) *Item 15:* In this field marked "Additional Information" enter an estimate of the total dollar volume of sales or other transactions with all consignees in the commodities involved during the last twelve month period or last calendar year before submission of the application. Specify whether the sales were under a previous Distribution License, Individual Validated License, or General License. This amount does not represent a limit to expected exports.

(l) The pink copy entitled "Applicants File Copy" should be retained by the exporter before submission.

(Approved by the Office of Management and Budget under control number 0694-0015)

Dated: July 26, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-17954 Filed 8-1-89; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Conduct of Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; recodification.

SUMMARY: The Commission is recodifing a recently revised portion of its Code of Conduct to promote ease of reference.

EFFECTIVE DATE: This recodification shall be effective on August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Susan M. Milligan, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-7110.

SUPPLEMENTARY INFORMATION: On May 31, 1989, the Commission published revisions to its Code of Conduct. *See* 54 FR 23207 (May 31, 1989) (Final Rule). The codification of these revisions, however, is difficult to read. The Commission has determined to recodify the revisions in a more easily readable form.

List of Subjects in 17 CFR Part 140

Commodity futures, Conflicts of Interest, Ethics, Organization, Functions and procedures.

PART 140—[AMENDED]

Accordingly, the Commission recodifies its Code of Conduct, Subpart C of Part 140 of Chapter I of Title 17 of the Code of Federal Regulations as specified below:

1. The authority citation for Part 140 continues to read as follows:

Authority: 17 U.S.C. 12a.

2. Section 140.735-8 is amended by revising paragraph (b) to read as follows:

§ 140.735-8 Acceptance of things of value.

* * * * *

(b) *Exceptions.* This paragraph does not apply:

(1) When the circumstances make it clear that it is obvious family or personal relationships rather than the business of the persons concerned which govern and are the motivating factors;

(2) When, on infrequent occasions, food and refreshments of nominal value are offered in the ordinary course of a luncheon or dinner meeting or other meeting; [14a]

(3) When unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars, and other items of nominal value are offered;

(4) When local transportation is provided to the member or employee while he is on official business and alternative arrangements are impracticable;

(5) To customary loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees such as home mortgage loans;

(6) If the General Counsel approves in advance, to reasonable travel and subsistence expense reimbursement by potential employers provided the Commission member or employee is engaged in bona fide post-Commission employment negotiations and is not on official business at the time; or

(7) If the General Counsel approves in advance, to attendance and acceptance of food and refreshments served at widely-attended group events. In deciding whether Commission members and employees may attend and accept food and refreshments at such group events, the General Counsel will consider whether:

(i) It is in the Commission's interest that the Commission member or employee attend the event where food and refreshments are being served;

(ii) The sponsor of the event is an individual or entity that is regulated by the Commission, or an individual or entity that has some other business connection with the Commission or is directly involved in a matter pending before the Commission so that the timing or other circumstances surrounding the event would create an appearance of impropriety that outweighs the agency's interest in the Commission member's or employee's attendance;

(iii) The event will be of mutual interest to the government and industry such as a reception, seminar, conference, industry trade fair, or training session, whose informational value is not merely incidental to its

[14a] For purposes of paragraph (b)(2) of this section, the Office of Government Ethics of the Office of Personnel Management has defined the term "meeting" to mean a luncheon, dinner, or other meeting attended by a large group at which the Commission member or employee is the guest speaker, or a meeting at which food is brought into facilitate the continuance of the work and is not itself the focus of the meeting. *See* October 23, 1987 Memorandum Re: Acceptance of Food and Refreshments by Executive Branch Employees from Donald E. Campbell, Acting Director, Office of Government Ethics at 4-5.

entertainment value (In instances where the Commission has paid for a member's or employee's admission to a conference or seminar, the member or employee may participate in all events hosted by the conference organizers as part of the paid admission. However, attendance and acceptance of food and refreshments at receptions and other events hosted by parties other than the conference sponsor, but held during the course of the conference, must be approved in advance by the General Counsel in accordance with the requirements of this section.);

(iv) The food and refreshments offered in conjunction with the event will be excessive;

(v) There are any other relevant factors that should be considered in reaching a determination.[14b]

* * * * *

Issued in Washington, DC, on July 26, 1989 by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 89-17903 Filed 8-1-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Placement of N,N-Dimethylamphetamine into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of *N,N*-dimethylamphetamine in Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq*). The temporary scheduling of this substance is due to expire on August 3, 1989. This notice will extend the temporary scheduling of N,N-dimethylamphetamine for six months or until rulemaking proceedings pursuant to 21 U.S.C. 811(a) are completed, whichever occurs first.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: On August 3, 1988, the Administrator of DEA published a final rule in the **Federal Register** (53 FR 29232) amending § 1308.11(g) of Title 21 of The Code of Federal Regulations to temporarily place *N,N*-dimethylamphetamine into Schedule I of the CSA pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h).

The final rule which became effective on August 3, 1988, was based on findings by the Administrator that the emergency scheduling of the above-referenced substance was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of the Department of Health and Human Services, or on the petition of any interested party. Such proceedings regarding *N,N*-dimethylamphetamine have been initiated by the Administrator.

Therefore, the temporary scheduling of *N,N*-dimethylamphetamine, which is due to expire on August 3, 1989, may be extended until February 3, 1990, or until proceedings initiated in accordance with 21 U.S.C. 811(a) are completed, whichever occurs first.

Pursuant to 21 U.S.C. 811(h)(2) the Administrator hereby orders that the temporary scheduling of *N,N*-dimethylamphetamine be extended until February 3, 1990 or until the conclusion of scheduling proceedings initiated in accordance with 21 U.S.C. 811(a), whichever occurs first.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the extended scheduling of *N,N*-dimethylamphetamine into Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). *N,N*-Dimethylamphetamine has no commercial use or manufacturer in the United States.

It has been determined that the extension of the temporary placement of *N,N*-dimethylamphetamine in Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193). This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparations of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Date: July 27, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-18028 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF STATE

22 CFR Parts 60, 61, 62, 63, 64, 65

[108.888]

RIN 1400-AA19

South Africa and Fair Labor Standards

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Comprehensive Anti-Apartheid Act of October 2, 1986 (Pub. L. 99-440) contains provisions on the fair labor standards to be implemented by U.S. firms in South Africa and Namibia. This final rule contains certain technical amendments to the regulations implementing the Act.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Bruce, Office of Southern African Affairs, (202) 647-8433, or John R. Byerly or Antonio F. Perez, Office of the Legal Adviser, (202) 647-4110, Department of State.

SUPPLEMENTARY INFORMATION: Section 2 of Executive Order 12532 of September 9, 1985 (50 FR 36861) deals with the labor practices of U.S. nationals and their firms in South Africa. On November 8, 1985 the Department of State published draft implementing regulations as a proposed rule for public comment (50 FR 46455). The final rule was published on December 31, 1985 (50 FR 53308).

[14b] The Commission, with the concurrence of the Office of Government Ethics, may grant other exceptions if the Commission determines that an exception is warranted and appropriate in a particular situation. See 5 CFR § 735.202(b).

The Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99-440) ("the Act") codified the measures required under the September 9, 1985 Executive Order. The Act contains a Code of Conduct (section 208) which codifies the fair labor standards specified in Executive Order 12532. It also contains several provisions relating to the fair labor standards to be implemented by U.S. firms. These provisions were implemented by the final rule that was published by the Department of State on October 30, 1986 (51 FR 39655).

The Department of State has determined that certain technical amendments are required in the existing regulations. These amendments include clarifying requirements for questionnaires, correcting citations to the criminal penalty provisions of the Comprehensive Anti-Apartheid Act, updating citations of authority to take into account the expiration of the President's determinations under the International Emergency Economic Powers Act (50 U.S.C. 1701), and changing current regulations to require any national that receives a Category IIIB standing in the Signatory Companies annual rating program to file a questionnaire on February 15 during the calendar year after it has received that rating.

These amendments deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. The basic regulations that are amended by this final rule were the subject of public comment because of the desirability of obtaining the public's views. However, the amendments deal with technical corrections and the continuing implementation of statutory requirements that have entered into force and consequently the amended regulations are promulgated as a final rule.

For the foregoing reasons, Title 22, Chapter I, Subchapter G, of the Code of Federal Regulations, is amended as set forth below:

1. The authority citations for Parts 60, 61, 62, 63, 64, and 65 are revised to read as follows:

Authority: Sec. 207, 208, 601, 603, and 604, Pub. L. 99-440 (22 U.S.C. 5035 (c)).

PARTS 60 AND 63—[AMENDED]

2. Parts 60 and 63 are amended to remove the word "Sullivan" and add in its place "Signatory Companies", and to remove the words "Sullivan Code" and add in their place "Statement of Principles for South Africa" in the following places:

(a) Section 60.1(b);

(b) Section 63.1(d);

(c) Section 63.3(c).

3. Section 63.1(b) is revised to read as follows:

§ 63.1 General policies.

* * * * *

(b) Failure to Register. Any such U.S. national who does not register with the Department of State prior to February 15, 1986 or thereafter within sixty days of meeting the criteria for registration, in accordance with § 62.1 shall be ineligible to receive the assistance specified in § 65.1 and shall be subject to the penalties specified in § 65.2.

* * * * *

4. Section 63.1(c) is amended to remove the second and third sentences and to replace them with the following sentence:

(c) * * * They shall so do by submitting to the Office of Southern African Affairs of the Department of State not later than February 15 of each calendar year a completed questionnaire furnished by the Department of State on an annual basis to all registrants.

* * * * *

5. Section 63.1(d)(1) is amended to remove the last two sentences and to replace them with the following sentence:

(d) * * *

(1) * * *

Any U.S. national participating in the Signatory Companies System who receives a Category IIIB standing shall not be deemed to be a *bona fide* participant pursuant to this subsection and must complete the required State Department questionnaire, in accordance with § 63.1(c).

* * * * *

6. Section 63.1(d)(2) is revised to read as follows:

(d) * * *

(2) Any U.S. national who becomes a participant in the Signatory Companies system during a calendar year and does not receive a rating during that calendar year shall be deemed to be a *bona fide* participant pursuant to § 63.1(d)(1) if, not later than February 15 of the following calendar year, it certifies by letter to the Office of Southern African Affairs of the Department of State that it is a participant in the Signatory Companies system.

PART 65—[AMENDED]

7. Section 65.2(a) is amended by revising the first two sentences to read as follows:

§ 65.2 Civil and criminal penalties.

(a) This subchapter is promulgated pursuant to the authority of the Comprehensive Anti-Apatheid Act of 1986 (Pub. L. 99-440). Sections 601 and 603 of the Comprehensive Anti-Apatheid Act are applicable to violations of this subchapter and to any license, ruling, regulation, order, direction, or instruction issued hereunder.* * *

* * * * *

Dated: June 21, 1989.

Herman J. Cohen,

Assistant Secretary of State for African Affairs.

[FR Doc. 89-17898 Filed 8-1-89; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8257]

RIN 1545-AN10

Transition Rules for the Allocation and Apportionment of Interest Expense and Rules Concerning the Treatment of Financial Products That Alter Effective Cost of Borrowing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary Income Tax Regulations relating to transition rules for the allocation and apportionment of interest expense for purposes of the foreign tax credit rules and certain other international tax provisions. This document also provides rules concerning the treatment of financial products that alter effective cost of borrowing. Changes to the transition rules were made by the Technical and Miscellaneous Revenue Act of 1988. These regulations are necessary to provide guidance needed by taxpayers engaging in international transactions in order to comply with these changes. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986, except for § 1.861-9T(b)(6), which is effective for transactions entered into after September 14, 1988.

FOR FURTHER INFORMATION CONTACT: Charles Plambeck of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-952-86)) (202-566-6284, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1987, the Federal Register published proposed regulations (52 FR 34580) to the Income Tax Regulations (26 CFR Part 1) under section 861 of the Internal Revenue Code of 1986. These regulations were issued under section 1215(c)(2) of the Tax Reform Act of 1986. Written comments responding to this notice were received. A public hearing was held on November 13, 1987. Section 1012(h)(2)(D) of the Technical and Miscellaneous Revenue Act of 1988 amended section 1215(c)(2) of the Tax Reform Act of 1986. The comments and revisions are discussed below.

Explanation of Provisions

These rules provide transition relief from the expense allocation rules of section 864(e), which reversed the provisions of prior law in a number of ways. While prior law permitted taxpayers to allocate and apportion interest expense on a separate company basis, section 864(e) requires a consolidated approach. While prior law permitted the use of a gross income method of apportionment, section 864(e) requires the use of an asset method. Other changes include the treatment of tax exempt assets and an earnings and profits adjustment to the basis of certain stock. These new rules are generally phased in over a three-year period in 25 percent increments, commencing with 1987. Generally, these percentages are applied to the amount of indebtedness outstanding on November 16, 1985 in order to compute the amount of a taxpayer's transition relief.

In addition, the rules provide supplemental transition relief from the consolidated approach to interest allocation for taxpayers that experienced net increases in total indebtedness in two different time periods. Taxpayers that are entitled to this kind of relief apply the rules of new law on a separate company basis to the amount of interest expense that is eligible for such treatment. Thus, interest expense for a given transition year can fall into one of three categories: old law, new law, and new law/separate company. This supplemental relief phases in over a four and five-year period, depending on the time period in which the net increase in indebtedness occurred.

The amount of indebtedness that is eligible for transition relief is reduced by any net decrease in indebtedness outstanding at any month-end since November 16, 1985. For taxpayers that experienced such a reduction, the reduced amount is used in lieu of the November 16, 1985 amount as the basis for computing transition relief. In the year in which a new month-end low is attained, the taxpayer may average its historic month-end low amounts for that year and use such average in lieu of the November 16, 1985 amount. In subsequent tax years, however, such averaging is not permitted. The averaging rule was adopted in response to criticism voiced concerning the rule of the proposed regulations that measured reductions solely on the basis of month-end debt levels, under a grant of authority contained in section 1215(c)(2)(A)(iii) of the Tax Reform Act of 1986, as amended by the Technical and Miscellaneous Revenue Act of 1988.

Reductions in indebtedness are deemed to first offset five-year indebtedness and then four-year indebtedness, both of which constitute subsets of the November 16, 1985 amount.

Thus, reductions first eliminate the supplemental relief from the consolidation rule, regardless of which particular indebtedness is reduced. Because a reduction in indebtedness by one affiliated corporation may be deemed to offset the indebtedness of another affiliated corporation under this stacking rule, an affiliated group must maintain separate company accounts of reductions reflecting the impact of reductions on the individual indebtedness of its members. If the transition indebtedness of a member of the affiliated group is reduced due to a paydown by another member of the group, the reduced level of transition indebtedness of that member does not change if either member leaves the affiliated group. Thus, if any member is transferred, the transferee must take account of reductions that precede its ownership. Although some commenters criticized the complexity associated with this rule, no alternative was presented that would preserve the effect of a reduction in indebtedness in the event of the transfer of an affiliated corporation and the rule was therefore retained.

As a general rule, the transition attributes of any corporation convey with the corporation. Commenters criticized a rule in the proposed regulations that permitted a transferee to take account of all the transition attributes of a transferred corporation in the year of transfer, regardless of when the transfer occurred. This rule has been modified to require a proration of transition attributes of a transferred corporation between the transferor and the transferee based on total months of ownership.

Commenters criticized a rule in the proposed regulations limiting the assumption of indebtedness, for purposes of these regulations, to a section 381 sucoessor. This rule has been modified so that the transition-qualified indebtedness of one member of an affiliated group can be assumed by any other member. However, in the case of the disposition of any corporation that was relieved of indebtedness in such an assumption, the transferee must assume on or before the date of acquisition of the transferred corporation the transition-qualified indebtedness for which the transferred corporation was liable at the time of the acquisition. Otherwise, the assumed indebtedness ceases to qualify for transition relief.

Commenters requested guidance concerning the definition of indebtedness. The regulations clarify that only interest-bearing obligations and obligations having original issue discount constitute indebtedness for purposes of these regulations. An obligation must have attained that status as of any critical date identified in the regulations in order to be taken into account. It is not necessary to show that the debts outstanding at the end of any month were the same debts as were outstanding on any critical date.

For purposes of determining the actual percentage of indebtedness of any member of an affiliated group that is subject to any of the three possible sets of rules, commenters questioned the use of the year-end debt level as the denominator of the fraction (with computed relief in a given category serving as the numerator). The regulations have been modified to require the use of an average of month-end debt levels for the year as the denominator.

With respect to the addition of paragraph (b)(6) to § 1.861-9T, several commenters raised the question of whether losses on interest rate swaps or other derivative financial products that alter a taxpayer's effective cost of borrowing would constitute an expense equivalent to interest within the meaning of § 1.861-9T(b)(1). Other commenters asked whether gain on such financial products would offset allocable interest expense. When such

financial products operate to hedge a liability or themselves constitute the functional equivalent of a liability, they are within the intended scope of § 1.861–9T(b)(1). Losses from such financial products should be allocated and apportioned in the same manner as interest expense. The addition of paragraph (b)(6) is intended to clarify these issues. Paragraph (b)(6) is limited to financial products that alter the effective cost of borrowing where the financial product and borrowing are in the same currency. It should be noted that section 988 applies to transactions in nonfunctional currency. Where applicable, forthcoming regulations under section 988 will take precedence over the rules of this paragraph (b)(6). *See, e.g.*, Notice 87–11, 1987–1 C.B. 423.

Although the rules of paragraph (b)(1) were effective for taxable years commencing after December 31, 1986, the Service believes that it would be inappropriate to apply the rules of paragraph (b)(6) under the generally applicable effective date of paragraph (b)(1). Thus, the rules of paragraph (b)(6) are effective with respect to losses incurred on any of the financial products described in paragraph (b)(6)(i) that were entered into after September 14, 1988, which was the date of publication of paragraph (b)(1). The Service does not intend that losses on transactions described in paragraph (b)(6)(i) that were entered into prior to September 15, 1988 should be subject to the rule of paragraph (b)(1).

In contrast to the rules of paragraph (b)(1), the rules of paragraph (b)(6) permit taxpayers under certain circumstances effectively to reduce their apportionable interest expense by the amount of gains derived from the financial products that are the subject of paragraph (b)(6).

The Service has determined that, under certain conditions, taxpayers should be able to apply retroactively the paragraph (b)(6) rule for the netting of gains and interest expense with respect to gains realized on any of the financial products described in paragraph (b)(6)(i) that were entered into after September 14, 1988. These conditions are that the taxpayer must be able to demonstrate to the satisfaction of the Commissioner that substantially all of the financial products described in paragraph (b)(6)(i) (*i.e.*, liability hedges) to which the taxpayer became a party during the period between September 15, 1988 and August 2, 1989, were identified with the liabilities of the taxpayer in a substantially contemporaneous manner and that all losses attributable to such products were treated consistently. For this purpose, financial products described in paragraph (b)(6)(i) that were identified in a substantially contemporaneous manner with the taxpayer's assets (rather than its liabilities) shall be ignored.

Although the Service believes that similar treatment should be accorded to the gains and losses of financial services entities and other taxpayers, paragraph (b)(6)(iii) reserves on the treatment of financial services entities. The fact that paragraph (b)(6) does so reserve should not be interpreted to mean that the losses of a financial services entity from these transactions do not constitute an interest equivalent under paragraph (b)(1). The Service invites financial services entities to comment with respect to appropriate rules for computing such gains and losses, particularly with respect to identification and the interaction of such rules with Notice 87–4, 1987–1 C.B. 416. Losses on interest rate swaps that are not described in paragraph (b) and are not incurred by a financial services entity or a dealer are governed by Notice 87–4.

The Service will issue additional regulations concerning the timing and characterization of gains and losses realized or incurred in connection with the financial products that are the subject of paragraph (b)(6). See Notice 89–21, I.R.B. 1989–9 (Feb. 21, 1989), regarding rules concerning timing.

Some commenters have asked whether paragraph (b)(2) represents a comprehensive treatment of nonfunctional currency borrowings or whether other such borrowings would be subject to the rules of paragraph (b)(1). The Service has added paragraph (b)(7) in order to clarify that, as a general rule, gain or loss on section 988 transactions (other than those described in paragraph (b)(1), (b)(2), or (b)(6)) will only be considered to be an adjustment to interest expense to the extent required by the regulations to be issued under section 988. However, certain nonfunctional currency borrowings alter the effective cost of borrowing in functional currency in a manner similar to the rule of paragraph (b)(1) in the sense that a taxpayer borrowing nonfunctional currency can incur a loss in a series of related transactions while securing the use of funds in its functional currency. In such a case, it is appropriate to require the apportionment of the loss in the same manner as interest expense. New *Example* (2) has been added to paragraph (b)(1) to demonstrate how a loss on a nonfunctional currency borrowing that would not be subject to paragraph (b)(2) can operate as an interest equivalent.

New *Example* (3) has been added to demonstrate how the disposition of one leg of an interest rate swap, even if not properly recharacterized as an actual borrowing, can produce a constructive borrowing, rendering the swap payments on the other leg an interest equivalent subject to allocation and apportionment under the rule of paragraph (b)(1). The example goes on to note that the same result would apply in the case of a swap agreement in which the swap payments were not substantially contemporaneous if the pricing of the transaction is materially affected by the time value of money, but only to the extent that the expense or loss is incurred in consideration of the time value of money. The Service does not generally intend that this rule apply to noncontemporaneous swap payments that are found in standard interest rate swap contracts where the pricing of the transaction is not materially affected by the time value of money. Taxpayers are invited to comment concerning appropriate circumstances (including safe harbors) in which this rule should not apply.

Although *Example* (3) involves a swap contract, this swap contract differs from those described in paragraph (b)(6) in the sense that it does not adjust the effective cost of borrowing with respect to actual liabilities of the taxpayer, but, like the gold example already contained in paragraph (b)(1), has the effect of creating a cost of borrowing unrelated to an actual liability.

Finally, the first sentence of § 1.861–2(a)(1) is modified by replacing the words "issued or assumed" with the words "issued, assumed, or incurred." This revision is made in order to conform the regulations to the opinion by the Second Circuit in *Iglesias* v. *U.S.*, 848 F.2d 362 (2d Cir. 1988).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is David Merrick of the Office of Associate Chief Counsel

(International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISCs, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. The first sentence of § 1.861–2(a)(1) is amended by removing the words "issued or assumed" and by inserting in their place the words "issued, assumed or incurred."

Par. 3. Section 1.861–9T is amended as follows:

1. By revising paragraph (b)(1) to read as set forth below, and

2. By adding immediately after paragraph (b)(5) a new paragraph (b)(6) and (b)(7).

§ 1.861–9T Allocation and apportionment of interest expense (Temporary regulations)

* * * * *

(b) *Interest equivalents*—(1) *Certain expenses and losses*—(i) *General rule.* Any expense or loss (to the extent deductible) incurred in a transaction or series of integrated or related transactions in which the taxpayer secures the use of funds for a period of time shall be subject to allocation and apportionment under the rules of this section if such expense or loss is substantially incurred in consideration of the time value of money. However, the allocation and apportionment of a loss under this paragraph (b) shall not affect the characterization of such loss as capital or ordinary for other purposes of the Code and the regulations thereunder.

(ii) Examples. The rule of this paragraph (b)(1) may be illustrated by the following examples.

Example (1). W, a domestic corporation, borrows from X two ounces of gold at a time when the spot price for gold is $500 per ounce. W agrees to return the two ounces of gold in six months. W sells the two ounces of gold to Y for $1000. W then enters into a contract with Z to purchase two ounces of gold six months in the future for $1,050. In exchange for the use of $1,000 in cash, W has sustained a loss of $50 on related transactions. This loss is subject to allocation and apportionment under the rules of this section in the same manner as interest expense.

Example (2). X, a domestic corporation with a dollar functional currency, borrows 100 pounds on January 1, 1987 for a three-year term at an interest rate greater than the applicable federal rate for dollar loans. At this time, the interest rate on the pound was approximately equal to the interest rate on dollar borrowings and the forward price on the pound, vis-a-vis the dollar, was approximately equal to the spot price. On January 1, 1987, X converted 100 pounds into dollars and entered into a currency swap that substantially hedged X's foreign currency exposure on the pound borrowing, both with respect to interest and principal. The borrowing, coupled with the swap, represents a series of related transactions in which the taxpayer secures the use of funds in its functional currency. Any net foreign currency loss on this series of transactions constitutes a loss incurred substantially in consideration of the time value of money and shall be apportioned in the same manner as interest expense. Thus, if the pound depreciates against the dollar, such that when the first payment on the pound borrowing is due the taxpayer has a currency loss on the swap payment hedging its first interest payment, such loss shall, even if the transaction is not integrated under section 988(d), be allocated and apportioned in the same manner as interest expense under the authority of this paragraph (b)(1).

Example (3). On January 1, 1987, X, a domestic corporation with a dollar functional currency, enters into a dollar interest rate swap contract with Y, a domestic counterparty. Under the terms of this agreement, X agrees to pay Y floating rate interest with respect to a notional principal amount of $100 for five years. In return, Y agrees to pay X fixed rate interest at 10 percent with respect to a notional principal amount of $100 for five years. On the same day, Y prepays the fixed leg of the swap by making a lump sum payment of $37 to X. This lump sum payment represents the present value of five $10 swap payments. Because X secures the use of $37 in this transaction, any net swap expense arising from the transaction represents an expense incurred substantially in consideration of the time value of money. Assuming this lump sum payment is not otherwise characterized as a loan from Y to X, and that X must amortize the $37 lump sum payment under the principles of Notice 89–21, any net swap expense incurred by X with respect to this transaction (*i.e.*, the excess, if any, of X's annual swap payment to Y over the annual amortization of the $37 lump sum payment that is taken into income by X) represents an expense equivalent to interest expense. The result would be the same if X sold the fixed leg to a third party for $37. While this example presents the case of a lump sum payment, the rules of paragraph (b)(1) would also apply to any transaction in which the swap payments are not substantially contemporaneous if the pricing of the transaction is materially affected by the time value of money. Thus, expenses and losses will be subject to apportionment under the rules of this section to the extent that such expenses or losses were incurred in consideration of the time value of money.

* * * * *

(6) *Financial products that alter effective cost of borrowing*—(i) *In general.* Various derivative financial products can be part of transactions or series of transactions described in paragraph (b)(1) of this section. Such derivative financial products, including interest rate swaps, options, forwards, caps, and collars, potentially alter a taxpayer's effective cost of borrowing with respect to an actual liability of the taxpayer. For example, a taxpayer that is obligated to pay interest at a fixed rate may, in effect, pay interest at a floating rate by entering into an interest rate swap. Similarly, a taxpayer that is obligated to pay interest at a floating rate may, in effect, limit its exposure to rising interest rates by purchasing a cap. Such a taxpayer may have gains or losses associated with such derivative financial products. This paragraph (b)(6) provides rules for the treatment of gains and losses from such derivative financial products ("financial products") that are part of transactions described in paragraph (b)(1) of this section and that are used by the taxpayer to alter its effective cost of borrowing with respect to an actual liability. This paragraph (b)(6) shall only apply where the hedge and the borrowing are in the same currency and shall not apply to the extent otherwise provided in section 988 and the regulations thereunder. The allocation and apportionment of a loss under this paragraph (b) shall not affect the characterization of such loss as capital or ordinary for other purposes of the Code and the regulations thereunder.

(ii) *Definition of gain and loss.* For purposes of this paragraph (b)(6), the term "gain" refers to the excess of the amounts properly taken into income under a financial product that alters the effective cost of borrowing over the amounts properly allowed as a deduction thereunder within a given taxable year. See, *e.g.*, Notice 89–21. The term "loss" refers to the excess of the amounts properly allowed as a deduction under such a financial product over the amounts properly taken into income thereunder within a given taxable year.

(iii) *Treatment of gain or loss on the disposition of a financial product.* [Reserved.]

(iv) *Entities that are not financial services entities.* An entity that does not constitute a financial services entity within the meaning of § 1.904–4(e)(3) shall treat gains and losses on financial products described in paragraph (b)(6)(i) of this section as follows.

(A) *Losses.* Losses on any financial product described in paragraph (b)(6)(i) of this section shall be apportioned in the same manner as interest expense whether or not such financial product is identified by the taxpayer under paragraph (b)(6)(iv)(C) of this section as a liability hedge.

(B) *Gains.* Gains on any financial product described in paragraph (b)(6)(i) of this section shall reduce the taxpayer's total interest expense that is subject to apportionment, but only if such financial product is identified by the taxpayer under paragraph (b)(6)(iv)(C) of this section as a liability hedge. Such reduction is accomplished by directly allocating interest expense to the income derived from such a financial product.

(C) *Identification of financial products.* A taxpayer can identify a financial product described in paragraph (b)(6)(i) of this section as hedging a particular interest-bearing liability (or any group of such liabilities) by clearly identifying on its books and records on the same day that it becomes a party to such arrangement that such arrangement hedges a given liability (or group of liabilities). In the case of a partial hedge, such identification shall apply to only that part of the liability that is hedged. If the taxpayer clearly identifies on its books and records a financial product as a hedge of an interest-bearing asset (or any group of such assets), it will create a rebuttable presumption that such financial product is not described in paragraph (b)(6)(i) of this section. A taxpayer may identify a hedge as relating to an anticipated liability, provided that such liability is in fact incurred within 120 days following the date of such identification. Gains and losses on such an anticipatory arrangement accruing prior to the time at which the liability is incurred shall constitute an adjustment to interest expense.

(v) *Financial services entities.* [Reserved.]

(vi) *Dealers.* The rule of paragraph (b)(6)(iv) of this section shall not apply to a person acting in its capacity as a regular dealer in the financial products described in paragraph (b)(6)(i) of this section. Instead, losses sustained by a regular dealer in connection with such financial products shall be allocated to the class of gross income from such arrangements. Gains of a regular dealer in notional principal contracts are governed by the rules of § 1.863–7T(b). Amounts received or accrued by any person from any financial product that is integrated as specified in Notice 89–90 with an asset shall not be treated as amounts received or accrued by a person acting in its capacity as a regular dealer in financial products.

(vii) *Examples.* The principles of this paragraph (b)(6) may be illustrated by the following examples.

Example (1). X is not a financial services entity or regular dealer in the financial products described in paragraph (b)(6)(i) of this section and has a dollar functional currency. In 1990, X incurred a total of $200 of interest expense. On January 1, 1990, X entered into an interest rate swap agreement with Y, in order to hedge its interest rate exposure with respect to a pre-existing floating rate liability. On the same day, X properly identified the agreement as a hedge of such liability. Under the agreement, X is required to pay Y an amount equal to a fixed rate of 10 percent on a notional principal amount of $1,000. Y is required to pay X an amount equal to a floating rate of interest on the same notional principal amount. Under the agreement, X received from Y during 1990 a net payment of $25. Because X identified the swap agreement as a liability hedge under the rules of paragraph (b)(6)(iv)(C), X may effectively reduce its totat allocable interest expense for 1990 to $175 by directly allocating $25 of interest expense to the swap income. Had X not properly identified the swap as a liability hedge, this swap payment would have been treated as domestic source income in accordance with the rule of § 1.863–7T(b).

Example (2). Assume the same facts as Example (1), except that X did not properly identify the agreement as a liability hedge on January 1, 1990. In 1990, X made a net payment of $25 to Y under the swap agreement. This swap payment is allocated and apportioned in the same manner as interest expense under the rules of paragraph (b)(6)(iv)(A).

(viii) *Effective dates*—(A) *Losses.* The rules of this paragraph (b)(6) shall apply to losses on any transaction described in paragraph (b)(6)(i) of this section that was entered into after September 14, 1988.

(B) *Gains.* Except as provided in paragraph (b)(6)(viii)(C) of this section, the rules of this paragraph (b)(6) shall apply to any gain that was realized on any transaction described in paragraph (b)(6)(i) of this section that was entered into after August 14, 1989.

(C) *Exception for interim gains.* Taxpayers shall be permitted to apply the rules of this paragraph (b)(6) to any gain that was realized on any transaction described in paragraph (b)(6)(i) of this section that was entered into after September 14, 1988 and on or before August 14, 1989, if the taxpayer can demonstrate to the satisfaction of the Commissioner that substantially all of the arrangements described in paragraph (b)(6)(i) of this section to which the taxpayer became a party during that interim period were identified on the taxpayer's books and records with the liabilities of the taxpayer in a substantially contemporaneous manner and that all losses and expenses that are subject to the rules of this paragraph (b)(6) were treated in the same manner as interest expense. For this purpose, arrangements that were identified in a substantially contemporaneous manner with the taxpayer's assets shall be ignored.

(7) *Foreign currency gain or loss.* In addition to the rules of paragraph (b)(1), (b)(2), and (b)(6) of this section, any foreign currency loss that is treated as an adjustment to interest expense under regulations issued under section 988 shall be allocated and apportioned in the same manner as interest expense. Any foreign currency gain that is treated as an adjustment to interest expense under regulations issued under section 988 shall offset apportionable interest expense.

Par. 4. The text of § 1.861–13T is added to read as follows:

§ 1.861–13T Transition rules for interest expenses (temporary regulations).

(a) *In general*—(1) *Optional application.* The rules of this section may be applied at the choice of a corporate taxpayer. In the case of an affiliated group, however, the choice must be made on a consistent basis for all members. Therefore, a corporate taxpayer (or affiliated group) may allocate and apportion its interest expense entirely on the basis of the rules contained in §§ 1.861–8T through 1.861–12T and without regard to the rules of this section. The choice is made on an annual basis and, thus, is not binding with respect to subsequent tax years.

(2) *Transition relief.* This section contains transitional rules that limit the application of the rules for allocating and apportioning interest expense of corporate taxpayers contained in §§ 1.861–8T through 1.861–12T, which are applicable in allocating and apportioning the interest expense of corporate taxpayers generally for taxable years beginning after 1986. Sections 1.861–9(d) (relating to individuals, estates, and certain trusts) and 1.861–9(e) (relating to partnerships) are effective for taxable years beginning after 1986. Thus, the taxpayers to whom those sections apply do not qualify for transition relief under this section.

(3) *Indebtedness defined.* For purposes of this section, the term "indebtedness" means any obligation or other evidence of indebtedness that qenerates an expense that constitutes interest expense within the meaning of § 1.861–9T(a). In the case of an obligation that does not bear interest initially, but becomes interest bearing with the lapse of time or upon the occurrence of an event, such obligation shall only be considered to constitute indebtedness when it first bears interest. Obligations that are outstanding as of November 16, 1985 shall only qualify for transition relief under this section if they bear interest-bearing as of that date. For this purpose, any obligation that has original issue discount within the meaning of section 1273(a)(1) of the Code shall be considered to be interest-bearing.

(4) *Exceptions.* The term "indebtedness" shall not include any obligation existing between affiliated corporations, as defined in § 1.861–11T(d). Moreover, the term "indebtedness" shall not include any obligation the interest on which is directly allocable under §§ 1.861–10T(b) and 1.861–10T(c). Under § 1.861–9T(b)(6)(iv)(B), certain interest expense is directly allocated to the gain derived from an appropriately identified financial product. When interest expense on a liability is reduced by such gain, the principal amount of such liability shall be reduced pro rata by the relative amount of interest expense that is directly allocated.

(b) *General phase-in*—(1) *In general.* In the case of each of the first three taxable years of the taxpayer beginning after December 31, 1986, the rules of §§ 1.861–8T through 1.861–12T shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount, as defined in paragraph (b)(2) of this section.

(2) *General phase-in amount defined.* Subject to the limitation imposed by paragraph (b)(3) of this section, the general phase-in amount means the amount which is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

Taxable year beginning after December 31, 1986	Percentage
First	75
Second	50
Third	25

(3) *Reductions in indebtedness.* The general phase-in amount shall not exceed the taxpayer's historic lowest month-end debt level taking into account all months after October 1985. However, for the taxable year in which a taxpayer attains a new historic lowest month-end debt level (but not for subsequent taxable years), the general phase-in amount shall not exceed the average of month-end debt levels within that taxable year (without taking into account any increase in month-end debt levels occurring in such taxable Year after the new historic lowest month-end debt level is attained).

Example. X is a calendar year taxpayer that had $100 of indebtedness outstanding on November 16, 1985. X's month-end debt level remained $100 for all subsequent months until July 1987, when X's month-end debt level fell to $50. In computing transition relief for 1987, X's general phase-in amount cannot exceed $75 (900 divided by 12), which is the average of month-end debt levels in 1987. Assuming that X's month-end debt level for any subsequent month does not fall below $50, the limitation on its general phase-in amount for all taxable years after 1987 will be $50, its historic lowest month-end debt level after October 1985.

(c) *Nonapplication of the consolidation rule*—(1) *General rule.* In the case of each of the first five taxable years of the taxpayer beginning after December 31, 1986, the consolidation rule contained in § 1.861–11T(c) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount, as defined in paragraph (c)(2) of this section.

(2) *Special phase-in amount.* The special phase-in amount is the sum of—

(i) The general phase-in amount,

(ii) The five-year phase-in amount, and

(iii) The four-year phase-in amount.

(3) *Five-year phase-in amount.* The five-year phase-in amount is the lesser of—

(i) The applicable percentage (the "unreduced percentage" in the following table) of the five-year debt amount, or

(ii) The applicable percentage (the "reduced percentage" in the following table) of the five-year debt amount reduced by paydowns (if any):

Transition year	Unreduced percentage	Reduced percentage
Year 1	8⅓	10
Year 2	16⅔	25
Year 3	25	50
Year 4	33⅓	100
Year 5	16⅔	100

(4) *Four-year phase-in amount.* The four-year phase-in amount is the lesser of—

(i) The applicable percentage (the "unreduced percentage" in the following table) of the four-year debt amount, or

(ii) The applicable percentage (the "reduced percentage" in the following table) of the four-year debt amount reduced by paydowns (if any) to the extent that such paydowns exceed the five-year debt amount:

Transition year	Unreduced percentage	Reduced percentage
Year 1	5	6¼
Year 2	10	16⅔
Year 3	15	37½
Year 4	20	100

(5) *Five-year debt amount.* The "five-year debt amount" means the excess (if any) of—

(i) The amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

(ii) The amount of the outstanding indebtedness of the taxpayer on December 31, 1983. The five-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

(6) *Four-year debt amount.* The "four-year debt amount" means the excess (if any) of—

(i) The amount of the outstanding indebtedness of the taxpayer on December 31, 1983, over

(ii) The amount of the outstanding indebtedness of the taxpayer on December 31, 1982.

The four-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the five-year debt amount.

(7) *Paydowns.* The term "paydowns" means the excess (if any) of—

(i) The aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

(ii) The limitation on the general phase-in amount described in paragraph (b)(3) of this section.

Paydowns are first applied to the five-year debt amount to the extent thereof and then to the four-year debt amount for purposes of computing the five-year and the four-year phase-in amounts.

(d) *Treatment of affiliated group.* For purposes of this section, all members of the same affiliated group of corporations (as defined in § 1.861–11(d)) shall be treated as one taxpayer whether or not such members filed a consolidated return. Interaffiliate debt is not taken into account in computing transition

relief. Moreover, any reduction in the amount of interaffiliate debt is not taken into account in determining the amount of paydowns.

(e) *Mechanics of computation*—(1) *Step 1: Determination of the amounts within the various categories of debt.* Each separate member of an affiliated group must determine each of its following amounts:

(i) *November 16, 1985 amount.* The amount of its debt outstanding on November 16, 1985 (after the elimination of interaffiliate indebtedness),

(ii) *Unreduced five-year debt.* The amount of any net increase in the amount of its indebtedness on May 29, 1985 (after elimination of interaffiliate indebtedness) over the amount of its indebtedness on December 31, 1983 (after elimination of interaffiliate indebtedness),

(iii) *Unreduced four-year debt.* The amount of any net increase in the amount of its indebtedness on December 31, 1983 (after elimination of interaffiliate indebtedness) over the amount of its indebtedness on December 31, 1982 (after elimination of interaffiliate indebtedness), and

(iv) *Month-end debt.* The amount of its month-end debt level for all months after October 1985 (after elimination of interaffiliate indebtedness).

(2) *Step 2: Aggregation of the separate company amounts.* Each of the designated amounts for the separate companies identified in Step 1 must be aggregated in order to compute consolidated transition relief. Paragraph (e)(10)(iv) of this section (Step 10) requires the use of the taxpayer's current year average debt level for the purpose of computing the percentages of debt that are subject to the three sets of rules that are identified in Step 10. For use in that computation, the taxpayer should compute the current year average debt level by aggregating separate company month-end debt levels and then by averaging those aggregate amounts.

(3) *Step 3: Calculation of the lowest historic month-end debt level of the taxpayer.* In order to calculate the lowest historic month-end debt level of the taxpayer, determine the month-end debt level of each separate company for each month ending after October 1985 and aggregate these amounts on a month-by-month basis. On such aggregate basis, in any taxable year in which the taxpayer attains an aggregate new lowest historic month-end debt level, add together all the aggregate month-end debt levels within the taxable year (without taking into account any increase in aggregate debt level subsequent to the attainment of such lowest historic month-end debt level) and divide by the number of months in that taxable year, yielding the average of month-end debt levels for such year. Such average shall constitute the taxpayer's lowest historic month-end debt level for that taxable year in which the aggregate new lowest historic month-end debt level was attained. Unless otherwise specified, all subsequent references to any amount refer to the aggregate amount for all members of the same affiliated group of corporations.

(4) *Step 4: Computation of paydowns.* Paydowns equal the amount by which the November 16, 1985 amount exceeds the taxpayer's lowest historic month-end debt level, determined under Step 3.

(5) *Step 5: Computation of limitations on unreduced five-year debt and unreduced four-year debt.* (i) The unreduced five-year debt cannot exceed the November 16, 1985 amount.

(ii) The unreduced four-year debt cannot exceed the November 16, 1985 amount less the unreduced five-year debt.

(6) *Step 6: Computation of reduced five-year and reduced four-year debt*—(i) *Reduced five-year debt.* Compute the amount of reduced five-year debt by subtracting from the unreduced five-year debt (see Step 5) the amount of paydowns (see Step 4).

(ii) *Reduced four-year debt.* To the extent that the amount of paydowns (see step 4) exceeds the amount of unreduced five-year debt (see Step 5), compute the amount of reduced four-year debt by subtracting such excess from the unreduced four-year debt (see Step 1).

(iii) To the extent that paydowns do not offset either the unreduced five-year amount or the unreduced four-year amount, the reduced and the unreduced amounts are the same.

(7) *Step 7: Computation of the general phase-in amount.* The general phase-in amount is the lesser of—

(i) The percentage of the November 16, 1985 amount designated for the relevant transition year in the table below, or

(ii) The lowest group month-end debt level (see Step 3).

GENERAL PHASE-IN TABLE

Transition year	Percentage
Year 1	75
Year 2	50
Year 3	25

(8) *Step 8: Computation of Five-Year Phase-in Amount.* The five-year phase-in amount is the lesser of—

(i) The percentage of the unreduced five-year debt designated for the relevant transition year in the table below, or

(ii) The percentage of the reduced five-year debt designated for the relevant transition year in the table below.

FIVE-YEAR PHASE-IN TABLE

Transition year	Unreduced percentage	Reduced percentage
Year 1	8⅓	10
Year 2	16⅔	25
Year 3	25	50
Year 4	33⅓	100
Year 5	16⅔	100

(9) *Step 9: Computation of Four-year Phase-in Amount.* The four-year phase-in amount is the lesser of—

(i) The percentage of the unreduced four-year debt designated for the relevant transition year in the table below, or

(ii) The percentage of the reduced four-year debt designated for the relevant transition year in the table below.

FOUR-YEAR PHASE-IN TABLE

Transition year	Unreduced percentage	Reduced percentage
Year 1	5	6¼
Year 2	10	16⅔
Year 3	15	37½
Year 4	20	100

(10) *Step 10: Determination of group debt ratio and application of transition relief to separate company interest expense.* (i) The general phase-in amount consists of the amount computed under Step 7. Interest expense on this amount is subject to pre-1987 rules of allocation and apportionment.

(ii) The post-1986 separate company amount consists of the sum of the amounts determined under Steps 8 and 9. Interest expense on this amount is subject to post-1986 rules of allocation and apportionment as applied on a separate company basis. Thus, § 1.861-11T(c) does not apply with respect to this amount of indebtedness. Because the consolidation rule does not apply, stock in affiliated corporations shall be taken into account in computing the apportionment fractions for each separate company in the same manner as under pre-1987 rules.

(iii) The post-1986 one-taxpayer amount consists of any indebtedness that does not qualify for transition relief under Steps 7, 8, and 9. Interest expense

on this amount is subject to post-1986 rules as applied on a consolidated basis.

(iv) To determine the extent to which the interest expense of each separate company is subject to any of these sets of allocation and apportionment rules, each company shall prorate its own interest expense using two fractions. The general phase-in fraction is the general phase-in amount over the current year average debt level of the affiliated group (see Step 2). The post-1986 separate company fraction is the post-1986 separate company amount over the current year average debt level of the affiliated group. The balance of each separate company's interest expense is subject to post-1986 one-taxpayer rules.

(f) *Example.* XYZ form an affiliate group.

(1) *Step 1:* Determination of the amounts within the various debt categories.

	Historic 3rd party debt	Increase
Company X:		
Nov. 16, 1985	$100,000	
May 29, 1983 (5-year)	90,000	$10,000
Dec. 31, 1983 (4-year)	80,000	10,000
Dec. 31, 1982	70,000	
Current Interest Expense	10,000	
Company Y:		
Nov. 16, 1985	200,000	
May 29, 1985 (5-year)	170,000	120,000
Dec. 31, 1983 (4-year)	50,000	10,000
Dec. 31, 1982	40,000	
Current Interest Expense	30,000	
Company Z:		
Nov. 16, 1985	300,000	
May 29, 1985 (5-year)	300,000	50,000
Dec. 31, 1983 (4-year)	250,000	100,000
Dec. 31, 1982	150,000	
Current Interest Expense	30,000	

(2) *Step 2:* Aggregation of the separate company amounts.

Aggregate Nov. 16, 1985	$600,000
Aggregate 5-year debt	180,000
Aggregate 4-year debt	120,000
Current year average debt level	700,000

(3) *Step 3:* Calculation of lowest historic month-end debt level.

An analysis of historic month-end debt levels indicates that in 1986, XYZ's aggregate month-end debt level fell to $500,000, which represents the lowest sum for all years under consideration. Because this historic low occurred in a prior tax year, there is no averaging of month-end debt levels in the current taxable year.

(4) *Step 4:* Computation of paydowns.

The aggregate November 16, 1985 amount ($600,000), less the lowest historic month-end debt level ($500,000), yields a total paydown in the amount of $100,000.

(5) *Step 5:* Computation of limitations on aggregate unreduced five-year debt and aggregate unreduced four-year debt.

Aggregate Nov. 16, 1985 amount	$600,000
Aggregate unreduced 5-year debt	180,000
Aggregate unreduced 4-year debt	120,000

Because the November 16, 1985 amount exceeds the unreduced 4- and 5-year debt, the full amount of the 4- and 5-year debt qualify for transition relief. In cases where the November 16, 1985 amount is less than the 4- or 5-year debt (or the sum of both), the latter amounts are limited to the November 16, 1985 amount. See the limitations on the 4-year and 5-year debt amounts in paragraphs (c)(6) and (c)(5), respectively, of this section.

(6) *Step 6:* Computation of reduced five-year and four-year debt. The paydowns computed under Step 4 are deemed to first offset the aggregate unreduced five-year debt. Accordingly, the reduced amount of five-year debt is $80,000. Since the paydowns are less than the aggregate unreduced five-year debt, there is no paydown in connection with aggregate unreduced four-year debt. Accordingly, the unreduced four-year debt and the reduced four-year debt are both considered to be $120,000.

(7) *Step 7:* Computation of the general phase-in amount. In transition year 1, the general transition amount is the lesser of:

(i) 75 percent of the aggregate November 16, 1985 amount (75% of $600,000 = $450,000); or

(ii) the lowest month-end debt level since November 16, 1985 ($500,000).

Therefore, the general transition amount is $450,000.

(8) *Step 8:* Computation of the five-year phase-in amount. In transition year 1, the five-year phase-in amount is the lesser of:

(i) 8⅓ percent of the unreduced five-year amount (8⅓% of $180,000=$15,000); or

(ii) 10 percent of the reduced five-year amount (10% of $80,000=$8,000).

Therefore, the five-year phase-in amount is $8,000.

(9) *Step 9:* Computation of the four-year phase-in amount. In transition year 1, the four-year phase-in amount is the lesser of:

(i) 5 percent of the unreduced four-year amount (5% of $120,000=$6,000); or

(ii) 6¼ percent of the reduced four-year amount (6¼% of $120,000=$7,500).

Therefore, the four-year phase-in amount is $6,000.

(10) *Step 10:* Determination of group debt ratio and application of relief to separate company interest expense.

(i) As determined under Step 7, interest expense on a total of $450,000 of the XYZ debt in the first transition year is computed under pre-1987 rules of allocation and apportionment.

(ii) The sum of Steps 8 ($8,000) and 9 ($6,000) is $14,000. Interest expense on a total of $14,000 of XYZ debt is computed under post-1986 rules of allocation and apportionment as applied on a separate company basis.

(iii) The balance of XYZ's current year interest expense is computed under post-1986 rules of allocation and apportionment as applied on a consolidated basis. X, Y, and Z, respectively, have current interest expense of $10,000, $30,000, and $30,000. Thus, 64.3 percent (450,000/700,000) of the interest expense of each separate company is subject to pre-1987 rules. Two percent (14,000/700,000) of the interest expense of each separate company is subject to post-1986 rules applied on a separate company basis. Finally, the balance of each separate company's current year interest expense (33.7 percent) is subject to post-1986 rules applied on a consolidated basis.

(g) *Corporate transfers*—(1) *Effect on transferee*—(i) *General rule.* Except as provided in paragraph (g)(1)(ii) of this section, if a domestic corporation or an affiliated group acquires stock in a domestic corporation that was not a member of the transferee's affiliated group before the acquisition, but becomes a member of the transferee's affiliated group after the acquisition, the transferee group shall take into account the following transition attributes of the acquired corporation in computing its transition relief:

(A) November 16, 1985 amount;

(B) Unreduced five-year amount;

(C) Unreduced four-year amount; and

(D) The amount of any transferor paydowns attributed to the acquired corporation under the rules of paragraph (h)(1) of this section.

(ii) *Special rule for year of acquisition.* To compute the amount of the transition attributes described in paragraph (g)(1)(i) of this section that a transferee takes into account in the transferee's taxable year of the acquisition, such transition attributes shall be multiplied by a fraction, the numerator of which is the number of

months within the taxable year that the transferee held the acquired corporation and the denominator of which is the number of months in such taxable year. In order for the transferee to assert ownership of a subsidiary for a given month, the transferee and the acquired corporation must be affiliated corporations as of the last day of the month. In addition, the transferor and the transferee shall take account of the month-end debt level of the transferred corporation only for those months at the end of which the transferred corporation was a member of the transferor's or the transferee's respective affiliated group.

(iii) *Aggregation of transition attributes.* The transition attributes of the acquired corporation shall be aggregated with the respective amounts of the transferee group.

(iv) *Conveyance of transferor paydowns.* The total paydowns of the transferee group shall include the amount of any paydown of the transferor group that was attributed to the acquired corporation under the rules of paragraph (h)(1) of this section.

(v) *Effect of certain elections.* If an election—

(A) Is made under section 338(g) (whether or not an election under 338(h)(10) is made),

(B) Is deemed to be made under section 338(e) (other than (e)(2)), or section 338(f), or,

(C) Is made under section 336(e), no indebtedness of the acquired corporation shall qualify for transition relief for the year such election first becomes effective and for subsequent taxable years, and no other transition attributes of the acquired corporation shall be taken into account by the transferee group.

(2) *Effect on transferor*—(i) *General rule.* Except as provided in paragraph (g)(2)(ii) of this section, in the case of an acquisition of a member of an affiliated group by a nonmember of the group, the transferor shall not take into account the transition attributes of the acquired corporation in computing the transition relief of the transferor group in subsequent taxable years. Thus, the November 16, 1985 amount, the unreduced five-year and four-year debt amounts, and the end-of-month debt levels of the transferor group shall be computed without regard to the acquired corporation's respective amounts for purposes of computing transition relief of the tranferor group for years thereafter.

(ii) *Special rule for the year of disposition.* To compute the amount of the transition attributes described in paragraph (g)(2)(i) of this section that a transferor shall take into account in the transferor's taxable year of the disposition, such transition attributes shall be multiplied by a fraction, the numerator of which is the number of months within the taxable year that the transferor held the acquired corporation and the denominator of which is the number of months in such taxable year. In order for the transferor to assert ownership of a subsidiary for a given month, the transferor and the acquired corporation must be affiliated corporations as of the last day of the month.

(iii) *Effect of prior paydowns.* Any paydowns of the acquired corporation that are considered to reduce the debt of other members of the transferor group under the rules of paragraph (h)(1) of this section (whether incurred in a prior taxable year or in that portion of a year of disposition that is taken into account by the transferor) shall continue to be taken into account by the transferor group after the disposition.

(3) *Special rule for assumptions of indebtedness.* In connection with the transfer of a corporation, if the indebtedness of an acquired corporation is assumed by any party other than the transferee or another member of the transferee's affiliated group, the transition attributes of the acquired corporation shall not be taken into account in computing the transition relief of the transferee group. See paragraph (g)(2) of this section concerning the treatment of the transferor group. Also in connection with the transfer of a corporation, if the transferee or another member of the transferee's affiliated group assumes the indebtedness of an acquired corporation, such assumed indebtedness shall only qualify for transition relief during the period in which the acquired corporation remains a member of the transferee group. Further, if the transferee group subsequently disposes of the acquired corporation, the indebtedness of the acquired corporation will continue to qualify for transition relief only if the indebtedness is assumed by the new purchaser as of the time such corporation is acquired.

(4) *Effect of asset sales.* If substantially all of the assets of a corporation are sold, the indebtedness of such corporation shall cease to be qualified for transition relief. Thus, the transition attributes of such corporation shall not be taken into account in computing transition relief.

(h) *Rules for attributing paydowns among separate companies*—(1) *General rule.* In the case of a corporate transfer under paragraph (g) of this section, it is necessary to determine the amount of paydowns attributable to the acquired corporation. Under paragraph (c)(7) of this section, paydowns are deemed to reduce first the five-year phase-in amount, then the four-year phase-in amount, and then the general phase-in amount. Thus, for example, a reduction in indebtedness of the group caused by a reduction in the debt of a group member that has no five-year debt will nevertheless be deemed under this ordering rule to reduce the indebtedness of those group members that do have five-year debt. In order to preserve the effect of paydowns caused by a reduction, each member must determine on a separate company basis at the time of any transfer of any member of the affiliated group the impact of paydowns (including those paydowns occurring in the year of transfer prior to the time of the transfer) on the various categories of indebtedness.

(2) *Mechanics of computation.* Separate company accounts of paydowns are determined by prorating any paydown among all group members with five-year debt to the extent thereof on the basis of the relative amounts of five-year debt. Paydowns in excess of five-year debt are prorated on a similar basis among all group members with four-year debt to the extent thereof on the basis of the relative amounts of four-year debt. Paydowns in excess of four-year and five-year debt are prorated among all group members with general phase-in debt to the extent thereof on the basis of the relative amounts of general phase-in debt. After an initial paydown has been prorated among the members of an affiliated group, any further reduction in the amount of aggregate month-end debt level as compared to the November 16, 1985 amount is prorated among all members of the affiliated group based on the remaining net amounts of four-year and five-year debt.

(3) *Examples.* The rules of paragraphs (g) and (h) of this section may be illustrated by the following examples.

Example (1): Computing separate company accounts of reductions—(i) *Facts.* XYZ constitutes an affiliated group of corporations that has a calendar taxable year and the following transition attributes:

	Historic 3rd party debt	Increase
Company X:		
Nov. 16, 1985	$100,000	
May 29, 1985 (5-year)	80,000	$0
Dec. 31, 1983 (4-year)	80,000	10,000
Dec. 31, 1982	70,000	
Company Y:		
Nov. 16, 1985	200,000	

	Historic 3rd party debt	Increase
May 29, 1985 (5-year)	170,000	120,000
Dec. 31, 1983 (4-year)	50,000	10,000
Dec. 31, 1982	40,000	
Company Z:		
Nov. 16, 1985	300,000	
May 29, 1985 (5-year)	290,000	40,000
Dec. 31, 1983 (4-year)	250,000	100,000
Dec. 31, 1982	150,000	

In 1986, the XYZ group attained its lowest historic month-end debt level of $500,000. Because the November 16, 1985 amount is $600,000 the XYZ group therefore has a paydown in the amount of $100,000. This paydown partially offsets the $160,000 of five-year debt in the XYZ group.

(ii) *Analysis.* Applying the rule of paragraph (h)(1) of this section, separate company accounts of paydowns are computed by prorating the $100,000 paydown among those members of the group that have five-year debt. Accordingly, the paydown is prorated between Y and Z as follows:

To Y:

$$\$100{,}000 \times \frac{\$120{,}000}{\$160{,}000} = \$75{,}000$$

To Z:

$$\$100{,}000 \times \frac{\$40{,}000}{\$160{,}000} = \$25{,}000$$

Example (2): Corporate acquisitions—(i) *Facts.* The facts are the same as in example (1). On July 15, 1987, the XYZ group sells all the stock of Y to A. Having held the stock of Y for six months in 1987, the XZ group computes its transition relief for that year taking into account half of the transition attributes of Y. AY constitutes an affiliated group of corporations after the acquisition. Having held the stock of Y for six months in 1987, the AY group computes its transition relief for that year taking into account half of the transition attributes of Y. In 1987, the AY group attained a new lowest month-end debt level that yields an average lowest month-end debt level for 1987 of $150,000.

(ii) *Transferee group.* The following analysis applies in determining transition relief for purposes of apportioning the interest expense of the transferee group for 1987. The AY group has the following transition attributes for 1987:

	Historic 3rd party debt	Increase
Company A:		
Nov. 16, 1985	$100,000	
May 29, 1985 (5-year)	250,000	$5,000
Dec. 31, 1983 (4-year)	245,000	10,000
Dec. 31, 1982	235,000	
Company Y (half-year amounts):		
Nov. 16, 1985	100,000	
May 29, 1985 (5-year)	85,000	60,000
Dec. 31, 1983 (4-year)	25,000	5,000
Dec. 31, 1982	20,000	
Pre-acquisition year paydown by another member of the transferor group that reduced Y's five-year debt (one half of $75,000)	37,500	

Because the November 16, 1985 amount of the AY group in 1987 is $200,000 and because the 1987 average of historic month-end debt levels was $150,000, the AY group has a paydown in the amount of $50,000. In addition, the 1986 paydown by the XYZ group that was deemed to reduce Y debt is added to the paydown computed above, yielding a total paydown of $87,500. This amount is prorated between members, eliminating the four and five year debt of the AY group. Note that Y is only a member of the AY group for half of the 1987 taxable year. In 1988, Y's entire transition indebtedness and a $75,000 paydown must be taken into account in computing the amount of interest expense eligible for transition relief.

(iii) *Transferor group.* The following analysis applies in determining transition relief for purposes of apportioning the interest expense of the transferor group for 1987. The XZ group has the transition attributes stated below for 1987. In 1987, the XZ group attained a new lowest month-end debt level that yields an average lowest month-end debt level for 1987 of $250,000.

	Historic 3rd party debt	Increase
Company X:		
Nov. 16, 1985	$100,000	
May 29, 1985 (5-year)	80,000	$0
Dec. 31, 1983 (4-year)	80,000	10,000
Dec. 31, 1982	70,000	
Pre-disposition paydown that reduced X's debt	0	
Company Y (half-year amounts):		
Nov. 16, 1985	100,000	
May 29, 1985 (5-year)	85,000	60,000
Dec. 31, 1983 (4-year)	25,000	5,000
Dec. 31, 1982	20,000	
Pre-disposition paydown that reduced Y's debt	37,500	
Company Z:		
Nov. 16, 1985	300,000	
May 29, 1985 (5-year)	290,000	40,000
Dec. 31, 1983 (4-year)	250,000	100,000
Dec. 31, 1982	150,000	
Pre-disposition paydown that reduced Z's debt	25,000	

Because the revised November 16, 1985 amount of the XZ group is $500,000 and because the 1987 average of lowest historic month-end debt levels of the XZ group was $250,000, the XZ group has a paydown in the amount of $250,000. This paydown offsets the total five and four year debt of the XZ group. Had the 1987 paydown of the XZ group been an amount less than the five-year amount, the paydown would have been prorated based on Y's adjusted 5-year amount of $22,500 and Z's adjusted 5-year amount of $15,000.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: July 3, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has (1) determined that USS MONTEREY (CG-61) is a vessel of the

Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval cruiser; and (2) directed that a revision be made to one of the tables in the existing Part 706. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400 Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS MONTEREY (CG-61) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided that the Judge Advocate General of the Navy has determined that the existing Table Four of 32 CFR 706.2 should be revised by amending the text of one of the paragraphs contained therein.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by revising the existing paragraph 1 to read as follows:

1. Ships other than aircraft carrier types (CV, CVN, AVT, LHA, LHD, and LPH) may not simultaneously exhibit the masthead lights required by Rule 27(b)(iii) and the lights required by Rule 27(b)(i) for vessels restricted in their ability to maneuver when such simultaneous exhibition will present a hazard to their own safe operations. In those instances, the lights required by Rule 27(b)(i) will be exhibited. Ships conducting flight operations also may not exhibit the stern light required by Rule 27(b)(iii).

3. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS MONTEREY	CG-61						X	X	38

Date: July 10, 1989.

Approved:

E.D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 89-18052 Filed 8-1-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-51]

Special Local Regulations for Marine Events; Cambridge Classic Powerboat Regatta; Hambrooks Bay, Choptank River, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Cambridge Classic Powerboat Regatta to be held in Hambrooks Bay, Choptank River, Cambridge, Maryland, July 29 and 30, 1989. These regulations will govern vessel activity during the actual races. The regulations are necessary due to the potential danger to waterway users, the confined nature of the waterway, and expected spectator craft congestion during the event.

EFFECTIVE DATES: The regulations are effective for the following periods: 9:00 a.m. to 6:00 p.m., July 29, 1989. 9:00 a.m. to 6:00 p.m., July 30, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning these regulations in the **Federal Register** on June 30, 1989 (54 FR 27654). Interested persons were requested to submit comments. No comments were received in response to the notice of proposed rulemaking.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Cambridge Powerboat Regatta Association Inc. is the sponsor of this event. The event will consist of approximately 30 powerboats, ranging from 13 to 21 feet in length racing on a designated course within the regulated area. The races will be conducted in Hambrooks Bay, located on the Choptank River, between Great Marsh Point and Hambrooks Bar. Hambrooks Bay will be closed during the actual races. The Coast Guard Patrol Commander may allow vessel traffic to transit the area between heats. Since Hambrooks Bay is outside the main channel, waterborne traffic should not be severely disrupted.

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–0551 is added to read as follows:

§ 100.35–0551 Hambrooks Bay, Choptank River, Maryland.

(a) *Definitions:* (1) Regulated area. The waters of Hambrooks Bay and Choptank River bounded by the arc of a circle with a radius of 1,200 yards and with its center located at latitude 38°35'20.0" North, longitude 76°05'20.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall;

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective periods.* The regulations are effective for the following periods: 9:00 a.m. to 6:00 p.m., July 29, 1989. 9:00 a.m. to 6:00 p.m., July 30, 1989.

Dated: July 21, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89–18048 Filed 8–1–89; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD7–88–49]

Drawbridge Operation Regulations; Kissimmee River, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the highway bridges over the Kissimmee River at State Roads 70, 78, and 98 which specify advance notification requirements for bridge openings. Under the provisions of this revocation, these bridges would no longer be considered as drawbridges, but as fixed bridges with removable spans. The owner of the bridges has indicated a willingness to open the spans upon 4 days advance notice. We do not consider it necessary to require this information to be included in Part 117 of Title 33 CFR.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, telephone (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

The proposal to revoke these regulations drew a comment from the Army Corps of Engineers that the Kissimmee River was an authorized federal navigation project, and not an inactive federal navigation project as stated in the public notice. The matter has been clarified. No other comments were received. The final rule is unchanged from the proposed rule published on March 14, 1989 (54 FR 10563).

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander D.G. Dickman, Jr., project attorney.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridges have not opened in the last 15 years. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a

significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

§ 117.295 [Amended]

2. Section 117.295 is amended by removing paragraphs (a), (c), and the paragraph designation (b) and redesignating the paragraph as the entire section.

Dated: July 19, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 89-18047 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AD19

Definition of Fraud

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning the definition of fraud. The amendment is necessary as the current definition of fraud, mandated by law, pertains exclusively to forfeiture. The effect of this amendment will be to establish a definition of fraud for all adjudication applications other than forfeiture.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Legal Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 15781-82 of the **Federal Register** of April 19, 1989, VA published a proposed rule on the definition of fraud. Interested persons were given until May 19, 1989, to submit comments on the proposed rule. As no comments were received, the amendment is adopted without change.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this amendment is nonmajor for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.100 through 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: July 13, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, is amended to read:

PART 3—ADJUDICATION

§ 3.1 [Amended]

1. In § 3.1(g)(4) remove the citation at the end which reads "(Pub. L. 89-670)".

2. In § 3.1, new paragraph (aa) is added and the crossreference at the end of the section is revised to read as follows:

§ 3.1 Definitions.

* * * * *

(aa) "Fraud":

(1) As used in 38 U.S.C. 103 and implementing regulations, fraud means an intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the purpose of obtaining, or assisting an individual to obtain an annulment or divorce, with knowledge that the misrepresentation or failure to disclose may result in the erroneous granting of an annulment or divorce; and

(Authority: 38 U.S.C. 210(c))

(2) As used in 38 U.S.C. 110 and 359 and implementing regulations, fraud means an intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the purpose of obtaining or retaining, or assisting an individual to obtain or retain, eligibility for Department of Veterans Affairs benefits, with knowledge that the misrepresentation or failure to disclose may result in the erroneous award or retention of such benefits.

(Authority: 38 U.S.C. 210(c))

Cross-References: Pension. See § 3.3. Compensation. See § 3.4. Dependency and indemnity compensation. See § 3.5. Preservation of disability ratings. See § 3.951. Service-connection. See § 3.957.

[FR Doc. 89-17976 Filed 8-1-89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AD98

Benefits at DIC Rates in Certain Cases When Death Was Not Service-Connected

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning the payment of benefits to surviving spouses of certain veterans whose deaths were not service-connected. These changes are required in order to implement liberalizing legislation regarding specific marriage requirements. The intended effect of these changes is to expand eligibility to include those surviving spouses who meet the requirements of the liberalized law.

EFFECTIVE DATE: November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Donald England, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 30, 1989 (54 FR 13081) VA published a proposed regulatory amendment concerning the payment of benefits at DIC rates to the surviving spouses of certain veterans whose deaths were not service-connected. Interested persons were invited to submit written comments,

suggestions or objections on or before May 1, 1989. Since no comments, suggestions or objections were received the regulation has been adopted as proposed with one technical change: the citation in 38 CFR 3.11 has been amended to reflect the recodification as 38 U.S.C. 418 of material formerly contained in section 410(b).

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: July 7, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, is amended as follows:

PART 3—ADJUDICATION

§ 3.11 [Amended]

In § 3.11, remove the words "410(b)" where they appear and add, in their place, the words "418".

2. In § 3.22, the introductory text of paragraph (a) and the authority citation for paragraph (e) are revised to read as follows:

§ 3.22 Benefits at DIC rates in certain cases when death is not service connected.

(a) *Entitlement criteria.* Benefits authorized by section 418 of Title 38, United States Code, shall be paid to a deceased veteran's surviving spouse (see § 3.54(c)(2)) or children in the same manner as if the veteran's death is service connected when the following conditions are met:

* * * * *

(e) * * *

(Authority: 38 U.S.C. 418)

* * * * *

2. In § 3.54, paragraph (c)(2) is revised to read as follows:

§ 3.54 Marriage dates.

* * * * *

(c) *Dependency and indemnity compensation.*

* * * * *

(2) In order for a surviving spouse to be entitled to benefits under section 418 of Title 38, United States Code, in the same manner as if death is service connected, the marriage to the veteran shall have been for a period of not less than 2 years immediately preceding the date of the veteran's death, or for any period of time if a child was born of the marriage, or was born to them before the marriage.

(Authority: 38 U.S.C. 418)

* * * * *

[FR Doc. 89–17979 Filed 8–1–89; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 21

RIN 2900–AD58

Veterans Education; Procedural Protections Following Loss of Dependent

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: This regulation sets out procedures which the Department of Veterans Affairs (VA) will follow when considering reduction of the veteran's educational assistance allowance in certain instances because VA has received evidence that the veteran has lost a dependent. This amended regulation brings the procedures used in such circumstances into agreement with the procedures followed when a veteran is receiving disability compensation or pension and VA receives evidence that the veteran has lost a dependent. The effect of this proposal will be to improve and more clearly define procedural protections afforded the veteran.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Alan Zoeckler, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 10420 (202) 233–2668.

SUPPLEMENTARY INFORMATION: On pages 5944 and 5945 of the **Federal Register** of February 7, 1989, (54 FR 5944), there was published a notice of intent to amend Part 21 in order to improve and more clearly define the procedural protections afforded a veteran who is receiving educational assistance and has lost a dependent. Interested persons were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making the proposed amended regulation final.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs certifies that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 5, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

In 38 CFR Part 21 Vocational Rehabilitation and Education, § 21.4132 is added to read as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

§ 21.4132 Procedural protections: reduction following loss of a dependent.

(a) *Notice of reduction required when a veteran loses a dependent.* (1) Except as provided in paragraph (a)(2) of this section, the Department of Veterans Affairs will not reduce an award of educational assistance allowance following the veteran's loss of a dependent unless:

(i) The Department of Veterans Affairs has notified the veteran of the adverse action, and

(ii) The Department of Veterans Affairs has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that the educational assistance allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency or marital status provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of educational assistance allowance:

(i) The Department of Veterans Affairs is not required to send a prereduction notice as stated in paragraph (a)(1) of this section, but

(ii) The Department of Veterans Affairs will send notice contemporaneous with the reduction in educational assistance allowance.

(Authority: 38 U.S.C. 3012, 3013)

(b) *Prereduction notice.* Where a reduction in educational assistance allowance is warranted by reason of information concerning dependency received from a source other than the veteran, the Department of Veterans Affairs will:

(1) Prepare a proposal for the reduction of educational assistance allowance, setting forth material facts and reasons;

(2) Notify the veteran of his or her latest address of record of the contemplated action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that the Department of Veterans Affairs receives a request for such a hearing within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the educational assistance allowance should be continued at its present level.

(Authority: 38 U.S.C. 3012, 3013)

(c) *Predetermination hearing.* (1) If the Department of Veterans Affairs receives a timely request for a predetermination hearing:

(i) The Department of Veterans Affairs will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of educational assistance allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a Department of Veterans Affairs employee:

(i) Who did not participate in the preparation of the proposal to reduce the veteran's educational assistance allowance, and

(ii) Who will bear the decision-making responsibility.

(Authority: 38 U.S.C. 3012, 3013)

(d) *Final action.* The Department of Veterans Affairs will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record.

(2) If a predetermination hearing was conducted, the Department of Veterans Affairs will base final action upon:

(i) Evidence adduced at the hearing,

(ii) Evidence contained in the claims file at the time of the hearing, and

(iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decision, and the evidence upon which it is based.

(4) When a reduction of educational assistance allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.4135 of this part. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter.)

(Authority: 38 U.S.C. 3012, 3013)

[FR Doc. 89-17978 Filed 8-1-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3540/R1033; FRL-3622-7

Pesticide Tolerance for Methyl 2-[[[[N-(4-Methoxy-6-Methyl-1,3,5-Triazin-2-yl)Methylamino] Carbonyl]Amino]Sulfonyl] Benzoate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide methyl 2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino]carbonyl] amino]sulfonyl] benzoate (also known as "Express™") in or on wheat grain at 0.05 part per million (ppm), wheat straw at 0.1 ppm, barley grain at 0.05 ppm, and barley straw at 0.1 ppm. The regulation was requested by E.I. du Pont de Nemours & Co., Inc.

EFFECTIVE DATE: July 14, 1989.

ADDRESS: Written objections, identified by the document control number, [PP 7F3540/R1033], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Schnaubelt, Acting Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register on November 25, 1987 (52 FR 45237) which announced that the E.I. du Pont de Nemours & Co., Inc., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898, has submitted pesticide petition (PP) 7F3540 to EPA proposing to amend 40 CFR Part 180 by establishing tolerances for residues of the herbicide methyl 2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-methylamino] carbonyl]amino]

sulfonyl]benzoate ("Express™") in or on the raw agricultural commodities wheat grain at 0.05 ppm, wheat straw at 0.1 ppm, barley grain at 0.05 ppm, and barley straw at 0.1 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered in support of the petition include: (1) An 18-month feeding/oncogenic study in Charles River Crl:CD–1 (ICR) BR strain mice fed dosages of 0, 3, 30, and 225 milligrams/kilogram/day (mg/kg/day) with an NOEL (no-observable-effect level) of 3 mg/kg/day and an LOEL (lowest-observable-effect level) of 30 mg/kg/day based on decreased body weight gain in both sexes, an increased incidence of age-related effects (amyloidosis and thyroid inflammation in both sexes, testicular atrophy (seminiforous degeneration and oligospermia) and mortality in males given 225 mg/kg/day). No oncogenic effects were observed in the study. (2) A 2-year feeding/oncogenic study in Sprague-Dawley rats fed dosages of 0, 1.25, 12.5, and 62.5 mg/kg/day with a statistically significant increase in the incidence of mammary gland adenocarcinomas in treated female rats at 62.5 mg/kg/day (HDT), an NOEL of 1.25 mg/kg/day and an LOEL of 12.5 mg/kg/day based on reduced body weight gains in treated males and females. (3) A 1-year feeding study in dogs fed dosage levels of 0, 0.625, 6.25, and 37.5 mg/kg/day with an NOEL of 0.625 mg/kg/day and an LOEL of 6.25 mg/kg/day (both sexes) based on elevated blood levels of bilirubin and aspartate aminotransferase (AST), increased urinary volume and decreased body weight gain in males, and in females, elevated bilirubin, AST, creatinine, and globulin levels as well as decreased body weight gain. (4) A 90-day feeding study in dogs fed dosages of 0, 1.25, 12.5, and 62.5 mg/kg/day with an NOEL of >62.5 mg/kg/day (HDT). (5) A 90-day feeding study in rats fed dosages of 0, 5, 87.5, and 250 mg/kg/day with an NOEL of 5 mg/kg/day and an LOEL of 87.5 mg/kg/day; there were no treatment-related histopathological effects. (6) A teratology study in rats fed dosage levels of 0, 20, 125, and 500 mg/kg/day with an NOEL of 20 mg/kg/day (LDT) for both maternal and developmental toxicity and an LOEL of 125 mg/kg/day. Maternal effects at the 125- and 500-mg/kg/day dose levels include decreased body weight gain and food consumption and an increased incidence of excess salivation; fetal effects include decreased body weights and increased numbers of resorptions (only at the highest dose tested). (7) A teratology study in rabbits fed dosage levels of 0, 5, 20, and 80 mg/kg/day with an NOEL for maternal and developmental toxicity of 20 mg/kg/day, an LOEL for maternal and developmental toxicicty of 80 mg/kg/day (HDT); maternal effects include decreased feed consumption and an increased incidence of abortions, and fetuses had slightly reduced body weights. (8) A two-generation reproduction study in rats with an NOEL of 1.25 mg/kg/day and an LOEL of 12.5 mg/kg/day based on decreased body weight gain; there were no reproductive or developmental effects observed at any dose level tested (HDT of 50 mg/kg/day). (9) A gene mutation assay in *Salmonella typhimurium* and Chinese hamster ovary cells *in vitro*. These assays were negative; structural chromosomal damage, including a micronucleus test in mice and a cytogenetics assay in rats. Both assays were negative; an unscheduled DNA synthesis assay in rat primary hepatocytes *in vitro*. The assay was negative for genotoxicity.

Methyl 2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino] carbonyl]amino]sulfonyl] benzoate has been classified by the Agency into Category C (possible human oncogen) because of a statistically significant increase in the incidence of malignant tumors (mammary gland adenocarcinomas) in female Sprague-Dawley strain rats. The increased incidence exceeded the historical control range. The Agency has determined that a quantitative oncogenic risk assessment for this chemical is not appropriate because: (1) The tumors were observed only in one sex and one species; (2) the tumors were significantly increased only at the highest dose tested at which the compound was clearly toxic and exceeded a maximum adequately high dose to assess oncogenic potential; (3) structural analogs show little evidence of oncogenic potential; (4) quantification has not been found appropriate for the s-triazine analogs; (5) there is a possible association between the induced tumors and a hormonal influence at the high test doses, and (6) in addition, there was no evidence of genetic toxicity shown in several studies.

The Scientific Advisory Panel has recommended that "Express™" be placed in Category D on the grounds that the only evidence for carcinogenicity was obtained with doses that greatly exceeded the MTD. The Panel noted that the negative data obtained with male rats and mice and the lack of positive genetic toxicity also supported Category D. The Agency believes that the data on carcinogenicity for this chemical do not indicate a strong likelihood that this chemical poses a significant risk to human health.

The acceptable daily intake (ADI) based on the 1-year dog feeding study (NOEL of 0.625 mg/kg/day) and an uncertainty factor of 100 is calculated to be 0.0063 mg/kg/day. The theoretical maximum residue contribution for this tolerance is calculated to be 0.000073 mg/kg/day. The current action will occupy 1.16 percent of the ADI. There are no published tolerances for this chemical. The pesticide is useful for the purposes of this tolerance rule.

The nature of the residue is adequately understood, and adequate analytical methods (high-performance liquid chromatography with a photoconductivity detector) are available for enforcement purposes. Prior to its publication in the *Pesticide Analytical Manual,* Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: By mail, Calvin Furlow, Public Information Branch, Field Operations Division (H–7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number, Crystal Mall #2, Rm. 242, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557–4432.

There are currently no actions pending against the registration of this chemical. No secondary residues are expected in meat, milk, poultry, or eggs from this use.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health. The tolerances are therefore established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register,** file written objections with the Hearing Clerk, Environmental Protection Agency, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this regulation from section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 14, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. New § 180.451 is added, to read as follows:

§ 180.451 Methyl 2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin 2-yl) methylamino] carbonyl]amino]sulfonyl] benzoate; tolerances for residues.

Tolerances are established for the residues of the herbicide methyl 2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin 2-yl)methylamino] carbonyl]amino] sulfonyl] benzoate in or on the following raw agricultural commodities:

Commodities	Parts per million
Barley, grain	0.05
Barley, straw	0.10
Wheat, grain	0.05
Wheat, straw	0.10

[FR Doc. 89-17840 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 180 and 186

[PP 6F3443, PP 6H5507/R1014; FRL-3622-6]

Pesticide Tolerances for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide iprodione in or on rice at 10.0 parts per million (ppm), rice straw at 20.0 ppm, eggs at 1.5 ppm, poultry fat at 3.5 ppm, poultry liver at 5.0 ppm, poultry meat and meat byproducts (except liver) at 1.0 ppm, rice hulls at 50.0 ppm, and rice bran at 30.0 ppm. These regulations to establish the maximum permissible level for residues of iprodione in or on raw agricultural commodity and feed commodities were requested by Rhone-Poulenc, Inc.

EFFECTIVE DATE: Effective on July 12, 1989.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 1, 1986 (51 FR 35034), which announced that Rhone-Poulenc, Inc., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition (6F3443) proposing to amend 40 CFR 180.399 and a feed additive petition (6H5507) proposing to amend 40 CFR 186.3750 (formerly 21 CFR 561.263 prior to recodification in the **Federal Register** of June 29, 1988 (53 FR 24666)) to establish tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)- N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on rice at 10 parts per million (ppm), rice straw at 20 ppm, eggs at 1.5 ppm, poultry fat at 3.5 ppm, poultry liver at 5.0 ppm, poultry meat and meat byproducts (except liver) at 1.0 ppm, rice hulls at 50.0 ppm, and rice bran at 30.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include:

1. A three-generation rat reproduction study using dosage levels of 0, 250, 500, and 2,000 ppm with a no-observed-effect level (NOEL) of 500 ppm (25 mg/kg bwt/day), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg bwt/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg bwt/day);

2. A rabbit teratology study in which the following doses were administered by gavage: 0, 20, 60, and 200 milligrams/kilograms body weight (mg/kg bwt), resulting in a developmental toxicity NOEL equal to or greater than 60 mg/kg bwt, and a lowest effect level of 200 mg/kg bwt.

3. A rat teratology study in which the following doses were administered by gavage: 0, 40, 90, and 200 mg/kg bwt, resulted in a developmental toxicity NOEL equal to 90 mg/kg bwt (considered supplementary under current guidelines and may be upgraded to minimum with additional information), and lowest effect level of 200 mg/kg bwt.

4. A 24-month feeding/oncogenicity study in rats using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study;

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, and 178.6 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study.

6. A 1-year dog feeding study using dosage levels of 168, 600, and 3,600 ppm (4.2, 15, and 90 mg/kg bwt/day) with a NOEL of 168 ppm (4.2 mg/kg bwt/day) and an LEL of 600 ppm (15 mg/kg bwt/day); and

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg bwt/day) with a NOEL of 2,400 ppm (60 mg/kg bwt/day) and an LEL of 7,200 ppm (180 mg/kg bwt/day).

Data currently lacking include an appropriate animal metabolism study. The registrant will be submitting this study to the Agency by the end of 1989.

The acceptable daily intake (ADI), based on the NOEL of 4.2 mg/kg bwt/day from the 1-year dog feeding study and using a hundredfold safety factor, is calculated to be 0.04 mg/kg bwt/day. The exposure from the proposed tolerance is 0.001583 mg/kg/day and utilizes 4.0 percent of the ADI. The total exposure from the previously established tolerances, using expected residues and percent of crop treated data, plus the proposed tolerance is 28.1 percent of the ADI for the overall U.S. population.

There are no regulatory actions pending against this registration of iprodione. The metabolism of iprodione in plants and animals, except for an appropriate toxicology laboratory animal metabolism study as noted above, is adequately understood for the

purposes of the tolerance. An analytical method, gas liquid chromatography using an electron capture detector, is available in the *Pesticide Analytical Manual*, Vol. II, for enforcement purposes.

Based on the information cited above, the Agency has determined that the establishment of these tolerances for residues of iprodione is appropriate. Therefore, the tolerances are established as set forth below. Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above.

Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 12, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In Part 180:

a. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.399 is amended in paragraph (a) by adding and alphabetically inserting the following raw agricultural commodities and in paragraph (b) by revising the entries for the following raw agricultural commodities, to read as follows:

§ 180.399 Iprodione; tolerance for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Rice grain	10.0
Rice straw	20.0
* * * * *	

(b) * * *

Commodities	Parts per million
* * * * *	
Eggs	1.5
* * * * *	
Poultry, fat	3.5
Poultry, liver	5.0
Poultry, meat	1.0
Poultry mbyp (except liver)	1.0
* * * * *	

PART 186—[AMENDED]

2. In Part 186:

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.3750 by adding and alphabetically inserting in the table therein the commodities rice bran and rice hulls, to read as follows:

§ 186.3750 Iprodione; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Rice bran	30.0
Rice hulls	50.0
* * * * *	

[FR Doc. 89-17839 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3F2854 and 4F3155/R1035; FRL-3624-1]

Triadimenol; Establishment of Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances in or on raw agricultural commodities of plant origin for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, hereafter referred to as triadimenol and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-1-yl)-1-butanediol, calculated as triadimenol; and in or on the raw agricultural commodities of animal origin for the combined residues of the fungicide triadimenol and its metabolities contain the chlorophenoxy moiety, calculated as triadimenol. This rule to establish maximum permissible levels of combined residues of the pesticide and certain of its metabolites in or on the commodities was requested by Mobay Corp.

EFFECTIVE DATE: Effective on July 25, 1989.

ADDRESS: Written objections, identified by the document control number (PP3F2854 and 4F3155/R1035), may be submitted to: the Hearing Clerk (A-110), Environmental Protection Agency, Rm. M-3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 20, 1983 (48 FR 16960), amended in the **Federal Register** of September 30, 1983 (48 FR 44905), and further amended in the **Federal Register** of March 1, 1989 (54 FR 8594), proposing to amend 40 CFR Part 180 by establishing tolerances for the fungicide triadimenol and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the raw agricultural commodities grain of wheat, barley, oats, and rye, corn forage, fresh corn (including sweet), grain of corn (including field and popcorn) and corn fodder at 0.05 ppm; green forage of wheat, barley, oats, and rye at 2.5 ppm; straw of wheat, barley, oats, and rye and meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep at 0.1 ppm; and meat, fat, and meat by-products of poultry, milk, and eggs at 0.01 ppm.

EPA also issued a notice, published in the **Federal Register** of January 16, 1985 (50 FR 2340), amended in the **Federal Register** of March 1, 1989 (54 FR 8594), proposing to amend 40 CFR 180 by

establishing tolerances for the fungicide triadimenol and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the raw agricultural commodities sorghum grain and dry sorghum forage at 0.01 ppm and green forage of sorghum at 0.05 ppm.

There were no comments received in response to the notices of filing. To clarify the residues of regulatory concern containing the chlorophenoxy and triazole moieties, the Agency has decided that the tolerance expression for plant commodities should consist of triadimenol and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as triadimenol. The tolerance expression for animal commodities consists of the parent compound, triadimenol and its metabolites containing the chlorophenoxy moiety, calculated as triadmenol.

Since triadimenol is a metabolite of 1-(4-chlorophenoxy)-3,3-dimethyl-l-(1*H*-1,2,4-triazol-l-yl)-2-butanone, hereafter referred to as triadimefon, which is also an active ingredient regulated under 40 CFR 180.410, the Agency is amending 40 CFR 180.3 by adding new paragraph (d)(13), to read as follows:

(13) Where tolerances are established for residues of both 1-(4-chlorophenoxy)-3,3-dimethyl-l-(1*H*-1,2,4-triazol-l-yl)-2-butanone (triadimefon) and *beta*-(4-chlorophenoxy)-alpha-(1,1-dimethyl-ethyl)-1*H*-1,2,4-triazole-l-ethanol (triadimenol) including its butanediol metabolite 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol in or on the same raw agricultural commodity and its products thereof, the total amount of such residues shall not yield more residue than that permitted by the higher of the two tolerances.

The data submitted in support of the petitions and other relevant materials have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the tolerances include the following:

1. A 2-year feeding/oncogenicity study with rats using dietary concentrations of 0, 125, 500, and 2,000 ppm, equivalent to 0, 6.25, 25.0, and 100 mg/kg bwt/day in males and females. Clinical chemistry findings suggest that the target organ for toxicity may be the liver. The levels of serum glutamic oxaloacetate transaminase (SGOT) and serum glutamic pyruvic transaminase (SGPT) were consistently higher at 2,000 ppm in males and females when compared to untreated controls, and some increase in these two parameters was also observed at 500 ppm. Although there was an accompanying small increase in liver weight at 2,000 ppm in females, there were no accompanying increases in histopathologic changes of the liver in either sex. There were only marginal effects seen on other clinical chemistry parameters, and no effect of the test compound was seen in clinically observed signs of toxicity, food consumption, hematology, or urinalysis parameters. The systemic NOEL (no observed effect level) is 125 ppm (6.25 mg/kg/day for males and females) based on the increase in liver enzymes (SGOT and SGPT). The systemic LEL (lowest effect level) was 500 ppm (25 mg/kg/day for males and females). The chemical was not oncogenic to rats under the testing conditions.

2. A 2-year chronic feeding/oncogenicity study in mice using dietary concentrations of 0, 125, 500, and 2,000 ppm (equivalent to doses of 0, 18, 72, and 285 mg/kg/day for males and females). The results of blood chemistry, organ weights, and gross and histological examinations indicate that the liver is the target organ. There were time- and dose-related increases in SAP (serum alkaline phosphatase), SGOT and SGPT activities in both male and female animals receiving 500 and 2,000 ppm of the test material.

In addition, increased incidence of enlarged livers, hyperplastic nodules, and increased liver weights in both male and female animals receiving 2,000 ppm of test material were detected at necropsy. Female animals receiving 2,000 ppm doses exhibited a significant increase in the incidences of liver adenomas only, a compound-related oncogenic effect. In males, there were no differences in the incidences of these lesions in treated and control males, and the incidences of liver adenomas were similar to those observed in historical controls.

Based on this evidence, the Agency classified this chemical as a Category C (possible human carcinogen) in accordance with the EPA Guidelines for Carcinogen Risk Assessment (see the **Federal Register** of September 24, 1986 (51 FR 33992)). This evaluation was confirmed by the Agency's Scientific Advisory Panel on December 15, 1987. However, it was also concluded that this evidence of carcinogenicity did not warrant a low-dose extrapolation of risks since the tumors were only benign, were observed in only one sex of one species, and were present only at the highest dose tested. Moreover, the chemical was negative in the genotoxic assay battery.

Based on blood chemistry findings, the systemic NOEL and the LEL are 125 ppm and 500 ppm, respectively (equivalent to 18 and 72 mg/kg/day for males and females).

3. A 2-year male and female dog feeding study using doses of 0, 150, 600 and 2,400 ppm (equivalent to 0, 3.75, 15, and 60 mg/kg bwt/day for males and females). The NOEL is 150 ppm based on changes in enzyme levels (equivalent to 3.75 mg/kg bwt/day for males and females). The LEL is 600 ppm. Although there were significant decreases in mean body weights in males receiving 150 and 2,400 ppm and in females receiving 600 and 2,400 ppm, the biological significance of these changes could not be assessed. There were noted increases in alkaline phosphatase N-demethylase and cytochrome P-450 in males receiving 2,400 ppm and significant increases in N-demethylase in females receiving 600 and 2,400 ppm and in cytochrome P-450 in females receiving 2,400 ppm when compared to controls.

4. A 6-month dog feeding study using doses of 0, 10, 30, and 100 ppm (equivalent to 0, 0.25, 0.75, 2.5 mg/kg bwt/day for males and females). The NOEL was 2.5 mg/kg, the highest dose level tested.

5. A 3-month rat feeding study using doses of 0, 150, and 600 ppm (equivalent to 0, 7.5, and 30 mg/kg bwt/day for males and females) demonstrated a decrease in body weight, in hematocrit values, and in eosinophil count and medium cell hemoglobin and demonstrated an increase in the high-dose group and a dose-related increase in liver weight. The NOEL is 7.5 mg/kg and the LEL is 30 mg/kg.

6. A 3-month dog feeding study using doses of 0, 150, 600 and 2,400 ppm (equivalent to 0, 3.75, 15, and 60 mg/kg bwt/day for males and females). Weight gain in all male groups and in the highest dose female group was significantly less than the control. Alkaline phosphatase in males and females showed a dose-related negative trend. There were no gross pathological changes. Effects at 15 mg/kg included an increase in serum cholesterol level in males. Although the NOEL appeared to be less than 3.75 mg/kg, based on reduced body weight and decreased alkaline phosphatase in males, the Agency has concluded that effects below 15 mg/kg in the 2-year dog study were not biologically significant and the longer-term study supercedes the 90-day dog study. Therefore, the NOEL remains at 3.75 mg/kg.

7. A rabbit teratology study with a NOEL for maternal toxicity of 8 mg/kg. The maternal LEL was 40 mg/kg based on decreased body weight gains and food consumption. The developmental

NOEL and LEL were 40 mg/kg and 200 mg/kg, respectively. This study has to be resubmitted with all the findings statistically analyzed on a per-litter and per-fetus basis in order to be upgraded from its current classification as core supplementary.

8. A rat teratology study using dose levels of 0, 30, 60, and 120 mg/kg/day was determined to be core supplementary because the NOEL for developmental toxicity (supernumerary ribs) was not definitively established. The NOEL and LOEL (lowest observed effect level) for maternal toxicity for this study are 30 and 60 mg/kg/day, respectively, based on decreases in maternal body weight, body weight gain, and food consumption at 60 and 120 mg/kg/day. Increased embryolethality (embryotoxicity) was only observed at the highest dose level tested (120 mg/kg/day). This study must be repeated to clearly define a NOEL for developmental toxicity.

The above rat study indicted that triadimenol caused a dose-dependent, statistically significant increase in the incidence of rudimentary supernumerary ribs. Althought the effect at the low dose level was not statistically significant, it was considered to be treatment related because of the dose-related trend.

The biological significance of the manifestation of supernumerary ribs is subject to scientific debate, especially if the ribs are not fully developed (rudimentary). Nonetheless, the margin of safety (MOS) for this effect must be taken into consideration. The MOS is the ratio between the NOEL for the effect and the acute exposure in mg/kg/day. A NOEL for developmental toxicity could not be defined in the rat teratology study but it is unlikely to be far below the threshold (LEL) of 30 mg/kg/day observed in the current study.

Based on worker exposure information and an estimation of the NOEL at about 15 mg/kg/day for developmental toxicity (rudimentary supernumerary ribs in rats) and assuming a maximum dermal penetration of about 10%, a margin of safety was calculated to be >100 for factory workers involved in seed treatments using a closed system.

9. A reverse mutation assay (AMES), a dominant lethal test in mice, DNA damage/repair, unscheduled DNA synthesis, *in vitro* and *in vivo* (rat) cytogenic assays, and a forward mutation in mice, all of which were negative for mutagenic effects.

10. A rat multigeneration reproduction study using doses of 0, 20, 100, and 500 ppm (equivalent to 0, 1, 5, and 25 mg/kg bwt/day for males and females) indicated that the NOEL and LOEL for both parental and pup toxicity are 100 and 500 ppm, respectively, based on significant body weight and organ weight changes. The NOEL for reproductive toxicity is 500 ppm, the highest dose level tested.

The provisional acceptable daily intake (PADI) based on the 2-year dog feeding studies (NOEL of 3.75 mg/kg bwt/day), and using a hundredfold uncertainty factor, is calculated to be 0.038 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) of the proposed tolerances is 0.000446 mg/kg/day and utilizes 1.175 percent of the PADI for the U.S. population. For non-nursing infants and children, the TMRC will represent 2.766 and 2.596 percent of the PADI, respectively.

For acute dietary exposure purposes, an average margin of safety (MOS) was determined to be 12,000 for females of child-bearing age, with a range of 3,100 to 47,000 based on high or low food consumption.

The nature of the residue is adequately understood. The residues of concern in plants consist of the parent compound, triadimenol and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4,-triazol-1-yl)-1,3-butanediol, calculated as triadimenol. The residues of concern in animal products consist of the parent compound, triadimenol, and its metabolites containing the chlorophenoxy moiety, calculated as triadimenol.

Adequate analytical methods are available for enforcement purposes. Methods are available in the "Pesticide Analytical Manual," Vol. II (PAM II) for enforcement of the tolerances on livestock commodities. The method for plants has been submitted to the FDA for publication in PAM II. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 242, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-4432.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected of this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.3, by adding new paragraph (d)(13), to read as follows:

§ 180.3 Tolerances for related pesticide chemicals.

* * * * *

(d) * * *

(13) Where tolerances are established for residues of both 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone (triadimefon) and beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol (triadimenol) including its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-1-yl)-1,3-butanediol, in or on the

same raw agricultural commodity and its products thereof, the total amount of such residues shall not yield more residue than that permitted by the higher of the two tolerances.

* * * * *

3. By adding new § 180.450, to read as follows:

§ 180.450 Beta-(4-Chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol (triademenol) and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as triadimenol, in or on the following commodities:

Commodities	Parts per million
Barley, grain	0.05
Barley, green forage	2.5
Barley, straw	0.1
Corn, fodder	0.05
Corn, fresh (including sweet) (K+CWHR)	0.05
Corn, forage	0.05
Corn, grain	0.05
Oats, grain	0.05
Oats, green forage	2.5
Oats, straw	0.1
Rye, grain	0.05
Rye, green forage	2.5
Rye, straw	0.1
Sorghum, grain	0.01
Sorghum, green forage	0.05
Sorghum, fodder	0.01
Wheat, grain	0.05
Wheat, green forage	2.5
Wheat, straw	0.1

(b) Tolerances are established for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol (triadimenol) and its metabolites containing the chlorophenoxy moiety, calculated as triadimenol, in or on the following commodities:

Commodities	Parts per million
Cattle, fat	0.1
Cattle, meat	0.1
Cattle, mbyp	0.1
Eggs	0.01
Goats, fat	0.1
Goats, meat	0.1
Goats, mbyp	0.1
Hogs, fat	0.1
Hogs, meat	0.1
Hogs, mbyp	0.1
Horses, fat	0.1
Horses, meat	0.1
Horses, mbyp	0.1
Milk	0.01
Poultry, fat	0.01
Poultry, meat	0.01
Poultry, mbyp	0.01
Sheep, fat	0.1
Sheep, meat	0.1
Sheep, mbyp	0.1

[FR Doc. 89-18058 Filed 8-1-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 180, 185, and 186

[PP 8F3592 and FAP 8H5550/R1032; FRL-3623-9]

Pesticide Tolerances for Avermectin B_1 and its Delta-8,9-Isomer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for the residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on certain raw agricultural commodities (RACs) food and feed commodities. These regulations to establish maximum permissible levels for the residues of the chemical were requested pursuant to petitions by Merck and Co., Inc., Merck Sharp and Dohme Research Laboratories.

EFFECTIVE DATE: August 2, 1989.

ADDRESS: Written objections, identified by the document control number [PP 8F3592 and FAP 8H5550/R1032], may be submitted to the:

Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

George LaRocca, Product Manager (PM) 15, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:

Rm. 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 3, 1988 (53 FR 3074), which announced that Merck and Co., Inc., Merck Sharp and Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887, had submitted pesticide petition (PP) 8F3592 proposing to establish tolerances in or on the RACs citrus whole fruit at 0.005 part per million (ppm), cattle meat and meat byproducts at 0.005 ppm, and milk at 0.001 ppm for residues of the insecticide/miticide avermectin B_1 and its delta-8,9-isomer [a mixture of avermectins containing > 80 percent avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and ≤ 20 percent avermectin B_{1b} (5-0-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] and food/feed additive petition (FAP) 8H5550 proposing that 21 CFR Parts 193 and 561 (redesignated as 40 CFR Parts 185 and 186 in the **Federal Register** of June 29, 1988 (53 FR 24667)), be amended by establishing a regulation to permit the combined residues of the avermectin B_1 and its delta-8,9-isomer in the food commodity citrus oil at 0.10 ppm and the feed commodity dried citrus pulp at 0.03 ppm.

The petition was subsequently amended in a notice published in the **Federal Register** of July 5, 1989 (54 FR 28109), by increasing the proposed tolerances for the RACs citrus, whole fruit and cattle meat and meat byproducts to 0.02 ppm and milk to 0.005 ppm and the feed commodity dried citrus pulp to 0.10 ppm.

The Agency received a comment in response to the Notice of Filing from the Florida Citrus Mutual in support of the subject petition and food-feed additive regulation. Florida Citrus Mutual stated that establishment of these tolerances and approval for use of the insecticide avermectin B_1 on citrus to control rust mite would be economically beneficial to Florida citrus growers. Florida Citrus Mutual based this conclusion on their interpretation of data demonstrating that this insecticide can be applied at very low application rates without loss of effectiveness, is compatible with oil and copper and as such is an excellent choice for use in the summer when rust mite on citrus is most important, and that the insecticide had no detrimental effects on natural enemies and non-target organisms.

No other comments were received in response to the notices of filing.

A tolerance has been established for avermectin B_1 and its delta-8,9-isomer on cottonseed (see the **Federal Register** of May 31, 1989 (54 FR 23209)), with an expiration date of March 31, 1993, to cover residues expected to be present for 1 year after the period of conditional registration. To be consistent with the tolerances of avermectin B_1 and its delta-8,9-isomers on cottonseed, EPA is establishing tolerances for this pesticide on citrus, whole fruit; cattle meat and meat byproducts; and milk in 40 CFR 180.449; for citrus oil in 40 CFR 185.300; and for dired citrus pulp in 40 CFR 186.300, with an expiration date of March 31, 1993.

In the May 31, 1989 **Federal Register**, EPA issued a conditional registration for avermectin B_1 with an expiration date of March 31, 1992. The registration was

made conditional since certain data were lacking. In order to evaluate the effects of avermectin B_1 on fish, mammals, and aquatic invertebrates and evaluate the effects in or on soil, several data requirements must be fulfilled during the period of conditional registration. Such requirements include a fish life-cycle study (section 72–5) which must be submitted to the Agency by October 1991; a simulated aquatic biological field study (section 72–7) which is due by October 1991; a simulated mammalian field test (section 71–5) which is due by October 1991; results of the analyses of the three remaining soil core replicates (field dissipation study—section 164–1) which must be submitted by July 24, 1989; and an adsorption/desorption study (section 163–1) which must be submitted by June 1990.

The data submitted in the petitions and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include a 12-month oral toxicity study in dogs with a no-observed-effect level (NOEL) of 0.25 milligram (mg)/kilogram (kg)/day; a 24-month rat chronic feeding/oncogenicity study with a NOEL of 1.5 mg/kg/day with no oncogenic effects observed at dose levels up to and including 2.0 mg/kg/day, the highest does tested (HDT); a 22-month mouse chronic toxicity/oncogenicity study with a NOEL of 4 mg/kg/day with no oncogenic effects observed at dose levels up to and including 8 mg/kg/day (HDT); and a two-generation rat reproduction study with a NOEL of 0.12 mg/kg/day. At a dose level of 0.40 mg/kg/day (HDT), the toxic effects observed in this study were increased number of dead pups at birth, decreased viability and lactation indices, decreased pup body weights, and retinal anomalies in some offspring. Avermectin B_1 was negative for mutagenic effects in the Ames assay, V-79 mammalian cell assay, in vitro chromosomal aberration assay in Chinese Hamster Ovary cells, and in vivo cytogenic assay in male mice. In a rat in vitro hepatocyte mutagenicity assay, avermectin B_1 at doses of 0.3 and 0.6 millimoles produced an increase in single-strand DNA breaks. However, when the assay was carried out in vivo at 10.6 mg/kg, no mutagenic effects were observed in hepatocytes of rats. No teratogenic effects were observed in rats at dose levels up to and including 1.6 mg/kg/day (HDT). No teratogenic effects were observed in a rabbit teratology study with dose levels up to and including 1.0 mg/kg/day. However, in a series of developmental toxicity studies, avermectin B_1 produced maternal toxicity (lethality) and developmental toxicity (cleft palate) in CF_1 mice. The NOEL for maternal toxicity was 0.05 mg/kg/day, and for developmental toxicity was 0.2 mg/kg/day.

The delta-8,9-isomer avermectin B_1 is a plant photodegradate which processes avermectin-like toxicological activity. Since this isomer is not produced in animals, additional toxicology studies were conducted on this isomer. These studies include a series of developmental toxicity studies on rats and mice. The delta-8,9-isomer was negative for teratogenicity in rats at doses up to and including 1.0 mg/kg/day (HDT). However, in CF_1 mice the delta-8,9-isomer, like avermectin B_1, produced maternal toxicity (lethality) and developmental toxicity (cleft palate). The NOEL for maternal toxicity was 0.10 mg/kg/day, and the NOEL for developmental toxicity was 0.06 mg/kg/day. The delta-8,9-isomer did not produce adverse reproductive effects in a one-generation rat reproduction study at doses up to and including 0.4 mg/kg/day (HDT) and was also negative in the Ames mutagenicity assay at doses up to 3,000 μg/plate.

Because of the developmental effects seen in animal studies, Agency used the two-generation rat reproduction study with a safety factor of 300 to assess chronic dietary exposure and establish an acceptable daily intake (ADI). The 300-fold safety factor was employed to account for (1) inter- and intra-species differences, (2) pup death observed in the reproduction study, (3) maternal toxicity (lethality) NOEL = 0.05 mg/kg/day, and (4) cleft palate in the mouse teratology study with the isomer, NOEL = 0.06 mg/kg. The ADI, based on a NOEL of 0.12 mg/kg/day from a two-generation rat reproduction study and a safety factor of 300, is 0.0004 mg/kg/body weight (bwt)/day. Residue estimates used in exposure calculations were based upon processing studies, field trial data, and animal feeding studies. The estimated exposure for the overall U.S. population resulting from the proposed tolerance on citrus (PP8F3592 and FAP8H5550) plus the published tolerance on cottonseed is 0.000115 mg/kg body weight/day, which represents approximately 29 percent of the ADI. The two most highly exposed population subgroups, non-nursing infants and children 1 to 6 years old, had estimated exposures of 0.000258 mg/kg body weight/day (64 percent of the ADI), and 0.000298 mg/kg body weight/day (75 percent of the ADI), respectively.

Additionally, a dietary acute exposure analysis for this tolerance and pending tolerances for this chemical was conducted using the NOEL of 0.06 mg/kg/day for developmental toxicity in CF_1 mice for the delta-8,9-isomer. The Tolerance Assessment System (TAS) subgroup of interest in this analysis is women aged 13 and above, which is the TAS subgroup most closely approximating women of child-bearing age. The margins of safety for the average woman of child-bearing age was calculated to be 1,579; none of the target population is expected to have an MOS of less than 125, even assuming tolerance level residues.

Nondietary margins of safety for these effects (maternal toxicity and developmental toxicity) were also calculated for persons engaged in the application of avermectin to citrus (mixers/loaders/applicators and harvesters) and were found to exceed 100 in all instances.

The metabolism of the chemical in plants and livestock for these RAC uses is adequately understood. Adequate analytical methods (HDLC—Fluorescence Methods) are available for enforcement. Prior to publication in the *Pesticide Analytical Manual*, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: By mail:

Calvin Furlow, Public Information Branch (H–7506C), Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:

Rm. 242, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–4432.

The tolerances established by amending 40 CFR Parts 180, 185 and 186 will be adequate to cover residues in or on citrus fruit, cattle meat, meat byproducts, and milk, and citrus oil and dried citrus pulp.

There are currently no actions pending against the registration of this product.

Based on the above information and data considered, the Agency concludes that the tolerances are useful for the purposes for which they are sought and that they will protect the public health. Therefore, the tolerances are established as set forth below with an expiration date of March 31, 1993. After receipt and evaluation of the data required to support the conditional registration of avermectin B_1 and its delta-8,9-isomer, the Agency will consider establishing permanent tolerances without an expiration date

for residues of the chemical and its metabolite.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from the tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185 and 186

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In Part 180:

a. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.449 is revised, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

Tolerances, to expire March 31, 1993, are established for the combined residues of the insecticide avermectin B_1 and its delta -8,9-isomer [a mixture of avermectins containing ≥ 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and ≤ 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a}] in or on the following commodities:

Commodities	Part per million	Expiration date
Citrus, whole fruit	0.02	Mar. 31, 1993.
Cattle, meat	0.02	Do.
Cattle, mbyp	0.02	Do.
Milk	0.005	Do.

PART 185—[AMENDED]

2. In Part 185:

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 185.300 is revised, to read as follows:

§ 185.300 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

Tolerances, to expire March 31, 1993, are established for the combined residues of the insecticide avermectin B_1 and its delta 8,9-isomer [a mixture of avermectins containing ≥ 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and ≤ 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a}] in or on the following commodity:

Commodity	Part per million	Expiration date
Citrus oil	0.10	Mar. 31, 1993.

PART 186—[AMENDED]

3. In Part 186:

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 186.300 is revised, to read as follows:

§ 186.300 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

Tolerances, to expire March 31, 1993, are established for the combined residues of the insecticide avermectin B_1 and its delta, 8,9-isomer [a mixture of avermectins containing ≥ 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and ≤ 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] in or on the following commodity:

Commodity	Part per million	Expiration date
Dried citrus pulp	0.10	Mar. 31, 1993.

[FR Doc. 89-18057 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-742]

Broadcast Services; Comparative Renewal and Abuse of the Renewal Process

AGENCY: Federal Communications Commission.

ACTION: Final rule; establishment of effective date.

SUMMARY: The policies and amended rules set out in the *First Report and Order in BC Docket 81-742* (Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants in the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process), 4 FCC Rcd 4780 (released May 16, 1989), *summarized in* 54 FR 22595 (May 25, 1989) were adopted subject to Office of Management and Budget approval of the new information collection requirements under the Paperwork Reduction Act of 1980. The changes adopted relate to settlement agreements, transmitter site availability, and other policies arising in renewal and comparative renewal proceedings.

The required Office of Management and Budget approvals have now been obtained and the rule and policy changes will accordingly become effective on August 7, 1989.

In accordance with paragraph 70 of the *Report and Order*, all applicants not yet designated for hearing that have relied upon the availability of the transmitter site of an existing licensee against whom they are competing will have an additional thirty days (until the close of business on September 6, 1989) to amend their applications in accordance with the new policy to show reasonable assurance of site availability and, if necessary, to amend the engineering data submitted.

EFFECTIVE DATE: August 7, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Mohrman-Gillis, Mass Media Bureau, Policy and Rules Division at (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18159 Filed 8-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 88-507; FCC 89-230]

Maritime Services; Amendment of the Maritime Services Rules (Part 80) To Restrict the Frequency Selection Capability of VHF Maritime Transmitters to Maritime Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule restricts the frequency selection capability of VHF maritime transmitters to maritime frequencies. This is accomplished by establishing new technical standards for transmitter type acceptance and by phasing out the manufacture, sale and installation of transmitters capable of indiscriminate frequency selection. This action will reduce the interferences caused by maritime stations to public safety and other radio services.

EFFECTIVE DATE: September 7, 1989.

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

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554. (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 88-507, adopted July 13, 1989, and released June 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

On October 25, 1988, the Commission released a *Notice of Proposed Rule Making*, PR Docket No. 88-507, FCC 88-319, 53 FR 44210, November 2, 1988, which proposed to restrict the frequency selection capabilities of VHF maritime transmitters to maritime frequencies. VHF maritime transmitters now being manufactured employ frequency synthesizers that are capable of being programmed by station operators to operate on maritime as well as other frequency channels not available to the maritime service. This leads to operations on unauthorized channels and can cause interference to public safety and other radio services. Establishing new type acceptance technical standards for VHF maritime transmitters is an efficient and effective means of restricting operations to VHF maritime frequencies. The Report and Order discusses the comments filed regarding the proposed rules in the *Notice of Proposed Rule Making* and provides for equipment phase out periods designed to minimize any adverse impact upon manufacturers, dealers and consumers.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of the decision, which may be obtained from the Commission or its copy contractor.

The Report and Order contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

Authority for issuance of this Report and Order is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

It is ordered, That Part 80 of the Commission's Rules is amended as shown at the end of this document effective as indicated in the "**EFFECTIVE DATE**" paragraph of this document.

It is further ordered, That a copy of the Report and Order be sent to the Chief Counsel for advocacy of the Small Business Administration.

It is further ordered, That this proceeding is terminated.

List of Subjects in 47 CFR Part 80

Ship stations, Coast stations, Communication equipment.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amended Rules

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.203, paragraph (a) is revised, paragraphs (b) through (j) are redesignated as paragraphs (c) through (k), and a new paragraph (b) is added to read as follows:

§ 80.203 Authorization of transmitters for licensing.

(a) Each transmitter authorized in a station in the maritime services after September 30, 1986, except as indicated in paragraphs (f), (g) and (h) of this section, must be type accepted by the Commission for Part 80 operations. The procedures for type acceptance are contained in Part 2 of this chapter. Transmitters of a model type accepted or type approved before October 1, 1986 will be considered type accepted for use in ship or coast stations as appropriate.

(b) The external controls, of maritime station transmitters capable of operation in the 156-162 MHz band and manufactured in or imported into the United States after August 1, 1990, or sold or installed after August 1, 1991, must provide for selection of only maritime channels for which the maritime station is authorized. Such transmitters must not be capable of being programmed by station operators using external controls to transmit on channels other than those programmed by the manufacturer, service or maintenance personnel.

(1) Any manufacturer procedures and special devices for programming must only be made available to service companies employing licensed service and maintenance personnel that meet the requirements of § 80.169(a) and must not be made available with information normally provided to consumers.

(2) The channels preprogrammed by manufacturers, service and maintenance personnel for selection by the external controls of a maritime station transmitter must be limited to those channels listed in this Part and the duplex channels listed in Appendix 18 of the international Radio Regulations. The duplex channels listed in Appendix 18 of the international Radio Regulations must be used only in the specified duplex mode. Simplex operations on Appendix 18 duplex channels that are

not in accordance with this Part are prohibited.

(3) Programming of authorized channels must be performed only by a person holding a first or second class radiotelegraph operator's certificate or a general radiotelephone operator's license using any of the following procedures:

(i) Internal adjustment of the transmitter;

(ii) Use of controls normally inaccessible to the station operator;

(iii) Use of external devices or equipment modules made available only to service and maintenance personnel through a service company; and

(iv) Copying of a channel selection program directly from another transmitter (cloning) using devices and procedures made available only to service and maintenance personnel through a service company.

(4) VHF maritime radio station transmitters capable of being programmed by station operators by means of external controls that are installed in a maritime station by August 1, 1991, are authorized for use indefinitely at the same maritime station.

* * * * *

[FR Doc. 89-17893 Filed 8-1-89; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 28]

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

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

ACTION: Final rule.

SUMMARY: This final rule delays the effective date of the lens marking requirements for motorcycle headlamps equipped with a light source other than the HB Types specified in Motor Vehicle Safety Standard No. 108 (paragraph S5.1.1.29) and establishes a new effective date. It responds to a July 13, 1989, petition from BMW of North America, Inc., for reconsideration of a June 1989 final rule. In its petition, BMW stated that it could not comply with the requirement with only a month's leadtime. Leadtime of 30 days was provided, based on the rationale that the June final rule would relieve restrictions. In recognition that the amendments did add a new requirement for manufacturers of systems incorporating replaceable bulb headlamps, NHTSA grants the petition, and adopts a new effective date of January 1, 1990 for the lens marking requirement.

DATES: The amendment made by this notice to Standard No. 108 is effective August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION: NHTSA published a notice amending Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* on June 29, 1989 (54 FR 27362), the primary purpose of which was to allow manufacturers of motor vehicles to use a new type of standardized replaceable light source in headlamps, as an alternative to existing light sources. The effective date set by the notice is July 31, 1989.

With respect to these amendments, the agency announced that "Since the amendment does not impose any new requirements but instead relieves a restriction, the agency finds for good cause shown that an effective date earlier than 180 days is in the public interest. This finding was made pursuant to section 103(e) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(e)), which provides that the effective date of an amendment to a Federal motor vehicle safety standard "shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding."

The June amendment allows motor vehicle manufacturers to use a new standardized replaceable light source in headlamps, known as HB2, as an alternative to Types HB1, HB3, and HB4. Type HB2 is a modification of a European light source, known as H-4. Because their headlamps are not required to be mechanically aimable, motorcycles may use the H-4 bulb, and have done so for years. However, under newly adopted paragraph S5.1.1.29, the lenses of motorcycle headlamps equipped with a replaceable bulb other than a standardized replaceable light source (i.e., Types HB1, HB2, HB3, or HB4) are required to be marked "motorcycle", to prevent their inadvertent use on other types of motor vehicles. This requirement will apply to motorcycle headlamps equipped with H-4 bulbs.

BMW of North America, Inc., submitted a petition for reconsideration stating that an effective date of July 31, 1989, for paragraph S5.1.1.29 affords insufficient leadtime for compliance. It argued that such a short lead time renders compliance impracticable and unreasonable. The petitioner stated that an effective date of September 1, 1990, would afford "a normal leadtime for such hardware changes", which is reasonable "because the requirement is not needed immediately to solve a safety problem."

The agency has carefully considered BMW's petition. It has concluded that while overall the amendments of June 29 do relieve a restriction, the requirements of paragraph S5.1.1.29 impose a new obligation upon manufacturers. It appears that the agency made an overly inclusive finding of good cause for an effective date earlier than 180 days after issuance of the final rule. For this reason, and because of BMW's compliance difficulties. NHTSA grants BMW's petition. However, the agency has not followed BMW's preference for an effective date of September 1, 1990. That date is 14 months after issuance of the final rule and would itself require a finding that good cause had been shown for delaying the date more than a year beyond issuance. The agency does not agree with BMW's statement that "the requirement is not needed immediately to solve a safety problem" because headlamps using H-4 bulbs are interchangeable with those installed on four-wheeled motor vehicles, but do not meet all specifications set forth for multiple headlamp vehicles. Therefore, NHTSA is establishing a new effective date that slightly exceeds the specified 180-day minimum. It is issuing this final rule amending paragraph S5.1.1.29 immediately to specify that it becomes effective on January 1, 1990.

The change in the effective date made by this notice does not affect any of the conclusions in the June 29, 1989, final rule regarding the impacts of that final rule. For the same reasons stated in that June 29 notice, this final rule is not major within the meaning of Executive Order 12291, nor significant within the meaning of the Department's regulatory policies and procedures. I certify that it will not significantly affect a substantial number of small entities. Finally, after reviewing this final rule under Executive Order 12612, the agency has determined that it will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, motor vehicle safety, motor vehicles.

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

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

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

§ 571.108 [Amended]

2. Paragraph S5.1.1.29 is revised to read as follows:

S5.1.1.29 Each replaceable bulb headlamp that is designed to meet the photometric requirements of SAE Recommended Practice J584, *Motorcycle Headlamps*, April 1964, that is equipped with a light source other than a standardized replaceable light source, and that is manufactured on or after January 1, 1990, shall have the word "motorcycle" permanently marked on the lens in characters not less than 0.114 inch (3 mm) in height.

Issued on July 28, 1989.

Jeffrey R. Miller,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc. 89-18038 Filed 7-28-89; 12:14 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of closure and inseason adjustment.

SUMMARY: NOAA announces: (1) The closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to the Queets River, Washington, effective midnight, July 26, 1989, to ensure that the coho salmon quota is not exceeded; and (2) an inseason adjustment to the recreational salmon fishery from Cape Falcon to Orford Reef Red Buoy, Oregon, to shorten the fishing week to Sunday through Thursday, effective midnight, July 27, 1989. The Director, Northwest Region, NMFS (Regional Director), has determined that the closure is necessary to conform to the preseason announcement of 1989 management measures and the shortened recreational fishing week is desirable to extend the recreational season. These actions are intended to ensure conservation of coho salmon and allow maximum harvest of ocean salmon quotas established for the 1989 season.

EFFECTIVE DATES: Closure of the EEZ from the U.S.-Canada border to the Queets River, Washington, to recreational salmon fishing is effective at 2400 hours local time, July 26, 1989. Modification of the recreational fishing week to Sunday through Thursday in the EEZ from Cape Falcon to Orford Reef Rej Buoy, Oregon, is effective at 2400 hours local time, July 27, 1989. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard notice-to-mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Any public comments on these actions must be received by August 14, 1989.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR Part 661. Management measures for 1989 were effective on May 1, 1989 (54 FR 19798, May 8, 1989). This notice announces inseason actions affecting the two ocean salmon fisheries below.

(1) *Recreational fishery from the U.S.-Canada border to the Queets River, Washington.* Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

The 1989 recreational fishery for all salmon species in the subarea from the U.S.-Canada border to the Queets River, Washington, commenced on July 2, 1989, and was scheduled to continue through the earliest of September 28, 1989 or the attainment of either a subarea quota of 22,500 coho salmon or an overall quota of 47,500 chinook salmon north of Cape Falcon, Oregon. Based on the best available information, the recreational fishery catch in the subarea is projected to reach the 22,500 coho salmon quota by midnight, July 26, 1989. Therefore, the fishery in this subarea is closed to further recreational fishing effective 2400 hours local time, July 26, 1989.

(2) *Recreational fishery from Cape Falcon to Orford Reef Red Buoy, Oregon.* The 1989 recreational fishery south of Cape Falcon, Oregon, is managed not to exceed 285,000 coho salmon. If the recreational coho quota is reached, the subarea between Cape Falcon and Orford Reef Red Buoy, Oregon, closes to recreational fishing for all salmon species, and the recreational salmon fishery south of Orford Reef Red Buoy, Oregon, remains open for all salmon species as regularly scheduled.

The entire area south of Cape Falcon currently is open to recreational fishing for all salmon species. According to the best available information through July 23, about 85,000 fish remain in the 285,000 recreational coho quota. At expected catch rates, the coho quota will be reached and the fishery in the subarea from Cape Falcon to Orford Reef Red Buoy will be closed well ahead of its scheduled ending date of September 15. A shortened recreational fishing week in this subarea is expected to dampen catch rates, provide additional opportunity to harvest coho and chinook salmon, and prolong the recreational fishery.

Regulations at § 661.21(b)(1)(iii) authorize inseason changes in the recreational fishing days per calendar week. Therefore, the fishing week for the recreational fishery in the subarea from Cape Falcon to Orford Reef Red Buoy, Oregon, is shortened to Sunday through Thursday only, effective 2400 hours local time, July 27, 1989.

In accordance with the revised inseason notice procedures of §§ 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to (1) 2400 hours local time, July 26, 1989 for the recreational closure between the U.S.-Canada border and the Queets River, Washington, and (2) 2400 hours local time, July 27, 1989 for the shortened recreational fishing week between Cape Falcon and Orford Reef Red Buoy, Oregon, by telephone hotline number

(206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fisheries, Oregon Department of Fish and Wildlife, and California Department of Fish and Game regarding this action. The states of Washington and Oregon will manage the salmon fisheries in State waters adjacent to these areas of the EEZ in accordance with this federal action. This notice does not apply to other fisheries which may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through August 14, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: July 27, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-17982 Filed 7-28-89; 9:14 am]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 81131-9010]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the Aleutian Islands Sub-area to directed fishing for sablefish under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action is necessary to prevent the total allowable catch (TAC) for sablefish in the Aleutian Islands Sub-area from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving sablefish stocks.

DATES: This closure is effective from noon, Alaska Daylight Time (ADT), July 30, 1989, through December 31, 1989. Comments will be accepted through August 14, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675.

The initial specifications of Domestic Annual Processing (DAP) for 1989 were based on the needs of the U.S. industry as projected by the Director, Alaska Region, NMFS (Regional Director). Certain species, including sablefish, are considered fully utilized by DAP. After 15 percent (510 mt) of the original TAC (3,400 mt) was placed in the non-specific reserve, as required at § 675.20(a)(3), the initial specification for the Aleutian Islands Sub-area sablefish DAP was determined to be 2,890 mt (54 FR 3608, January 25, 1989).

In the Aleutian Islands Sub-area, the estimated catch to date of sablefish for DAP is 2,243 mt. When the Aleutian Islands Subarea sablefish TAC is reached, current regulations require that all domestic vessels operating in that area discard sablefish in the same manner as prohibited species. The Regional Director estimates that at current and anticipated catch rates the entire Aleutian Islands Sub-area sablefish TAC (3,400 mt) will be reached by DAP fisheries by late August. Thus, sablefish taken in fisheries for other groundfish species and discarded as required by regulation would be wasted for the remainder of the year.

Notice of Closure to Directed Fishing

Under § 675.20(a)(8), when the Regional Director determines that the remaining amount of the TAC of any target species is necessary for bycatch in fisheries for other groundfish species the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for that species for the remainder of the fishing year.

The Regional Director has determined that the amount of sablefish TAC remaining on July 30, 510 mt, will be needed for bycatch in DAP fisheries catching other groundfish species in the Aleutian Islands Sub-area during the remainder of 1989. Therefore, in order to prevent wastage and encourage the full utilization of all sablefish harvested, directed fishing for sablefish by U.S. fishermen in the Aleutian Islands Sub-area must cease effective noon, ADT, July 30, 1989.

Following the closure of directed fishing for sablefish, operators of U.S. vessels may retain sablefish as bycatch provided that they comply with the definition of directed fishing as revised by the emergency rule currently in effect (see 54 FR 13191, March 31, 1989; 54 FR 27348, June 29, 1989). Under that rule, if directed fishing is prohibited, the operators may not retain on board a fishing vessel at any one time sablefish in an amount equal to or greater than (a) 1 percent or more of the total amount of fish and fish products, other than Pacific ocean perch and Greenland turbot, (as calculated in round weight equivalents), plus (b) 10 percent or more of the total amount of Pacific ocean perch and Greenland turbot (fish and fish products, as calculated in round weight equivalents).

Classification

The Assistant Administrator for Fisheries finds that the overfishing of sablefish, the underutilization of other fisheries, or the unnecessary wastage and underutilization of sablefish will result unless this notice takes effect promptly. NOAA finds for good cause that prior opportunity for comment on this notice is impracticable and contrary to the public interest and similarly finds good cause that the effective date should not be delayed. Public comments on this action are invited for a period of 15 days after the effective date of this notice. Public comments may be submitted to the Regional Director at the above address until August 14, 1989.

This action is taken under the authority of 50 CFR 675.20(b) and 675.20(a)(8) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: July 28, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-18022 Filed 7-28-89; 12:01 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV-89-047]

Limes Grown in Florida; Proposed Increase in the 1989-90 Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes an increase in the authorized expenditures and the assessment rate for the 1989-90 fiscal year for the Florida Lime Administrative Committee (committee), established under Marketing Order No. 911. This proposal would increase authorized expenditures to $278,000 from $233,000, and the assessment rate to $0.18 from $0.15 per bushel (55 pounds) of assessable limes. This proposed action is needed by the committee to pay additional anticipated marketing order expenses and to collect additional assessments from handlers to pay those expenses. The proposed action would enable the committee to continue to perform its duties and the order to operate.

DATES: Comments must be received by August 14, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 911, both as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. This agreement and 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 proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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 proposed rule on small entities.

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

There are about 26 handlers subject to regulation under the marketing order for limes grown in Florida, and about 230 lime growers in Florida. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and growers may be classified as small entities.

The marketing order for Florida limes administered by the U.S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all of the assessable commodity handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and growers of Florida limes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected shipments of limes in bushels (55 pounds). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the committee shortly before a season starts, or during the season when changes are needed, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met April 12, 1989, and unanimously recommended increasing 1989-90 budgeted expenditures from $233,000 to $278,000, and the assessment rate from $0.15 to $0.18 per bushel (55 pounds) of assessable limes shipped. The proposed $45,000 expenditure increase is for additional market promotion. The "marketing" item in the 1989-90 budget is proposed to be increased to $70,000 from $25,000. The committee plans to develop and submit for approval its market promotion projects later in the season. The current expenditure level and assessment rate was authorized by a final rule signed April 12, 1989, and published in the Federal Register (54 FR 15168, April 17, 1989), based on a January 11, 1989, unanimous recommendation of the committee.

Based on shipments of 1,500,000 bushels of assessable limes and an $0.18 assessment rate, committee assessment income for 1989-90 is estimated at $270,000. Interest income continues to be estimated at $8,000.

The committee also unanimously recommended that excess 1988-89 assessments of about $12,000 be refunded to handlers, as provided in § 911.42, rather than be placed in its reserve as it recommended on January

11, 1989. The committee's reserve currently contains about $156,000, an amount well within the maximum authorized under the order.

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

A comment period of less than 30 days is deemed appropriate for this action. As mentioned earlier, committee expenses are incurred on a continuous basis. Hence, approval of the additional expenses and for collecting additional assessments must be expedited.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, limes, Florida.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 911 be amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

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

2. Section 911.228 is amended to read as follows:

§ 911.228 Expenses and assessment rate.

Expenses of $278,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.18 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1990. Excess funds from the 1988–89 fiscal year may be refunded to handlers from whom collected.

Dated: July 27, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-18034 Filed 8-1-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 929

[FV-89-077PR]

Proposed Expenses and Assessment Rate for Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 929 for the 1989–90 fiscal year established under the cranberry marketing order. This action is needed for the Cranberry Marketing Committee (Committee), the agency responsible for the local administration of the order, to incur operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 14, 1989.

ADDRESSES. Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 929 [7 CFR Part 929], regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

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 final rule on small entities.

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

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less that $3,500,000. The majority of cranberry handlers and producers may be classified as small entities.

The cranberry marketing order requires that an assessment rate for a particular fiscal year shall apply to all assessable cranberries handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of cranberries. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be

expedited so that the Committee will have funds to pay its expenses for the 1989–90 fiscal year which begins on September 1, 1989.

The Committee conducted a mail vote and recommended 1989–90 marketing order expenditures of $172,602 and an assessment rate of $0.037 per 100-pound barrel of cranberries shipped. In comparison, 1988–89 marketing year budgeted expenditures were $198,000, and the assessment rate was $0.055 per 100 pound barrel of cranberries shipped. Assessment income for 1989–90 is estimated at $148,555 based on a crop of 4,015,000 barrels of cranberries. Interest income expected to be received is estimated at $4,047, bringing total income to $152,602. Adequate reserve funds are available to meet the expected deficit in assessment income.

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

Based on the forgoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Connecticut, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Rhode Island, Washington, and Wisconsin.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 929 be amended as follows:

PART 929—CRANBERRIES GROWN IN MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

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

2. Section § 929.230 is added to read as follows:

§ 929.230 Expenses and assessment rate.

Expenses of $172,602 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.037 per 100 pound barrel of assessable cranberries. is established for the fiscal year ending August 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 28, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18032 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 967

[FV–89–062PR]

Proposed Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This action proposes establishing the quantity of Florida celery which handlers may ship to fresh markets during the 1989–90 marketing season at 6,789,738 crates or 100 percent of producers' base quantities. This proposal is intended to lend stability to the industry and thus, help to provide consumers with an adequate supply of the product. As in past marketing seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment. This proposal was recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

DATES: Comments must be received by August 14, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456;; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 967 [7 CFR Part 967], both as amended, regulating the handling of celery grown in Florida. 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 proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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 proposed rule on small entities.

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

There are approximately seven handlers of celery grown in Florida subject to regulation under the celery marketing order, and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

This proposal is based upon the recommendation and information submitted by the Committee and upon other available information. The Committee met on May 24, 1989, and recommended a marketable quantity of 6,789,738 crates of fresh celery for the 1989–90 marketing season beginning August 1, 1989. Additionally, a uniform percentage of 100 percent was recommended which would allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1989–90 supplies and prospective demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (407,384 crates) of the 1988–89 total base quantities is authorized for new producers and for increases by existing producers.

The proposal would limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1989–90 marketing season to 6,789,738 crates. This marketable quantity is identical to the 1988–89 marketable quantity and is about 20 percent more than the average number of crates marketed fresh during the 1982–83 through 1986–87 seasons. It is expected that the 6,789,738 crate marketable quantity will be above actual shipments for the 1989–90 season. Thus, the 6,789,738 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the proposal should lend stability to the industry and thus, help to provide consumers with an adequate supply of the product.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 10-day comment period is deemed adequate because the proposal, if implemented, should be in effect for the new marketing season which begins on August 1.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR Part 967 is proposed to be amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 967 continues to read as follows:

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

Subpart—Administrative Rules and Regulations

2. A new § 967.325 is added to read as follows:

§ 967.325 Handling regulation, marketable quantity, and uniform percentage for the 1989–90 season beginning August 1, 1989.

(a) The marketable quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1), a reserve of six percent of the total base quantities is hereby authorized for: (1) New producers and (2) increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: July 28, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18033 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 993

[FV–89–082PR]

Expenses and Assessment Rate for Dried Prunes Produced in California

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 993 for the 1989–90 fiscal year established under the marketing order for dried prunes produced in California. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the marketing order committee to have sufficient funds to meet the expenses of operating the program. Expenses are incurred on a continuous basis.

DATES: Comments must be received by August 14, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 993 (7 CFR Part 993), regulating the handling of dried prunes produced in California. This 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 proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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 proposed rule on small entities.

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

There are approximately 16 handlers of prunes produced in California subject to regulation under the California prune marketing order, and approximately 1,200 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of prune handlers and producers may be classified as small entities.

The marketing order for California prunes requires that the assessment rate for a particular fiscal year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses is prepared by the Prune Marketing Committee (Committee) and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of regulated prunes. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are, therefore, in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an

opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of assessable prunes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and assessment rates are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 27, 1989, and unanimously recommended 1989–90 marketing order expenditures of $250,895 and an assessment rate of $1.39 per salable ton of prunes. In comparison, 1988–89 marketing year budgeted expenditures were $248,320 and the assessment rate was $1.60 per ton. Assessment income for 1989–90 is estimated at $250,895 based on a crop of 180,500 salable tons of prunes.

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

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The Committee must have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 993

California, Dried prunes, and Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that a new § 993.340 be added to 7 CFR Chapter IX as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR Part 993 continues to read as follows:

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

2. Section 993.340 is added to read as follows:

§ 993.340 Expenses and assessment rate.

Expenses of $250,895 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $1.39 per ton for salable dried prunes for the 1989–90 crop year ending July 31, 1990.

Dated: July 27, 1989.

William J. Doyle,

Acting Deputy Director Fruit and Vegetable Division.

[FR Doc. 89–17952 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–109–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–15F, –32F, –33F, and –34F Series Airplanes, Including C–9A and C–9B (Military) Airplanes

AGENCY. Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9 series airplanes, which currently requires certain inspections and modifications of the main cargo door assembly to prevent inadvertent opening of the main cargo door in flight. This condition, if not corrected, could result in loss of pressurization and control of the airplane. This action would require installation of a main cargo door hydraulic isolation valve; installation of an additional, and modification of the existing, door-open indicating system; installation of a main cargo door lock pin viewing window; installation of a main cargo door vent system; installation of a vent door-open indicating circuit; installation of a main cargo door hinge pin retainer; and modification to the main cargo door latch operating mechanism. This proposal is prompted by further review of the main cargo door design and operation by the FAA and constitutes terminating action for the existing AD.

DATE: Comments must be received no later than September 22, 1989.

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. 89–NM–109–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publication, C1–LOO (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California; telephone (213) 988–533.

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 regulatory 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 89–NM–109–AD." The post card will be date/time stamped and returned to the commenter.

Discussion: On May 4, 1989, the FAA issued AD 89–11–02, Amendment 39–6216 (54 FR 21416; May 18, 1989), to require inspection and modification of the main cargo door hydraulic control valve and control panel access door, visual inspection of the main cargo door to ensure the door is locked prior to each takeoff, inspection and

modification of the exterior markings on the main cargo door, and functional checks of the door-open indicating system. That action was prompted by an accident in which the main cargo door on a Model DC-9 series airplane opened in flight. This condition, if not corrected, could result in loss of pressurization and control of the airplane.

Since issuance of that AD, which was considered an interim action, the FAA further reviewed the Model DC-9 main cargo door, including the main cargo door design, prior incidents of inadvertent opening of the door in flight, maintenance of the door, operational aspects of the door, all available service information, and the need to provide terminating action for the initial and repetitive inspections/checks required by that AD. Based on this review, the FAA has determined that additional mandatory corrective actions are necessary to ensure that the Model DC-9 main cargo door will be properly closed, latched, and locked prior to takeoff and will not inadvertently open in flight.

McDonnell Douglas has developed additional safety features to prevent the door from opening in flight. The FAA has reviewed and approved the following related McDonnell Douglas service bulletins:

a. Service Bulletin 52-91, Revision 2, dated August 12, 1976, which describes installation of a main cargo door hydraulic isolation valve to shut off the hydraulic pressure to the control valve when the system is not in use;

b. Service Bulletin 52-92, Revision 2, dated November 21, 1985, which describes procedures for installation of a redundant (dual) door-open indicating system by installing a new door-open indicating circuit, modifying the existing door-open indicating system, and installing a main cargo door indicating system test circuit;

c. Service Bulletin 52-93, Revision 1, dated May 3, 1978, which describes installation of a viewing window in the exterior skin of the door for visual inspection of the lock pin position;

d. Service Bulletins 52-70, dated January 22, 1969, and 52-87 dated June 7, 1974, both of which describe a modification of the main cargo door latch operating mechanism to prevent the latches from closing prematurely during the door closing cycle; and

e. Service Bulletin 52-100, dated September 30, 1976, which describes installation of a vent door system to improve the positive lock feature of the cargo door latching and locking system and limit pressurization of the airplane.

In addition, McDonnell Douglas is currently developing a vent door-open indicating circuit which will alert the flight crew when the vent door is not properly closed and latched. The circuit will be part of the main cargo door-open indicating system. McDonnell Douglas plans to have a vent door-open indicating circuit available for installation on in-service Model DC-9 airplanes by December 1989.

McDonnell Douglas is also developing a cargo door hinge pin retainer to ensure that the hinge pin will be retained in the event of a failure of the hinge pin. McDonnell Douglas plans to have hinge pin retainers available for installation on in-service Model DC-9 airplanes by December 1989.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 89-11-02 to require installation of a main cargo door hydraulic isolation valve, modification to the existing door-open indicating system, installation of an additional door-open indicating circuit, installation of a main cargo door indicating system test circuit, installation of a main cargo door lock pin viewing window, modification of the main cargo door latch operating mechanism, and installation of a main cargo door vent system, in accordance with the service bulletins previously described. In addition, this AD would require the installation of the aforementioned vent door-open indicating circuit which will signal the appropriate flight crew member when the vent door is not fully closed and latched; and would require the installation of a main cargo door hinge pin retainer to ensure retention of the hinge pin in the event of its failure. Installation of all the above described modifications would constitute terminating action for the repetitive inspections and checks proposed by this AD.

The degree of assurance necessary as to the adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections and special procedures, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position on continual inspection, the FAA has decided to require, whenever practicable, airplane modifications necessary to remove the source of the problem addressed. The proposed modification requirements of this action are in consonance with that policy decision.

There are approximately 86 Model DC-9 series airplanes of the affected design in the worldwide fleet. It is estimated that 75 airplanes of U.S. registry would be affected by this AD, that it would take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost for the required modification parts is estimated to be $80,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,540,000.

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 regulatory 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 revising AD 89-11-02, Amendment 39-6216 (54 FR 21416; May 18, 1989), as follows:

McDonnell Douglas: Applies to Model DC-9-15F, -32F, -33F, and -34F, including C-9A and C-9B (Military) series airplanes, as listed in McDonnell Douglas DC-9 Service Bulletin 52-70, dated January 22, 1969; Service Bulletin 52-87, dated June 7, 1974; Service Bulletin 52-91, Revision 2, dated August 12, 1976; Service Bulletin 52-92, Revision 2, dated November 21, 1985; Service Bulletin 52-93, Revision 1, dated May 3, 1978; and Service Bulletin 52-100, dated September 30, 1976; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of the main cargo door in flight, a condition which could result in loss of pressurization and control of the aircraft, accomplish the following:

A. Within the next 14 days after May 30, 1989 (the effective date of Amendment 39-6216), ensure that the main cargo door is closed, latched, and locked prior to takeoff following each operation of the door, in accordance with the procedures specified below. The procedures required by this paragraph must be accomplished by qualified and trained personnel, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI). The method for documentation of compliance must also be approved by the FAA PMI.

1. From the outside of the airplane perform a visual check of the exterior manual latch controls, to ensure that the latch actuating socket and the lock pin handle are in the LOCK position; or

2. Perform a visual check of the latches and lock pins, located on the inside of the main cargo door, to ensure that the latches are in the closed position and the lock pins are in the locked position.

3. Prior to taxi, communicate to the flight crew that the main cargo door has been closed, latched, locked, and checked.

B. Unless the modifications described in paragraph F.2. of this AD have previously been accomplished, within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), and thereafter at intervals not to exceed 45 days, conduct a main cargo door-open indicating system functional check in accordance with Paragraph 1 of McDonnell Douglas All Operators Letter (AOL) 9-799, dated April 16, 1974. If the main cargo door-open indicating system functional check is not successfully accomplished, repair the main cargo door-open indicating system prior to further flight, in accordance with AOL 9-799.

C. Within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), and thereafter at intervals not to exceed 45 days, inspect and modify the main cargo door control panel access door, spacer block, and "T" handle stowage clip, in accordance with McDonnell Douglas AOL 9-799A, dated January 22, 1975, and AOL 9-799, dated April 16, 1974, paragraph 2.A. In addition, inspect the control panel access door to ensure the door can be secured in the down and locked position. If the control panel access door cannot be secured in the down and locked position, repair prior to further flight.

D. Unless previously accomplished in accordance with paragraph (2) of AD 75-03-03, Amendment 39-2076, within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), verify that the main cargo door hydraulic control valve shaft operates freely, without binding, between the operate neutral and neutral lock positions. This shall be accomplished by opening the main cargo door hydraulic control valve control panel access door; raising the "T" handle Douglas P/N 4777888-1, and pulling the "T" handle vertically upward to its maximum travel (operate neutral position). When the vertical force on the "T" handle is relieved, the main cargo door hydraulic control valve shaft should return to the neutral lock (down) position without binding. Replace the main cargo door hydraulic control valve, Douglas P/N 5919985-5001, prior to further flight, if the valve shaft does not return freely to the neutral lock position.

E. Within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), inspect the main cargo door exterior lock pin handle and latch actuating socket markings in accordance with paragraph 4.C. of McDonnell Douglas AOL 9-799, dated April 16, 1974; and McDonnell Douglas Drawings 7910689, Revision P, dated November 29, 1973, item numbers 16 and 18 (DC-9-15F), or 7910868, Revision AK, dated January 21, 1977, item numbers 16 and 18 (DC-9-32F, -33F, and -34F). If the exterior markings are not correct, modify in accordance with the above specified McDonnell Douglas drawings prior to further flight.

F. Within the next six months after the effective date of this amendment, accomplish the following:

1. Install a main cargo door hydraulic isolation valve in accordance with McDonnell Douglas Service Bulletin 52-91, Revision 2, dated August 12, 1976; and

2. Install a new main cargo door-open indicating circuit, revise the existing main cargo door-open indicating circuit, and install a main cargo door-open indicating system test circuit in accordance with McDonnell Douglas Service Bulletin 52-92, Revision 2, dated November 21, 1985. Compliance with the requirements of paragraph B., above may be terminated upon the accomplishment of the requirements of this paragraph.

G. Within one year after the effective date of this amendment, accomplish the following:

1. Install a main cargo door lock pin viewing window in accordance with McDonnell Douglas Service Bulletin 52-93, Revision 1, dated May 3, 1978; and

2. Install a main cargo door vent system in accordance with McDonnell Douglas Service Bulletin 52-100, dated September 30, 1976; and

3. Modify the main cargo door latch operating mechanism in accordance with McDonnell Douglas Service Bulletins 52-70 dated January 22, 1969, and 52-87 dated June 7, 1974; and

4. Install a main cargo door hinge pin retainer on each end of the hinge, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will retain the hinge pin in the event of a structural failure of the pin; and

5. Install a vent door-open indicating system, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will signal the appropriate flight crew member when the main cargo door vent door is not fully closed and latched.

H. Compliance with the requirements of paragraphs F., G.1., G.2., G.3., and G.5., constitutes terminating action for the initial and repetitive inspections required by paragraphs A., B., and C., of this AD.

I. The checks and modifications specified in paragraphs A. through G. of this AD are not required on airplanes which have the main cargo door deactivated and secured in the closed and locked position, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, until that door is reactivated.

J. Compliance with the requirements of this AD constitutes terminating action for the requirements of AD 84-23-02 for Model DC-9 series airplanes only.

Note.—The requirements of AD 84-23-02 relating to Model DC-8 series airplanes are not affected by this AD.

K. 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, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

L. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on July 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18014 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-27063; File No. S7-13-89]

Proprietary Trading Systems

AGENCY: Securities and Exchange Commission.

ACTION: Second extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from July 19, 1989, to August 2, 1989, the date by which comments must be received on Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429, concerning the regulation of proprietary securities trading systems. The Commission previously granted an initial extension of the comment period from June 19, 1989, to July 19, 1989 (Securities Exchange Act Release No. 26935 (June 25, 1989), 54 FR 26055). The Commission is now extending that period a second time in order to permit potential commentators to complete the drafting and review of their comments.

DATE: Comments should be received on or before August 2, 1989.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comment letters received should refer to file No. S7-13-89. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Gordon K. Fuller, Special Counsel, (202) 272-2414; or Eugene A. Lopez, Attorney, (202) 272-2828, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429, the Commission published for public comment proposed Rule 15c2-10. The proposed Rule would provide for Commission review of proprietary securities trading systems that are not operated as facilities of a registered national securities exchange or association and are not subject to Commission regulation as national securities exchanges or associations pursuant to Section 6 or 15A of the Securities Exchange Act of 1934 ("Act"). In Securities Exchange Act Release No. 26935 (June 15, 1989), 54 FR 26055, the Commission granted an initial extension of the comment period on proposed Rule 15c2-10 from June 29, 1989, to July 19, 1989, in order to assist commentators in preparing complete and thorough responses to the questions raised in the release.

Since that time, the staff has been advised that, in light of the complex issues raised by the proposed Rule, certain commentators need additional time to complete their comments, while others are awaiting review of draft comments by key officials who have been on summer vacation. Accordingly, in order to ensure that Commission consideration of the proposed Rule is informed by as many views as possible, the Commission is granting a second extension of the comment period on Securities Exchange Act Release No. 26708 from July 19, 1989, to August 2, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: July 26, 1989.

[FR Doc. 89-17949 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 270

[Release No. IC-17084; International Series 110; File No. S7-20-89]

Purchases by Registered Investment Companies of the Securities of Foreign Banks and Foreign Insurance Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a rule which would, under certain circumstances, ease restrictions on registered investment companies' acquisitions of the securities of foreign banks or foreign insurance companies. The Commission's rule proposal is designed to provide registered investment companies more flexibility in making such acquisitions. The proposal would have the effect of permitting registered investment companies to pursue a broader range of investment policies.

DATE: Comments must be received on or before October 2, 1989.

ADDRESS: Comment letters should refer to File No. S7-20-89 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Commission will make all comment letters available for public inspection and copying in its Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Ann M. Glickman, Special Counsel, (202) 272-3042, or Brian M. Kaplowitz, Assistant Director, (202) 272-2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is seeking public comment on proposed rule 12d1-1 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act"). The rule would permit registered investment companies to hold securities of foreign banks and foreign insurance companies without regard to the limitations of section 12(d)(1)(A) of the Act (15 U.S.C. 80a-12(d)(1)(A)).

Executive Summary

Section 12(d)(1)(A) of the Act makes it unlawful for a registered investment company to acquire securities issued by any other investment company in excess of certain limitations. The broad definition of the term "investment company" in sections 3(a)(1) and 3(a)(3) of the Act (15 U.S.C. 80a-3(a)(1) and 15 U.S.C. 80a-3(a)(3)) may include not only those organizations typically regarded as investment companies, but also banks and insurance companies. Section 3(c)(3) of the Act (15 U.S.C. 80a3(c)(3)) specifically excludes "banks" and "insurance companies" from being deemed investment companies, but the definitions of these terms do not include foreign banks and foreign insurance companies. Proposed rule 12d1-1 would both define such foreign entities and except them from the definition of "investment company" for purposes of determining compliance with section 12(d)(1)(A). Thus, the proposed rule would give registered investment companies more flexibility to invest in the securities of foreign banks and foreign insurance companies.

Proposed rule 12d1-1 would contain only two conditions. The first condition would require any securities acquired under the rule to be direct interests in the foreign bank or insurance company, rather than interests in some type of entity organized under the auspices of the bank or insurance company. The other condition would subject acquisitions of foreign insurance company voting securities made in reliance on the exemption provided by the rule to the same limitations that apply to acquisitions of voting securities of domestic insurance companies.

The release will first address the background and purpose of section

12(d)(1)(A) and the status of foreign banks and insurance companies under that provision and other provisions of the Act, and then discuss and request public comment on the provisions of the proposed new rule, including the costs and benefits associated with its adoption.

Background

A. Introduction

Section 12(d)(1)(A) of the Act imposes limitations on the amount of securities of investment companies which may be held by other investment companies registered under the Act.[1] Specifically, that section provides as follows:

It shall be unlawful for any registered investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any other investment company (the "acquired company"), and for any investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any registered investment company (the "acquired company"), if the acquiring company and any company or companies controlled by it immediately after such purchase or acquisition own in the aggregate—

(i) More than 3 per centum of the total outstanding voting stock of the acquired company;

(ii) Securities issued by the acquired company having an aggregate value in excess of 5 per centum of the value of the total assets of the acquiring company; or

(iii) Securities issued by the acquired company and all other investment companies (other than Treasury stock of the acquiring company) having an aggregate value in excess of 10 per centum of the value of the total assets of the acquiring company.

Section 12(d)(1)(A) does not restrict registered investment companies' holdings of securities of United States banks and insurance companies, primarily because section 3(c)(3) of the Act specifically excludes "any bank or insurance company" from the definition of "investment company." The definitions of the terms "bank" and "insurance company," however, do not include foreign entities.[2] Therefore, to the extent that foreign banks and insurance companies are involved in owning, holding, trading, investing or reinvesting in securities, they may be deemed to be investment companies within the definition of section 3(a) of the Act (15 U.S.C. 80a–3(a)) and as that term is used elsewhere in the Act.[3] Registered investment companies would then be restricted by section 12(d)(1)(A) in the amount of securities of these entities that such investment companies may acquire. Conversely, because the term "insurance company" does not include a foreign insurance company, the limitation imposed by section 12(d)(2) would not apply to foreign insurance companies.[4]

B. Legislative History of Section 12(d)(1)(A)

Section 12(d)(1)(A) was enacted as a part of the Investment Company Amendments Act of 1970,[5] replacing a less restrictive provision.[6] The Report of the House Committee on Interstate and Foreign Commerce [7] noted that the new provision was intended to address the Commission's concerns about fund holding companies, as set forth in the Commission's report *Public Policy Implications of Investment Company Growth* ("PPI" or the "Report").[8] The first concern was that the exercise of or potential for influence or control of a registered investment company by a fund holding company, or a group of related fund holding companies, could be disadvantageous to the other investors in the controlled company. In addition, the threat of redemption by the holding company or companies could cause the management of the acquired company to deviate from the investment program or policies that it would otherwise pursue. Management might also be required to maintain large cash balances in anticipation of large redemptions, or to sell off a large portion of its assets in the event of a redemption, to the disadvantage of the other investors in the fund.[9] Further, as was noted in the Report, "inherent in the fund holding company structure is a layering of costs including advisory fees, administrative expenses, sales loads, and brokerage fees, all of which serve to make a fund on funds a particularly expensive investment vehicle." [10]

The Report also dismissed the claim that the fund holding company structure provides investors with diversification, noting that investment in a single mutual fund offers diversification by spreading the investment over a number of companies in different industries. "Any

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[1] The section also limits the amount of securities of registered investment companies that may be acquired by an investment company, whether registered or not.

[2] Section 2(a)(5) of the Act (15 U.S.C. 80a–2(a)(5)) defines "bank" as follows:

"Bank" means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

Section 2(a)(17) of the Act (15 U.S.C. 80a–2(a)(17)) defines "insurance company" as follows:

"Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

[3] An "investment company" is defined in section 3(a)(1) of the Act as any issuer which is, holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities.

An "investment company" is defined in section 3(a)(3) of the Act as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

"Investment securities" are defined in section 3(a)(3) to include all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which are not investment companies.

[4] Section 12(d)(2) of the Act (15 U.S.C. 80a–12(d)(2)) imposes certain limitations on registered investment companies' holdings of United States insurance company securities:

It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security (except a security received as a dividend or as a result of a plan of reorganization of any company, other than a plan devised for the purpose of evading the provisions of this paragraph) issued by any insurance company of which such registered investment company and any company or companies controlled by such registered company do not, at the time of such purchase or acquisition, own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered company and any company or companies controlled by it own in the aggregate, or as a result of such purchase or acquisition will own in the aggregate, more than 10 per centum of the total outstanding voting stock of such insurance company.

Because the purpose of proposed rule 12dl–1 is to place foreign insurance companies on an equal footing with domestic insurance companies, proposed rule 12dl–l(a)(2) would apply the limitations of section 12(d)(2) to the purchase of foreign insurance company shares.

[5] Pub. L. 91–547, enacted December 14, 1970.

[6] Section 12(d)(1) of the Act formerly prohibited a registered investment company from purchasing more than five percent of the total outstanding voting stock of any other investment company which concentrates its investments in a particular industry or group of industries or more than three percent of the total outstanding voting stock of any other type of investment company. It did not place any limitation on the percentage of an investment company's assets which could be invested in other investment companies, however.

[7] H.R. Rep. No. 1382, 91st Cong., 2d Sess. (1970), at 10.

[8] H.R. Rep. No. 2337, 89th Cong., 2d Sess. (1966).

[9] PPI at 316–317.

[10] PPI at 318.

added value of diversification offered by a fund on funds," according to the Report, "is largely illusory." Although theoretically there may be a greater spreading of risk, as a practical matter, "diversification upon diversification does not result in greater safety in proportion to the number of layers imposed on the original investment," [11] In any event, any potential advantages of the fund holding company structure were found not significant enough to warrant duplication of fees and expenses.[12]

C. Status of Foreign Banks Under the Act

As was noted above, foreign banks may be deemed to be investment companies under the Act.[13] The Commission has not previously addressed the status of these entities under section 12(d)(1)(A) of the Act or the issue of whether registered investment companies may purchase securities issued by foreign banks. However, the Commission has long recognized in other contexts that most foreign banks are very much unlike domestic investment companies, and need not be regulated in the same manner.

Beginning in 1979, the Commission granted exemptions to a number of foreign banks under section 6(c) of the Act (15 U.S.C. 80a-6(c)),[14] permitting them to sell their debt securities, directly or through finance subsidiaries, within the United States without registering as investment companies under the Act.[15] More recently, the Division of Investment Management (the "Division"), by delegated authority, has granted foreign banks exemptions under section 6(c) to sell equity securities in the United States.[16]

In 1987, the Commission adopted rule 6c-9 under the Act (17 CFR 270.6c-9), permitting foreign banks and their finance subsidiaries to sell debt securities and non-voting preferred stock without registration under the Act.[17] The only conditions to the use of the rule are that the issuer register the securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "Securities Act") or sell the securities pursuant to an exemption from that Act's registration requirements; that any debt securities be direct obligations of the issuer and that any non-voting preferred stock be a direct interest in the issuer; and that a foreign issuer and, in the case of a finance subsidiary, its foreign bank parent, file Form N-6C9 (17 CFR 274.304) appointing a United States agent for service of process.

A foreign bank is defined by rule 6c-9 as a banking institution incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof, is engaged substantially in commercial banking activity, and is not operated for the purpose of evading the provisions of the Act.[18] "Engaged substantially in commercial banking activity" means "engaged regularly in, and deriving a substantial portion of its business from, extending commercial and other types of credit, and accepting demand and other types of deposits, that are customary for commercial banks in the country in which the head office of the banking institution is located." [19]

D. Status of Foreign Insurance Companies Under the Act

Foreign insurance companies, like foreign banks, have been accorded special treatment by the Commission, notwithstanding their possible status under the Act as investment companies. In this regard, the Commission has granted a number of exemptions from all provisions of the Act under section 6(c) in the case of applications contemplating both debt and equity offerings.[20] As has been the case with foreign bank exemptions, these exemptions have been requested by foreign insurance companies as issuers; they have not been concerned with registered investment company purchases of foreign insurance company securities or with section 12(d)(1)(A) of the Act.

The applications have generally included representations about the nature and extent of supervision and regulation of the applicants' business, as well specific representations about the contemplated offerings: That the offering would be made pursuant to an offering memorandum containing appropriate information about the securities and the issuer; that the offering would be registered under the Securities Act or made pursuant to a valid exemption from that Act's registration provisions; that in the case of debt securities, any public offering would receive an investment grade rating from a nationally recognized statistical rating organization; and that the foreign issuer would appoint a United States agent for service of process (and, in some cases, agree to submit itself to the jurisdiction of certain United States courts).[21]

E. Recent Developments

On February 15, 1989, the Division, in response to a request from the Investment Company Institute ("ICI"), issued a letter (the "ICI letter") stating that it would not recommend enforcement action to the Commission under section 12(d)(1)(A)(iii) in the event that a registered investment company invested more than ten percent of its assets in certain of the securities of entities that, because they were foreign banks, might be deemed to be investment companies. Section 12(d)(1)(A)(iii) prohibits an investment company from having in the aggregate more than ten percent of its assets

[11] PPI at 320.

[12] PPI at 321. See section 12(d)(1)(F) of the Act (15 U.S.C. 80a-12(d)(1)(F)) for an exception to the limitations of section 12(d)(1) for securities purchased by a registered investment company with low sales loads and restrictions on its rights to redeem the securities purchased, among other provisions.

[13] *See supra* text accompanying notes 2 and 3.

[14] Section 6(c) provides the Commission broad exemptive powers, to be exercised through rulemaking upon its own motion, or by order upon application, to exempt conditionally or unconditionally any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or any rule or regulation under the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

[15] *See, e.g.*, notices of application and orders for Banque Nationale de Paris, Credit Lyonnais, Kansallis-Osake-Pankki, Post-Och Kreditbanken, Skandinaviska Erskilda Banken, Societe Generale and Svenska Handelbanken, Investment Company Act Rel. Nos. 10765 10771 (July 9, 1979) (44 FR 41365-41377, July 16, 1979) and 10813-10817 and 10820-10821 (August 7, 1979).

[16] *See, e.g.*, notices of application and orders for Westpac Banking Corporation, Investment Company Act Rel. Nos. 15181 (June 27, 1986) (51 FR 24774, July 8, 1986) and 15217 (July 23, 1986); Barclays PLC, Investment Company Act Rel. Nos. 15189 (July 2, 1986) (51 FR 24955, July 9, 1986) and 15228 (July 29, 1986); and National Westminster Bank PLC, Investment Company Act Rel. Nos. 15211 (July 18, 1986) (51 FR 26619, July 24, 1986) and 15248 (Aug. 12, 1986).

[17] Investment Company Act Rel. No. 16093 (October 29, 1987) (52 FR 42280, Nov. 4, 1987); the rule was proposed in Investment Company Act Rel. No. 15314 (Sept. 17, 1986) (51 FR 34221, Sept. 26, 1986).

[18] Rule 6c-9(b)(2).

[19] Rule 6c-9(b)(3).

[20] *See, e.g.*, notices of application and orders for Nationale-Nederlanden N.V. (debt), Investment Company Act Release Nos. 12019 (Nov. 2, 1981) (46 FR 55463, Nov. 9, 1981) and 12062 (Nov. 30, 1981); Societe Centrale de l'Union des Assurances de Paris (equity), Investment Company Act Release Nos. 16104 (Nov. 2, 1987) (52 FR 42753, Nov. 6, 1987) and 16145 (Nov. 24, 1987); more recently, Aegon, N.V., Investment Company Act Rel. Nos. 16799 (Feb. 7, 1989) (54 FR 6793, Feb. 14, 1989) and 16856 (Mar. 9, 1989); also Legal and General Group PLC, Investment Company Act Rel. Nos. 16785 (Jan. 30, 1989) (54 FR 5569, Feb. 3, 1989) and 16835 (Feb. 24, 1989).

[21] *See, e.g.*, Aegon N.V., *supra* note 20.

invested in other investment companies.[22] The response went on to provide, however, that the ten percent limitation imposed by section 12(d)(1)(A)(iii) could be exceeded only if the excess was attributable to the value of debt securities and non-voting preferred stock issued by foreign banks as defined in rule 6c–9(b)(2) under the Act. The no-action response did not extend to investments in other foreign bank equity securities or to investments in foreign insurance company securities.

Prior to the issuance of the ICI letter, the Division had considered the limitations imposed by section 12(d)(1)(A)(iii) on purchases of securities of foreign banks and foreign insurance companies in its letter concerning Indosuez Asia Investment Services Ltd. (pub. avail. Mar. 21, 1988). In that letter, the Division indicated that a Hong Kong investment company (not registered with the Commission) could purchase securities of Asian banks and insurance companies in excess of the ten percent limitation imposed by section 12(d)(1)(A)(iii), provided that those entities were engaged in bona fide banking and insurance businesses.[23] In a footnote, the Division identified the critical elements for a determination that an entity was engaged in those businesses. To be engaged in a bona fide banking business, a foreign bank would have to meet the standards of rule 6c–9. To be engaged in a bona fide insurance business, a foreign insurance company would have to be regulated and licensed by the government of the country in which it was organized, or by an agency thereof, and be "engaged primarily and predominantly in the writing of bona fide insurance agreements of the types specified in Section 3(a)(8) of the Securities Act of 1933 (having substantially similar credit, insurance underwriting and investment risk characteristics as those sold in the United States) or the reinsurance of risks on such agreements underwritten by bona fide insurance companies." As discussed below, these standards provide the basis for the generic relief from section 12(d)(1) proposed in this release.

[22] The ICI had not requested no-action advice under section 12(d)(1)(A)(i), which prohibits the acquisition of more than three percent of the voting stock of another investment company, or section 12(d)(1)(A)(ii), which prohibits the acquisition of securities of any one investment company with an aggregate value exceeding five percent of the total assets of the acquiring company.

[23] The issue arose because the Hong Kong investment company also held securities of some registered investment companies. *See supra* note 1, and accompanying text.

Discussion

The Commission's preliminary view is that, under appropriate conditions, the limitations imposed by section 12(d)(1)(A) need not apply to registered investment company purchases of foreign bank and foreign insurance company securities. Therefore, the Commission is proposing rule 12d1–1 for public comment. Proposed rule 12d1–1 would, in effect, exempt acquisitions of securities of foreign banks and foreign insurance companies from the limitations imposed by section 12(d)(1)(A) by stating that such entities are not to be regarded as investment companies for purposes of determining compliance with the limitations imposed by that section. Because the Commission sees no reason to distinguish between subparagraphs (i), (ii) and (iii) of section 12(d)(1)(A) [24] in the case of purchases of foreign bank and foreign insurance company securities, proposed rule 12d1–1 would provide an exemption from all three subparagraphs. Proposed rule 12d1–1 would apply to purchases of both debt and equity securities.

Paragraph (a) is the operative portion of the proposed rule. Subparagraph (a)(1) would make clear that the proposal would cover only direct obligations of or interests in foreign banks or insurance companies, rather than interests in any collective trusts, separate accounts, or other units organized by those entities that function effectively as investment companies. Subparagraph (a)(2) would subject acquisitions of foreign insurance company voting securities made in reliance on the exemption provided by the rule to the same limitations that section 12(d)(2) of the Act imposes upon acquisitions by registered investment companies of the voting securities of United States insurance companies. This condition is in keeping with the policy behind the rule proposal, which is to treat foreign and United States banks and insurance companies in an equivalent manner for purposes of section 12(d)(1).

Paragraphs (b) and (c) would define the terms "foreign bank" and "foreign insurance company" for purposes of the rule. The definition of "foreign bank" for these purposes is the same as the definition included in rule 6c–9 under the Act, as discussed above.[25] While no such precedent exists for the definition of "foreign insurance company," the two alternative versions of that definition being proposed for public comment have been drafted so that the securities that would be covered by the proposed rule include only those securities issued by institutions that are engaged in a bona fide insurance business and that do not function as investment companies. Thus, the proposed rule specifies that the insurance company must be engaged primarily and predominantly [26] in writing bona fide insurance agreements of the type specified in section 3(a)(8) of the Securities Act (15 U.S.C. 77c(a)(8)),[27] except for the substitution of supervision by foreign government insurance regulators for the state regulators referred to in that section. The version of paragraph (c) presented in Alternative I includes additional language designed to clarify the types of agreements that may constitute the primary business of the insurance company; the agreements are to have various characteristics similar to those sold in the United States. Thus, the exemption provided by Alternative I would not extend to contracts whose essential features had not actually been subject to section 3(a)(8) scrutiny in the United States. Alternative II does not include this additional language out of concern that the language might be confusing to investment companies or might make the appropriate section 3(a)(8) analysis unduly difficult. The Commission is specifically requesting comment as to whether the additional language included in Alternative I is necessary or helpful in characterizing the types of foreign insurance companies whose securities would be covered by the proposed rule. Paragraphs (b) and (c) also provide that the foreign entities must not be operated for the purpose of evading the provisions of the Act.

The proposed rule is intended to meet the wishes of registered investment companies for greater flexibility with respect to investments in foreign banking and insurance institutions, without compromising the protections afforded by section 12(d)(1)(A) to purchasers of shares in registered investment companies. As was noted above, section 12(d)(1)(A) was enacted to deal with the problems posed by the

[24] The subparagraphs are set forth in part A of the *Background* portion of this release.

[25] *See supra* text accompanying notes 17 to 19.

[26] This language derives from the definition of insurance company found in section 2(a)(17) of the Act. *See supra* note 2.

[27] Variable annuity contracts, for example, are not bona fide insurance agreements of the type included in section 3(a)(8) of the Securities Act. In S.E.C. v. Variable Annuity Life Ins. Co. of America, 359 U.S. 65 (1959), the Supreme Court concluded that such contracts were securities subject to federal securities regulation, and that the issuer of such contracts was an investment company and should be regulated as such. *See also* S.E.C. v. United Benefit Life Ins. Co., 387 U.S. 202 (1967).

control of investment companies by fund holding companies, as well as the layering of costs to investors inherent in the fund holding company structure. These problems should not arise in the case of an investment company investing in foreign bank or foreign insurance company securities. Securities issued by foreign banks and foreign insurance companies are generally not redeemable. In addition, to the Commission's knowledge, foreign banks and insurance companies, unlike investment companies, do not charge advisory fees and sales loads to purchasers of their securities.[28] Therefore, a shareholder in an investment company relying on the proposed rule would not incur an additional layer of costs associated with his investment in the investment company. Further, because banks and insurance companies are engaged in businesses that are not simply investment businesses, the purchase of securities of a number of different foreign banks and insurance companies may result in genuine diversification and spreading of risks.

Finally, because the proposed rule would cover acquisitions of foreign bank and foreign insurance company securities by registered investment companies, and deals only with issues related to section 12(d)(1)(A) of the Act, it does not include any restrictions as to type of security or conditions of the offering. Such restrictions might be appropriate in a rule or exemptive order relating to purchases of foreign bank and foreign insurance company securities by other investors.[29]

Cost/Benefit of Proposed Action

Proposed rule 12d1-1 would not impose any cost burden on registered investment companies desiring to utilize its provisions. As discussed above, the Commission does not expect that the proposed rule would increase costs to persons purchasing shares of registered investment companies. To the contrary, the rule should benefit investment companies and their shareholders by providing greater flexibility to them in their purchases of securities of foreign banks and foreign insurance companies.

The Commission specifically invites comments on its assessment of the costs and benefits associated with the proposal, including estimates of any costs and benefits perceived by commenters.

Summary of Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis regarding proposed rule 12d1-1. The Analysis states that the proposed rule is designed to provide investment companies more flexibility in acquiring the securities of foreign banks and foreign insurance companies. It states that the Commission does not believe that the conditions to the use of the rule would be burdensome to investment companies, regardless of their size, and notes that investment companies may elect to use the rule or not, depending on their investment policies. The Analysis states that, in the absence of the rule, investment companies would need to file applications with the Commission in order to pursue certain investment policies which the proposed rule would permit, and that the costs of that process would fall most heavily on small entities. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Ann M. Glickman, Mail Stop 5-2, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

The authority citation for Part 270 is amended by adding the following citations:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80c-89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *et seq.*; unless otherwise noted. * * * § 270.12d1-1 is also issued under Secs. 6(c) (15 U.S.C. 80a-6(c)) and 38(a) (15 U.S.C. 80a-37(a)).

2. By adding § 270.12d1-1 to read in either one of the two following ways:

Alternative I

§ 270.12d1-1 Exemption from the limitation imposed by section 12(d)(1)(A) of the Act for acquisitions of securities of foreign banks and foreign insurance companies.

(a) For purposes of determining compliance with section 12(d)(1)(A) of the Act (15 U.S.C. 80a-12(d)(1)(A)), a foreign bank or foreign insurance company shall not be considered an investment company; *Provided however,*

(1) That this rule shall apply only to a purchase or other acquisition by a registered investment company of a direct interest in, or obligation of, a foreign bank or foreign insurance company; and

(2) That acquisitions by a registered investment company of the securities of a foreign insurance company shall not exceed the limitations imposed by section 12(d)(2) of the Act (15 U.S.C. 80a12(d)(2)) upon the acquisition by a registered investment company of securities of an insurance company as defined in section 2(a)(17) of the Act (15 U.S.C. 80a-2(a)(17)).

(b) For purposes of this section, "foreign bank" means a foreign bank within the meaning of rule 6c-9 under the Act (17 CFR 270.6c-9).

(c) "Foreign insurance company" means an insurance company incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(1) Regulated as such by that country's or subdivision's government or any agency thereof;

(2) Engaged primarily and predominantly in (i) the writing of bona fide insurance agreements of the type specified in section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), except for the substitution of supervision by foreign government insurance regulators for the regulators referred to in that section, and having substantially similar credit, insurance underwriting and investment risk characteristics as those sold in the United States; or (ii) the reinsurance of risks on such agreements underwritten by bona fide insurance companies; and

(3) Not operated for the purpose of evading the provisions of the Act.

Alternative II

§ 270.12d1-1 Exemption from the limitation imposed by section 12(d)(1)(A) of the Act for acquisitions of securities of foreign banks and foreign insurance companies.

(a) For purposes of determining compliance with section 12(d)(1)(A) of the Act (15 U.S.C. 80a-12(d)(1)(A)), a foreign bank or foreign insurance company shall not be considered an investment company; *Provided however,*

(1) That this rule shall apply only to a purchase or other acquisition by a registered investment company of a direct interest in, or obligation of, a

[28] The Commission specifically requests comment on this matter.

[29] As was discussed above, the applications relating to sales in the United States of foreign bank and foreign insurance company securities did contain several conditions. *See supra* notes 14-21, and accompanying text.

foreign bank or foreign insurance company; and

(2) That acquisitions by a registered investment company of the securities of a foreign insurance company shall not exceed the limitations imposed by section 12(d)(2) of the Act (15 U.S.C. 80a12(d)(2)) upon the acquisition by a registered investment company of securities of an insurance company as defined in section 2(a)(17) of the Act (15 U.S.C. 80a 2(a)(17)).

(b) For purposes of this section, "foreign bank" means a foreign bank within the meaning of rule 6c–9 under the Act (17 CFR 270.6c–9).

(c) "Foreign insurance company" means an insurance company incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(1) Regulated as such by that country's or subdivision's government or any agency thereof;

(2) Engaged primarily and predominantly in (i) the writing of bona fide insurance agreements of the type specified in section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), except for the substitution of supervision by foreign government insurance regulators for the regulators referred to in that section; or (ii) the reinsurance of risks on such agreements underwritten by bona fide insurance companies; and

(3) Not operated for the purpose of evading the provisions of the Act.

By the Commission.

Jonathan G. Katz,

Secretary.

July 26, 1989.

[FR Doc. 89–17950 Filed 8–1–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of N,N-Dimethylamphetamine into Schedule I

AGENCY: Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued by the Administrator of the Drug Enforcement Administration (DEA) to place *N,N*-dimethylamphetamine into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This proposed action by the DEA Administrator is based on data gathered and reviewed by DEA. If finalized, this proposed action would impose the regulatory control mechanisms and criminal sanctions of Schedule I on the manufacture, distribution and possession of this substance.

DATE: Comments must be submitted on or before October 2, 1989.

ADDRESS: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On August 3, 1988, the Administrator of DEA issued a final rule in the **Federal Register** (53 FR 29232) temporarily placing *N,N*-dimethylamphetamine into Schedule I using the temporary scheduling provisions of the CSA (21 U.S.C. 811(h)).

The final rule which became effective on August 3, 1988, was based on a finding by the Administrator that the emergency scheduling of the above-referenced substance was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance may be extended for up to six months. Under this provision, the temporary scheduling of *N,N*-dimethylamphetamine which would expire on August 3, 1989, may be extended to February 3, 1990. This extension is being ordered by the DEA Administrator in a separate action.

DEA has gathered and reviewed the available information regarding the actual abuse and relative abuse potential of *N,N*-dimethylamphetamine. DEA, in conjunction with the National Institute on Drug Abuse (NIDA), has provided for the synthesis and biological testing of this substance. By letter, the Administrator has submitted data which DEA has gathered regarding *N,N*-dimethylamphetamine to the Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the DEA Administrator also requested a scientific and medical evaluation and a scheduling recommendation for *N,N*-dimethylamphetamine from the Assistant Secretary for Health.

The following is a summary of the available information submitted to the Assistant Secretary for Health. Chemically, *N,N*-dimethylamphetamine is *N,N* alpha-trimethylbenzeneethanamine or *N,N*,alpha-trimethylphenethylamine. It is a close structural analogue of amphetamine, methamphetamine and N-ethylamphetamine, all psychomotor stimulants with demonstrated high abuse potentials.

Data exist which show that *N,N*-dimethylamphetamine exhibits central nervous system stimulant properties in rodents qualitatively similar to those of methamphetamine. *N,N*-dimethylamphetamine is less potent than methamphetamine. It has discriminative stimulus properties which enable it to be recognized as cocaine by rodents trained to discriminate cocaine from saline. *N,N*-dimethylamphetamine is reported to be self-administered by monkeys trained to self-administer cocaine. It is about three times less potent than methamphetamine in its lethal effects and produces neurotoxic effects on dopaminergic nerve terminals. Sufficient data exists to support a finding that *N,N*-dimethylamphetamine, at the proper dose, is an amphetamine-like central nervous system stimulant with a high potential for abuse.

Since the summer of 1987 law enforcement agencies have seized at least 20 clandestine laboratories (18 in California, 1 each in Iowa and Georgia) which have produced *N,N*-dimethylamphetamine. Over 57 kg. of *N,N*-dimethylamphetamine and sufficient precursors to produce an additional 246 kg. were seized at these laboratories. Forensic laboratories have identified *N,N*-dimethylamphetamine in over 175 exhibits of drug evidence purchased or seized by law enforcement officials since the middle of 1987. It has been identified in evidence submissions from California, Iowa, Alabama, Missouri, Colorado, Utah, Arizona, Kansas, Florida and Idaho.

There have been no reports of deaths or injuries specifically attributed to the abuse of *N,N*-dimethylamphetamine, to date. It is likely that individuals abusing this substance do not know that they are taking *N,N*-dimethylamphetamine but think that they are taking methamphetamine. *N,N*-dimethylamphetamine has been sold and trafficked as methamphetamine or speed. Thus, any injuries or adverse effects associated with the use of *N,N*-dimethylamphetamine are likely to be

reported as methamphetamine or speed related incidents. *N,N*-dimethylamphetamine's pharmacological and toxicological profiles strongly suggest that abuse of this substance will lead to health and safety risks similar to those produced by amphetamine and methamphetamine. Since *N,N*-dimethylamphetamine is only manufactured in clandestine laboratories, there are additional risks associated with its abuse. The health and safety hazards associated with the abuse of amphetamine and methamphetamine are well established. According to national estimates of emergency room mentions from the Drug Abuse Warning Network (DAWN), there were over 40,000 emergency room mentions associated with the use of methamphetamine and speed during the period 1986–1988. Abuse of *N,N*-dimethylamphetamine is likely to cause similar types of emergency room episodes and may already have contributed to those attributed to methamphetamine or speed.

There are no commercial manufacturers or suppliers of *N,N*-dimethylamphetamine. The Food and Drug Administration has notified DEA that there are no exemptions or approvals in effect under section 505 of the Federal Food, Drug and Cosmetic Act for *N,N*-dimethylamphetamine. A search of the scientific and medical literature revealed no indications of current medical use of *N,N*-dimethylamphetamine.

The DEA Administrator, based on the information gathered and reviewed by his staff and after consideration of the factors in 21 U.S.C. 811(c), believes that sufficient data exists to propose that *N,N*-dimethylamphetamine be placed into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for a substance to be placed into Schedule I are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Before issuing a final rule in this matter, the DEA Administrator will take into consideration the scientific and medical evaluations and scheduling recommendations of the Secretary of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). The recommendations of the Secretary regarding scientific and medical matters are binding on the Administrator and if the Secretary recommends that a substance should not be controlled, the DEA Administrator will not control it. The Administrator will also consider relevant comments from other concerned parties.

Interested persons are invited to submit their comments, objections or requests for a hearing in writing with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative.

In the event that comments, objections or requests for a hearing raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the proposed placement of *N,N*-dimethylamphetamine in Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). The substance proposed for control in this notice has no legitimate use or manufacturer in the United States. In accordance with the provisions of Title 21, United States Code, Section 811(a), this proposal to place *N,N*-dimethylamphetamine into Schedule I is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby proposes that 21 CFR Part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.11 is amended by adding paragraph (f)(3) to read as follows:

1308.11 Schedule I.

* * * * *

(f) * * *

(3) *N,N*-dimethylamphetamine (also known as *N,N*-trimethyl-benzeneethanamine; *N,N*,alpha-trimethylphenethylamine), 1480.

3. Section 1308.11 is further amended by removing and reserving paragraph (g)(3).

Date: July 27, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–18029 Filed 8–1–89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Chapter I

[Docket No. N-89-2011; FR-2665]

RIN 2501-AA85

Advance Notice of Intention To Develop and Publish Fair Housing Accessibility Guidelines

AGENCY: Department of Housing and Urban Development, Office of the Secretary.

ACTION: Advance Notice of Development of Fair Housing Accessibility Guidelines.

SUMMARY: In the final rule implementing the Fair Housing Amendments Act of 1988 (54 FR 3232, January 23, 1989), HUD announced its intention to publish "accessibility guidelines" to provide additional guidance to designers and developers of residential structures, and to the public, concerning the requirements of the amended Fair Housing Act as the Act relates to accessibility of dwellings for use by handicapped persons.

This document solicits early comment from the public concerning the content of the accessibility guidelines, and outlines the procedure that HUD intends to follow in developing the guidelines.

The purpose of this notice is to secure expert advice from the public on the appropriate content of the accessibility guidelines.

DATES: The Department is not providing in this notice for any closing date for public comment on the guidelines. It is HUD's intention to prepare and publish proposed accessibility guidelines at the earliest practicable time, and to provide a fixed period for comment. Public comment will be considered whether it is received before or after the publication of the proposed accessibility guidelines. To the extent practicable, consistent with HUD's plans for early publication of its proposal, advice from the public received in response to this notice will be considered in advance of the publication of the proposed accessibility guidelines.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication, whether by outside parties or HUD's own technical standards contractor, as well as any communication on this subject matter received by HUD before the publication of this notice, will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. on regular business days at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile [FAX] machine. The telephone number of the FAX receiver is (202) 755–2575. (This is not a toll-free number.) Only comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755–7084.)

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Multifamily Housing Programs, Room 6114, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Telephone (202) 755–3287 (voice) or 755–6490 (TDD). (These are not toll-free numbers.)

SUPPLEMENTATARY INFORMATION: On September 13, 1988, the President approved Pub. L. 100–430, the Fair Housing Amendments Act of 1988. (Amendments Act) This statute amends the Fair Housing Act—title VIII of the Civil Rights Act of 1968—to add, among other changes, a new prohibition against discrimination on the basis of handicap.

HUD's final rule implementing section 6 of the Fair Housing Amendments Act (54 FR 3232, January 23, 1989) provides that covered multifamily dwellings for first occupancy after March 13, 1991 must be designed and constructed to have at least one accessible building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site. The rule, at § 100.205(c), further provides that all covered multifamily dwellings must be designed and constructed in such a manner that—

(1) The public use and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwellings contain the following features of adaptable design;

—An accessible route into and through the covered dwelling unit.

—Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

—Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

—Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

The statute provides that compliance with appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (ANSI A117.1) will satisfy the adaptive design requirements quoted in numbered paragraph (3), above. Further, the Department's regulation implementing the Fair Housing Amendments Act provides that compliance with the duly enacted law of a State or unit of general local government which includes the requirement that covered multifamily buildings have at least one accessible entrance on an accessible route and which includes all of the provisions of paragraphs (1), (2) and (3) above will satisfy the requirements of the Federal statute. (See 24 CFR 100.205(f).) Finally, in spite of the recognition of ANSI A117.1 and of State and local laws, the statute directs the Secretary of Housing and Urban Development to provide technical assistance to States, local governments and other persons in implementing all of these requirements. It is appropriate, therefore, that HUD develop specific guidelines representing an acceptable level of compliance with the requirements of the statute. These guidelines, if complied with, could be raised as a defense in a complaint filed with HUD under the Fair Housing Law based upon section 804(f)(3)(c).

Development of appropriate accessibility guidelines is a highly technical exercise and involves a balancing of interests. HUD must develop accessibility guidelines that will address all of the above-mentioned requirements and that will interpret such difficult concepts as what constitutes site impracticality, and what design standards will provide for dwelling unit spaces which allow for usability and maneuverability within and about the space by a person in a wheelchair. The accessibility guidelines will need to ensure that persons with disabilities are afforded the degree of accessibility provided for in the Amendments Act. At the same time, the Department must be mindful of the costs of providing accessibility and must seek to avoid requirements that would unnecessarily increase the costs of multifamily construction. The Department believes that departures from the design requirements of the ANSI may be feasible that will provide for accessibility at lower cost than would be incurred if following ANSI.

The Department is seeking comments from persons and organizations concerned with adequate accessibility and with cost-control, in order to assure that the accessibility guidelines strike the proper balance between these concerns. Accordingly, this notice solicits technical advice from the public concerning the form and content of its accessibility guidelines. To ensure that all interested parties are given the fullest possible access to any advice the Department has or will receive on this subject, including from its own contractor(s), a public docket has been opened for public inspection and copying of such material.

Comments received as a result of this notice, and those received after publication of the proposed guidelines in the **Federal Register**, all will be considered before the accessibility guidelines are published in their final form.

Dated: July 21, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89–17939 Filed 8–1–89; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-304-89]

RIN 1545-AN11

Transition Rules for the Allocation and Apportionment of Interest Expense and Rules Concerning the Treatment of Financial Products that Alter Effective Cost of Borrowing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations relating to transition rules for the allocation and apportionment of interest expense for purposes of the foreign tax credit rules and certain other international tax provisions. This document also provides rules concerning the treatment of financial products that alter effective interest expense. Changes to the transition rules were made by the Technical and Miscellaneous Revenue Act of 1988. These regulations are necessary to provide guidance needed by taxpayers engaging in international transactions in order to comply with these changes. In the rules and regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking. Certain additional regulations are also proposed by this document.

DATES: These regulations are proposed to be effective for taxable years beginning after December 31, 1986. These regulations would be applicable to the allocation and apportionment of interest expense for taxable years beginning after December 31, 1986, except for § 1.861-9T(b)(6), which is effective for transactions entered into after September 14, 1988. Comments and requests for a public hearing must be delivered or mailed before September 1, 1989.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-952-86), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Charles Plambeck 202-566-6284 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the rules and regulations portion of this issue of the **Federal Register** add new temporary regulations § 1.861-13T and a new paragraph (b)(6) to § 1.861-9T. For the text of the temporary regulations, see T.D. 8257 published in the rules and regulations portion of this issue of the **Federal Register**. Certain additional regulations are also proposed by this document.

Special Analyses

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

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David Merrick of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR 1.861-1 Through 1.997-1

Income taxes, Aliens, Exports, DISCs, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

Proposed Amendments to the Regulations

The temporary regulations, [T.D. 8257], published in the rules and regulations portion in this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 861 and 864 of the Internal Revenue Code of 1986.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 89-17723 Filed 8-1-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-370]

RIN 1218-AB15

Occupational Exposure to Bloodborne Pathogens

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of additional hearing site.

SUMMARY: On May 30, 1989, OSHA published a Notice of Proposed Rulemaking (NPRM) on Occupational Exposure to Bloodborne Pathogens in the **Federal Register** (54 FR 23042). Included in the Notice was the scheduling for public hearings.

The locations announced for the hearings were Washington, DC, Chicago, IL, and San Francisco, CA. The selection of these sites was based primarily on geographical considerations. The American Federation of State, County and Municipal Employees requested that a fourth hearing be held in New York City to facilitate the public participation of individuals in the New York City area. OSHA has agreed to this suggestion and is hereby announcing that a hearing will take place in New York City at the time and address indicated below. The other hearings will take place on the dates and at the locations announced in the May 30 NPRM. The hearings will be conducted in accordance with the procedures specified in that Notice at 54 FR 23133.

In order to allow interested parties adequate opportunity to decide to participate in the New York City hearing, OSHA is allowing additional time for the submission of Notices of Intention to Appear and of statements for that hearing.

DATES: Notices of Intention to Appear at the Washington, DC, Chicago, IL, and San Francisco, CA hearings must be postmarked on or before August 14, 1989. Notices of Intention to Appear at the New York City hearing must be postmarked on or before September 15, 1989. Statements and any documentary evidence to be presented at these hearings must be submitted by August 31, 1989, for the Washington, DC, hearing; September 29, 1989, for the Chicago, IL and San Francisco, CA hearings; and October 20, 1989, for the New York City, N.Y. hearing.

The hearings will begin at 10 a.m. The date and location where each will be held are as follows:

Date hearing begins	Location
1. September 12, 1989	The Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.
2. October 17, 1989	Parlor A, Palmer House, 17 East Monroe Street, Chicago, IL 60603.
3. October 24, 1989	The Crystal Ballroom, San Franciscan Hotel, 1231 Market Street, San Francisco, CA 94103.
4. November 13, 1989	The Oval Room, Roosevelt Hotel, 45 E. 45th Street, New York, New York 10017.

ADDRESSES: Notices of Intention to Appear at the hearings, statements and documentary evidence should be submitted to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket H-370, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-8615. A Notice of Intention to Appear also may be transmitted by facsimile to (202) 523-5046 or, for FTS, to 8-523-5046, provided the original and 4 copies of the Notice are sent to the above address thereafter.

Notices of Intention to Appear at the public hearings, as well as any other information gathered by the Agency during this rulemaking, will be available for inspection and copying at the OSHA Technical Data Center Docket Office, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Office of Public Affairs, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-8151.

Authority: Secs. 6(b), 8(c), and 8(g). Pub. L. 91-596, 84 Stat. 1593, 1599, 1600: 29 U.S.C. 655. 657; 29 CFR Part 1911: Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, DC, this 27th day of July, 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

[FR Doc. 89-18044 Filed 8-1-89; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 89-08]

Special Local Regulations: Southern California Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule adds an additional marine event to Table 1 of Part 100.1101 of Title 33, Code of Federal Regulations. Table 1 lists current annual marine events held in Southern California. The annual marine event being added is Naval Station San Diego's "Base to Base Swim" held in San Diego Harbor during the month of July. This event has approximately 200 swimmers which could pose a hazard to navigation. The addition of this marine event is necessary to provide for the safety of life and property on navigable waters during this event.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Comments should be mailed or hand carried to Commander, Eleventh Coast Guard District (b), 400 Oceangate, Suite 914, Long Beach, California, 90822-5399. The comments and other materials referenced in this notice will be available for inspection and copying at Suite 914 at the above address. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LTjg E.E. McLaughlin, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822, Tel: (213) 499-5318.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11 90-08) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTjg E.E. McLaughlin, project officer, Eleventh Coast Guard District Boating Affairs Office, and LCDR G. R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Naval Station San Diego's "Base to Base Swim" is an annual event conducted in San Diego Harbor during the month of July. The swim commences in the vicinity of Pier 2 at Naval Station San Diego, California and proceeds southerly to the vicinity of the boat landing at Naval Amphibious Base, Coronado, California.

Approximately 200 swimmers are expected to participate in this event and could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area during this event may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

§ 100.1101 [Amended]

2. Section 100.1101 is amended by adding the following event to Table 1:

San Diego Naval Station Base to Base Swim

Sponsor: Naval Station San Diego.
Date: July.
Location: San Diego commencing in the vicinity of Pier 2, Naval Station San Diego, California and then proceeding southerly to the vicinity of the boat landing, at the Naval Amphibious Base, Coronado, California.

Dated: July 7, 1989.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 89-18050 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD11 89-09]

Special Local Regulations: Marine Events on the Colorado River, Between Davis Dam (Bullhead City, AZ) and Headgate Dam (Parker, AZ)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule adds an additional annual marine event to Table 1 of Part 100.1102 of Title 33, Code of Federal Regulations. Table 1 lists current annual marine event held on the Colorado River between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona). The event being added is the "International Waterski Race" held on Lake Moorvalya on the Colorado River during the month of March. This event typically has 300 participants operating at high speeds which could pose a hazard to navigation. The addition of this marine event is necessary to provide for the safety of life and property on navigable waters during this event.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Comments should be mailed or hand carried to Commander, Eleventh Coast Guard District (b), 400 Oceangate, Suite 914, Long Beach, California, 90822-5399.

The comments and other materials referenced in this notice will be available for inspection and copying at Suite 914 at the above address. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LTjg E.E. McLaughlin, Commander, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822, Tel: (213) 499-5318.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11 89-09) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTjg E.E. McLaughlin, project officer, Eleventh Coast Guard District Boating Affairs Office, and LCDR G.R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Parker Area Chamber of Commerce's "International Waterski Race" is an annual event conducted during the month of March on Lake Moorvalya on the Colorado River.

The race runs from La Paz County Park, Road Runner Resort to ½ mile south of Bluewater Marina. Approximately 300 skiboats, 26 feet in length, operating at high speeds participate in this event and could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area during the event may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.)

§ 100.1102 [Amended]

2. Section 100.1102 is amended by adding the following event to Table 1:

International Waterski Race

Sponsor: Parker Area Chamber of Commerce.
Date: March.
Location: The Colorado River, commencing at La Paz County Park, thence proceeding southerly along the natural flow of the river to mile 179 of the river (approximately ½ mile south of Bluewater Marina).

Dated: July 7, 1989.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 89-18049 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY-052; FRL-3621-7]

Designation of Areas for Air Quality Planning Purposes; Redesignation of a Kentucky Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve the request by the Commonwealth of Kentucky that Jefferson County be redesignated from nonattainment to attainment for carbon monoxide (CO). The redesignation is based on eight quarters of ambient monitoring data that show no violations of the CO standards and on implementation of the EPA-approved CO control strategies.

DATE: The public is invited to submit written comments on this proposed action. To be considered, comments must reach us on or before September 1, 1989.

ADDRESSES: Written comments should be addressed to Kay Prince of the Region IV Air Programs Branch (see

EPA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal working hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

Jefferson County Air Pollution Control District, 914 East Broadway, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and phone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, **Federal Register** (43 FR 8962) EPA designated Jefferson County, Kentucky as nonattainment for CO. The Commonwealth was therefore required to revise their State Implementation Plan (SIP) for CO. Through implementation of the control strategy contained in its 1982 Part D SIP revisions, Kentucky demonstrated attainment of the CO standard by December 31, 1987. EPA fully approved these revisions on October 9, 1984, **Federal Register** (49 FR 39547).

Kentucky has requested that EPA change the attainment status of Jefferson County from nonattainment to attainment for CO. In order to redesignate CO nonattainment area, EPA policy requires the most recent eight consecutive quarters of quality assured, representative ambient air quality data showing no violations plus evidence of an implemented control strategy that EPA had fully approved. In December 1985, the CO monitoring sites located at 2nd Street and 5th Street were shut down due to renovation activities in the downtown area of Louisville. During 1985, there was one exceedance of the eight-hour standard at the 2nd Street location. One of these monitors was relocated on W Muhammad Ali Boulevard and the other on Goldsmith Lane. Both sites were selected by EPA personnel. Kentucky has submitted ambient air quality data collected from the Muhammad Ali Boulevard and Goldsmith Lane sites as well as the site located at Fire Station #20. There were no exceedances of either the one-hour or eight-hour standards from March 1987 through April 1989 at either of the relocated sites. From 1985 through the first quarter of 1989, there was only one exceedance of the eight-hour standard at the Fire Station #20 location. Therefore, there were no violations of either the one-hour or the eight-hour standard during the most recent eight quarters.

Kentucky has also submitted evidence of implementation of the control strategies required by the SIP for Jefferson County. The required vehicle inspection and maintenance (I/M) program has been adopted and implemented in Jefferson County. The submittal included a copy of Regulation 8, Vehicle Exhaust Testing Requirements; the annual operating report for calendar years 1985, 1986 and 1987; a copy of a report of an EPA audit of Jefferson County's Vehicle Exhaust Testing (VET) Program showing that the program exceeds the RACT requirements; and an approved contract for continuation of the VET through June 30, 1991.

Kentucky also submitted information regarding the status of the 34 TCMs contained in the SIP. Twenty six of the TCMs have been completed, three are under construction at this time and nearing completion, and two have been fully funded with start of construction being imminent. On January 3, 1989, Evelyn L. Waldrop, Director, Physical and Environmental Services Cabinet, sent a letter to EPA Region IV stating that the funds for completion of these two TCMs would not be diverted to other projects. The remaining three TCMs have been cancelled due to the following reasons:

1. Hill Street—This TCM was included in the SIP erroneously. The project is related to safety rather than air quality. Traffic counts and a Volume 9 screening model and impact were submitted to support the calculation (see TSD).

2. KY 1631—This TCM has been cancelled due to the planned expansion of Standiford Field Airport. The intersection will be removed entirely as a result of the expansion.

3. Greenwood Road—This TCM was included in the SIP because an analysis indicated a hot spot would exist due to a proposal to locate a large Sears shopping center at the corner of Greenwood Road. However, zoning was not granted and the shopping center was never constructed. Traffic counts and a Volume 9 screening model input and output were submitted to support this cancellation (see TSD).

It is Region IV's opinion that cancellation of these TCMs is justifiable and will not adversely affect the continuing attainment of the CO standards.

Kentucky further submitted information regarding the implementation of the ridesharing commitments. Therefore, the requirements of the approved EPA control strategy have been fully implemented in Jefferson County.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Proposed Action

EPA is today proposing to approve the redesignation of the Jefferson County CO nonattainment area to attainment on the basis of eight quarters of air quality data and on a fully implemented control strategy approved by EPA. The public is invited to participate in this rulemaking by submitting written comments on these proposed actions.

Under 5 U.S.C. 605(b), I certify that this request will not have significant impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 40 U.S.C. 7401-7642.

Dated: March 17, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 89-18059 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 620, 672 and 675

RIN 0648-AC72

Groundfish of the Gulf of Alaska and the Bering Sea/Aleutian Islands

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

ACTION: Notice of availability amendments to fishery management plans and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council has submitted Amendment 13 to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands Area and Amendment 18 to the Fishery Management Plan for Groundfish of the Gulf of Alaska for Secretarial review and is requesting comments from the public. Copies of the

amendments may be obtained from the address below.

DATE: Comments on the amendments should be submitted on or before September 27, 1989.

ADDRESS: All comments should be sent to Steven Pennoyer, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802.

Copies of the amendments and the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (NMFS, Alaska Region), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

If approved Amendment 13 will make the following changes to the Bering Sea/Aleutian Islands plan: (1) Allocate sablefish total allowable catch in the BSAI area between fixed and trawl gear; (2) establish a procedure to set fishing seasons on an annual basis by regulatory amendment; (3) create seasonal groundfish fishing closed zones around the Walrus Islands and Cape Pierce; (4) establish a new recordkeeping and data reporting system; (5) establish a new observer program on domestic fishing and/or processing vessels and at shore based processing plants; and (6) clarify the authority of the Secretary to split or combine species or species groups within the target species category.

If approved Amendment 18 will modify the Gulf of Alaska Groundfish plan and implementing regulations as described in items 2, 4, 5, and 6 above. In addition, it will: (7) Establish a Shelikof District in the Central Regulatory area of the Gulf of Alaska; (8) suspend the Gulf of Alaska halibut prohibited species catch framework for all of 1990, implement halibut prohibited species catch limits of 2000 metric tons for trawl gear and 750 metric tons for fixed gear for the calendar year 1990, and reinstitute the framework for 1991; and (9) implement and revise bottom trawl closures around Kodiak Island to protect crab stocks.

Regulations proposed by the North Pacific Fishery Management Council and based on these amendments are scheduled to be published within 15 days.

List of Subjects

50 CFR Part 611

Foreign fishing.

50 CFR Part 620

General provisions for domestic fisheries.

50 CFR Part 672

Groundfish of the Gulf of Alaska.

50 CFR Part 675

Groundfish of the Bering Sea/Aleutian Islands.

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

Dated: July 28, 1989.

Richard H. Schaefer,

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

[FR Doc. 89–18023 Filed 7–28–89; 12:00 pm]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 655

[Docket No. 90764–9164]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Notice of preliminary initial specifications for 1990 and request for comments.

SUMMARY: NOAA issues this notice to propose preliminary initial specifications for the 1990 fishing year for Atlantic mackerel. Regulations governing this fishery require the Secretary of Commerce (Secretary) to propose for public comment preliminary initial specifications for the coming fishing year. This action provides information and requests comments on NOAA's determination of the initial specifications for the 1990 fishing year.

DATE: Comments must be received on or before September 1, 1989.

ADDRESS: Send comments to Kathi L. Rodrigues, Northeast Region, One Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope, "Comments—Atlantic Mackerel Annual Specifications."

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–9324.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) (51 FR 10547, March 27, 1986) as amended, stipulate at 50 CFR 655.22(b) that the Secretary will publish a notice specifying the preliminary initial annual amounts of the initial optimum yield (IOY) as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species.

Procedures for determining the initial annual amounts are found in §§ 655.21 and 655.22 and, pursuant to those regulations, the Secretary is required to publish this notice on or about November 1 of each year and to provide a 30-day comment period on the preliminary specifications. U.S. businessmen involved in the mackerel industry have expressed dissatisfaction with strict adherence to this schedule because it does not afford sufficient time for formulating business plans, arranging contracts and other preparations necessary to engage in foreign joint ventures beginning on January 1. Therefore, both the New England and MidAtlantic Fishery Management Councils, and NOAA have agreed to publish the proposed specifications for Atlantic mackerel sooner than the deadline of November 1 identified at § 655.22(b). This action is consistent with the FMP and implementing regulations because the FMP identifies November 1 to be the latest date for the Secretary to publish Atlantic Mackerel initial specifications. Specifications for *Loligo* and *Illex* squids and butterfish will be determined and published at a later date and are in compliance with the FMP schedule.

These proposed specifications are based on recommendations submitted by the Mid-Atlantic Fishery Management Council (Council) the lead Council for the FMP, and the New England Fishery Management Council. The Council's recommendations and supporting analysis are available for inspection at the above address during the comment period.

The following table lists the preliminary initial specifications in metric tons for Atlantic mackerel. These initial specifications are the amounts that the Regional Director, Northeast Region, NMFS, is proposing for the 1990

fishing year beginning January 1.

PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL FOR THE 1990 FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1990

[Metric tons]

ABC	[a] 368,000
IOY	83,000
DAH	[b] 59,000
DAP	20,000
JVP	9,000
TALFF	[c] 24,000

[a] IOY can rise to this amount, according to the FMP.

[b] Includes 15,000 mt projected recreational catch based on the formula contained in the regulations plus an additional 15,000 mt to promote recreational use.

[c] Foreign partner is required to purchase JVP and U.S. processed product in the ratio 8 mt TALFF to 3 mt JVP and 2 mt U.S. product. One-third of a venture's obligation to purchase U.S. processed product may be substituted by a purchase of JVP in the ratio of 3 to 1. The ratio may therefore be expressed as 8 to 0 and 3 or, 8 to 6 and 1 (8 to 9 and 0 is unacceptable). Export declaration forms are acceptable as proof of purchase.

The proposed 1990 Atlantic mackerel ABC, calculated according to the formula at § 655.21(b)(2)(i), is 368,000 mt. An Atlantic mackerel IOY is proposed at a level that allows for TALFF and JVP amounts of 24,000 mt and 9,000 mt, respectively. These amounts are lower than in 1989 and considerably lower than previous years. They reflect a commitment by the Council to take the necessary steps toward Americanization of the fishery and development of the U.S. industry.

The Council's recommendations for the mackerel IOY were made after reviewing the nine economic factors specified in the FMP and contained at § 655.21(b)(2)(ii) and after consideration of public testimony from industry members. The Council's policy for development of U.S. fisheries has been to stimulate growth and investment of the domestic industry with a concurrent phasing-out of foreign participation. The primary mechanism for this development has been to condition directed foreign fishing allocations on the purchase of U.S. over-the-side and shore-produced product. It should be understood that both of these products must originate in U.S. waters.

In proposing the IOY, the Regional Director has taken into consideration economic, resource, and social factors which include information concerning the recreational fishery, market analysis, the capacity and intent of domestic processors, investment in new equipment, etc. Indications are that expansion of U.S. harvesting and processing capacity is occurring, both on shore and in at-sea processing capability, sufficient to achieve the DAP portion of the proposed IOY. In addition, indications are that at least two states may report record recreational catches when survey results are complete. Although environmental factors are largely responsible, the high level of stock abundance may also be a contributing factor to good recreational catches. Many believe opportunities for U.S. processed mackerel will expand as world mackerel resources decline.

U.S. expansion efforts are currently being hampered by some trade barriers and the inability of the domestic harvesters and processors to achieve the economies of scale that would ensure competitiveness in the world marketplace. The Council believes that the industry is still in the stage of development at which some degree of foreign participation in the fishery is still needed. In fact, the Council continues to demonstrate its willingness to provide opportunities that can prove mutually beneficial to foreign and domestic joint ventures consonant with its policy goal to promote full domestic involvement in all aspects of the fishery.

The Regional Director also has considered the status of the resource in proposing the initial IOY. The current stock biomass estimate for the Northwestern Atlantic mackerel stock is in excess of one million metric tons. The stock is sufficiently large that density dependent factors are negatively impacting individual growth rates and sexual maturity. Northeast Fishery Center biologists and the Science and Statistical Committee of the Council have advised that 150,000 to 200,000 mt could be harvested without appreciably affecting the size of the spawning stock. This level of harvest could stabilize or reverse the negative trends associated with the high stock density.

The Council's policy has been, and continues to be, to develop the capacity of the U.S. industry to harvest, process, and market the optimum yield of the Atlantic mackerel resource. It is the Council's intent to accomplish this by conditioning TALFF allocations on purchases of U.S. harvested and processed product. This arrangement is intended to foster business relationships of mutual benefit between U.S. and foreign entities upon which domestic development relies. This strategy is meeting with slow but steady success as U.S. commercial catches have increased over the past several years.

This year, U.S. companies, having sold most of the available processed mackerel, provided the Regional Director with copies of contracts to supply foreign entities with processed or over-the-side product before the 1989 fishing year expires. This enabled foreign nations to receive additional releases of TALFF in 1989. The Council and the Regional Director fully expect both the U.S. and foreign entities to fulfill these obligations. If these obligations are met, several purposes will be served: 1) harvest from the Northwestern Atlantic stock may exceed 100,000 mt in 1989, alleviating density dependent effects (includes Canadian and recreational catch); 2) the U.S. industry will benefit directly from the sale of product; 3) TALFF allocation decisions, which are based upon the factors outlined in section 201(e)(1)(E) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), will be facilitated by compliance with the purchase conditions.

The Regional Director believes that the IOY level proposed for the 1990 fishing year will promote the continued growth of the domestic industry, thereby providing the greatest overall benefit to the United States. This level is proposed to encourage continued growth in both the harvesting (commercial and recreational) and processing sectors of the U.S. fishing industry in accordance with the purposes of the Magnuson Act. These proposed specifications were selected after meetings and discussions with the Council, considering information from industry groups and foreign national representatives, and reviewing the performance of U.S. fishermen, processors, projected domestic landings, stock assessments, and joint venture information.

Based on consideration of all of the above factors, the Regional Director believes that the proposed specifications recommended by the Council will stimulate the development of all sectors of the U.S. mackerel industry, leading to increased benefits to the Nation.

The Council has recommended that several conditions be placed on allocations of TALFF. These recommendations are intended to minimize harvesting conflicts among users and minimize impacts on other regional resources. The following are the recommended conditions that the Regional Director is proposing for the 1990 fishing year and on which he is seeking comment:

1. Directed foreign fishing for Atlantic mackerel should be prohibited south of 37°30' N. latitude. Joint ventures are allowed, but river herring bycatch south of that latitude may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; directed foreign fishing for Atlantic mackerel (allowed

north of 37°30' N. latitude and 20 miles seaward only) should be limited to a 1 percent river herring bycatch; river herring TALFF should be 100 mt with the possibility of an increase to 200 mt.

2. Purchase requirements for foreign allocations should be set at a ratio of 8 mt TALFF to 3 mt JVP and 2 mt U.S. processed product. One third of a foreign partner's obligation to purchase U.S. processed product may be substituted by a purchase of JVP in the ratio of 3 to 1. The ratio may be expressed as 8 to 0 and 3 or, 8 to 6 and 1 (8 to 9 and 0 is unacceptable).

3. Allocations should be distributed in increments in order to ensure compliance with the 8:3 and 2 ratio by the end of the fishing year.

4. The number of foreign permits should be limited to the vessels needed to harvest the particular allocation.

5. The Regional Director should do everything within his power to reduce impacts on marine mammals in the Atlantic mackerel fisheries.

6. Increases in IOY during the year should not exceed 200,000 mt.

7. TALFF should not exceed 24,000 mt.

8. Applications from a particular nation for joint ventures and directed foreign fishing for 1990 should not be considered until that nation's purchase obligations for 1989 have been fulfilled.

The Regional Director is specifically seeking additional information and comment on proposal seven because there is insufficient evidence to determine that this level of TALFF, and no more, would conform with § 655.21(b)(2)(v) which provides that IOY may be adjusted to produce maximum net benefits to the United States. The Council's recommendations, and all public comments on the annual specifications and conditions, will be considered in the final determination. A notice of final determination of the initial amounts and responses to public comments is expected to be published in the **Federal Register** on or about August 1, 1989.

Classification

This action is authorized by 50 CFR Part 655 and complies with Executive Order 12291.

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

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: July 27, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-18024 Filed 8-1-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

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

Farmers Home Administration

Submission of Information Collection to OMB (Under Paperwork Reduction Act and 5 CFR Part 1320)

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for emergency clearance under 5 CFR 1320.18. The agency solicits comments on subject submission. The action is necessary in order to comply with the Agricultural Credit Act of 1987 (Pub. L. 100–233) and the Consolidated Farm and Rural Development Act.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: *Lisa Grove,* USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Edward R. Yaxley, Jr., FmHA Farmer Programs, USDA Room 5449-South USDA Building, 14th and Independence Avenue, SW., Washington, DC 20250—202–447–6293.

SUPPLEMENTARY INFORMATION: The agency has submitted the proposal for collection of information as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is requested that OMB approve this submission within seven days.

The supporting statement below explains the revision, and the need and justification for the revision of the Form FmHA 440–32, Request For Statement of Debts and Collateral.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507

Supporting Statement

Form FmHA 440–32, Statement of Debts and Collateral

(1) The Consolidated Farm and Rural Development Act authorizes the Secretary of Agriculture to make insured loans to eligible farmers and ranches for farm operating (7 CFR 1941–A) and emergency loans for operating purposes (7 CFR 1945–D). When loans are to be secured by chattel property, the property security instruments must be recorded within that particular State. The Uniform Commercial Code (UCC) was adopted by most states in 1965 and 1966. It dictates the process by which each state perfect security instruments. The UCC security and amount of debt(s) owed to other secured parties be obtained through a written request from the applicant or debtor. Form FmHA 440–32 is used for that purpose. It is also designated to obtain the necessary information when chattel debts are to be refinanced. The information requested on the form is necessary to determine if FmHA can obtain the desired lien(s) for the loan(s). This form has been in existence for many years, and has provided FmHA County Offices with the required information during the loan making process. Along with providing the above information, the form shows the balance, due date, delinquency, interest rate, and collateral on the debt(s) in question, assisting in the loan making decision.

The Agricultural Credit Act of 1987 (Pub. L. 100–233) enacted on January 6, 1988, provided for additional Loan Servicing and Preservation Program benefits for FmHA Farmer Programs borrowers. On September 14, 1988, FmHA published regulations in the **Federal Register** to implement these provisions of the Act. The provisions of the Act for restructuring an FmHA debt for a Farmer Programs borrower make it essential that FmHA have accurate data from a borrower's creditor for making the calculations for restructuring the borrower's debt, therefore, it was necessary to revise the form to expand its use so information could be collected from all creditors. Previously, some information was collected by the use of Form FmHA 410–8, Applicant Reference Letter. However, this form did not provide sufficient information regarding the amount of installments, interest rates and etc. Therefore, the revised Form FmHA 440–32 will eliminate the need for the use of Form FmHA 410–B for Farmer Programs borrowers.

(2) The revisions to the form are as follows:

(a) The form will be sent to all of an applicant's creditors rather than just to creditors with UCC liens.

(b) The form requests information on any debt a borrower might have rather than just credit for a UCC lien.

(c) The form requests information on any lien a creditor might hold rather than just a UCC lien.

(d) A statement is added for a creditor to check a block to indicate the applicant's repayment record. The form is signed by any creditor the applicant is indebted to rather than just debts to UCC creditors.

Form FmHA 440–32 is partially completed by and signed by the applicant and forwarded to the respondent for completion. Respondents mainly consist of bankers, and small businessmen, such as feed, seed, and fertilizer companies. They list debts owed by the FmHA applicant. This assures that the Government can obtain proper security when making or servicing a loan. Without collection of this information, FmHA would not have verification as to their lien position and would not have exact balances on the debts in question.

(3) Many lenders have credit information available through computers, thus allowing quick and easy access to the requested data. The use of the revised form will eliminate the need to use the Form FmHA 410–8 for information from creditors without UCC liens.

(4) FmHA requests this information from respondents only at the time of application.

(5) There is no other means by which a secured party can furnish the information. There is no similar information that is available.

(6) There is little burden on the respondents to complete this form. Their records are easily accessible and all information can be quickly transferred to this form. The form is designed to minimize the burden. FmHA does not ask for more than is absolutely needed.

(7) The form is only completed when a farmer applies for FmHA assistance and has other creditors. This is keeping the collection of this information to the absolute minimum.

(8) The data collection is not inconsistent with the guidelines in 5 CFR 1320.6.

(9) The Agricultural Credit Act of 1987 (Pub. L. 100–233) enacted on January 6, 1988, requires FmHA to send notices to inform Farmer Programs borrowers that are 180 days or more delinquent about the Primary and Preservation Programs contained in the act. The credit information submitted on the Form FmHA 440–32 is essential in processing applications for these programs. A new group of borrowers will become 180 days delinquent on August 1, 1989. The revised form is essential for collecting accurate information on the borrower's debts from other creditors. The reason for the emergency clearance request is that the existing form is not presently adequate for this purpose as it only collects data from creditors that have uniform Commercial Code liens filed. The amount of debt a borrower has with other lenders is an important part in determining how much debt the Government will write down or write off for a borrower. Therefore, it is urgent that the revised form be available for use when the notices are sent out to delinquent borrowers in August. Immediate clearance is needed to do this. Therefore, persons outside the Agency were not contacted. However, when other lenders were contacted on the revisions of the form for October 1985, they indicated the form was self-explanatory and easy to complete. All those lenders stated the information requested on the form was easily accessible to them and took about ten minutes to complete. They understood the use of the form and the value of the information. The comments should still apply to the revised form as the revision mainly expands the use of the form from only UCC creditors to all creditors and the type of information requested is very similar.

(10) FmHA is the primary user of the information collected. Under the Freedom of Information Act, the general public can request most data requested of lenders and borrowers by FmHA. No assurance of confidentiality is provided to respondents.

(11) No questions of a sensitive nature are required by Form FmHA 440–32.

(12) The estimated annual cost to the Government for the use of this form is $266,667. This includes all the administrative and overhead costs. Based on the recent decline in loan applications and borrowers it is estimated that approximately 50,000 applications will be filed per year, with an average of five forms prepared by the respondents per application, for a total of 250,000 responses. The cost of the form as a burden to the public was computed on the basis of $7.50 per hour. This was arrived at by estimating the average salary for the respondents' secretary/ bookkeeper and the applicant. The hourly cost was then multiplied by the burden hours. Therefore, the total public cost is estimated to be $468,750 per year.

(13) FmHA made a total of 37,731 insured and guaranteed Farmer Programs loans in fiscal year 1988. As of July 12, 1989, FmHA has made 33,592 insured and guaranteed Farmer Programs loans for fiscal year 1989. Based on the latest delinquency report, it is estimated that about 15,000 delinquent borrowers will request servicing assistance per year. Based on the above it is estimated that about 50,000 applicants will request FmHA loans or servicing assistance per year. An average of five forms per applicant for 50,000 applicants is a total of 250,000 creditor responses for the year.

Based on our long term experience for the use of the form, it takes the applicant about five minutes and the creditor about ten minutes to complete each form. With 250,000 responses the total annual burden would be 62,500 man-hours.

(14) There has been a recent decline in Farmer Program applications which is expected to continue. The provisions of the Agricultural Credit Act of 1987 substantially decreased the number of FmHA delinquent borrowers. The debt write-down provision of the Act should reduce the number of existing borrowers that will become delinquent in the future.

The applicant's time for handling the form and the use of the form for servicing was previously overlooked in calculating the burden. This has increased the respondent's time for completing the form. However, due to the decline in applicants, the total public burden is lessened. The elimination of the use of Form FmHA 410–8 has increased the use of the number of forms per applicant but overall has not greatly changed the number of total forms used for credit information.

(15) The information will not be published for statistical use.

Dated: July 27, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–17953 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

Trail Plan for Sequoia National Forest, Fresno, Kern and Tulare Counties, California; Intention To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement to determine future management practices for the trail system on the Sequoia National Forest.

The Sequoia National Forest Land and Resource Management Plan has been prepared. Management Direction in the Management Plan calls for trail system planning to provide a comprehensive look at trails and identification of their specific uses.

A range of alternatives will be considered for the Trail Plan. One of these will be "no action". Other alternatives will provide a wide range of themes for managing use and development of the trail system on the Forest. Alternatives will consider what types of trail uses will be allowed in specific parts of the Forest, where users will be allowed or encouraged, what new facilities are needed or desired, and how to manage the selected combination of uses and facilities.

Federal, State, and local agencies; user groups; and other individuals or organizations who may be interested in or affected by the decision have been invited to participate in the scoping process. The scoping process began in November, 1988 and will continue during preparation of the draft environmental impact statement. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

The California Department of Fish and Game and the U.S. Fish and Wildlife Service will be invited to participate as cooperating agencies. Potential impacts on threatened and endangered species habitat will be evaluated.

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review and comment by February, 1990. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 90 days from the date of the EPA's published notice of availability. All persons interested in the proposed projects are urged to participate at that time. Comments on the draft EIS should be as specific as

possible and may address the adequacy of the EIS or the merits of the alternatives considered. (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.) In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewers position and contentions, Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service in a timely manner so the agency can respond to them in the final EIS.

After the comment period ends on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final (EIS). The final EIS is scheduled to be complete by October, 1990. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding these project propsals. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal.

James A. Crates, Forest Supervisor, Sequoia National Forest, Porterville, California, is the responsible official. Written comments and suggestions concerning the analysis should be sent to James A. Crates, Forest Supervisor, Sequoia National Forest, 900 West Grand Avenue, Porterville, California 93257.

Questions about the proposed action and environmental impact statement should be directed to James W. Whitfield, Trail Planner, at the above address, phone 209–784–1500.

Dated: July 25, 1989.

James Crates,

Forest Supervisor.

[FR Doc. 89–17994 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–11–M

Special Uses Permit Holder Housing

AGENCY: Forest Service, USDA.

ACTION: Notice; reissuance of policy.

SUMMARY: The Forest Service gives notice that it is reissuing direction governing when permittee housing may be approved within a permit area on National Forest System land. This policy was previously issued as Interim Directive No. 42, April 24, 1985, to Forest Service Manual Chapter 2720. The interim directive has expired. The policy is being reissued as Amendment No. 108. While the text has been edited for clarity, there is no substantive change in the policy.

EFFECTIVE DATE: This policy is effective September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to John Shilling, Recreation Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 382–9426.

SUPPLEMENTARY INFORMATION: The Forest Service authorizes and administers under special use permit a number of large recreational complexes on National Forest System lands developed and operated through private enterprise. Examples include ski areas and year-round resorts. The large acreages, substantial investments in property and equipment, and remoteness of some of these developments may require the permittee or the permittee's employees to reside at the site. Forest Service policy is to allow such on-site housing where there is justification. The policy being issued as Amendment No. to Chapter 2340 continues direction to Forest Service personnel on when to approve such housing. The reissuance of this direction represents no substantive change in policy, although the language has been edited to improve clarity.

The text of the amendment as it is being issued in the Forest Service Manual is set out at the end of this notice.

Dated: July 20, 1989.

Larry D. Henson,

Associate Deputy Chief.

Forest Service Manual

Chapter 2340—Privately Provided Recreation Opportunities

Amendment No. 108; Effective September 1, 1989.

2341.5—Permittee Employee Housing. Some special recreation uses, such as ski areas and year-round resorts, may require on-site housing for the permittee and/or employees of the permittee to adequately protect property and provide for public safety. The authorized officer shall carefully evaluate the need and justification for permittee housing within a permit area and shall make the determination in compliance with the appropriate environmental analysis and documentation requirements set forth in FSM 1950 and FSH 1909.15.

An authorized officer may approve permittee housing within a permit area if the following conditions are met:

1. Provision of permittee housing is consistent with the management direction and guidelines of the forest land and resource management plan for the area.

2. There is a clear and convincing need for 24-hour, on-site property protection, round-the-clock public safety, and/or intermittent emergency service at other than normal operating hours and the commuting time between the permit area and the nearest private property available for permittee housing exceeds one hour.

Ownership of housing provided for the holder of the permit or employees of the holder must be vested in the holder.

[FR Doc. 89–18030 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Senior Executive Service; Membership of General and Limited Performance Review Boards

The purpose of the General Performance Review Board (GPRB) is to review performance agreements, appraisals, ratings, and recommended action pertaining to employees in the Senior Executive Service and to make appropriate recommendations to the Director of NIST concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives. The GPRB performs its review functions for all NIST senior executives except those who are members of the NIST Executive Board and those who are members of the GPRB.

The Limited Performance Review Board (LPRB) performs its review functions for all NIST senior executives who are members of the NIST Executive Board (except the NIST Deputy Director) and those senior executives who are members of the NIST GPRB.

The individuals who have been newly appointed by the Acting Director of NIST to membership on the GPRB and

LPRB or have had their term of membership extended are listed below:

GPRB

Mr. E. Larry Heacock, Director, Office of Satellite Operations, National Environmental Satellite Data and Information Service, National Oceanic and Atmospheric Administration, Washington, DC 20233. Appointment expires: 12/31/90.

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, National Measurement Laboratory, National Institute of Standards and Technology, Boulder, CO 80303. Appointment expires: 12/31/90.

Dr. Shelton Wiederhorn, Scientific Assistant to the Director, Institute for Materials Science and Engineering, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/90.

LPRB

Dr. Burton H. Colvin (Chair), Director, Office of Academic Affairs, Office of the Associate Director for International and Academic Affairs, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/90.

Mr. Thomas N. Pyke, Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Washington, DC 20233. Appointment expires: 12/31/90.

The full membership and expiration dates of the GPRB and LPRB are listed below:

GPRB

Dr. James E. Hill (Chair), Chief, Building Environment Division, National Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/89.

Mr. Allen L. Hankinson, Chief, Systems and Software Technology Division, National Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/89.

Mr. E. Larry Heacock, Director, Office of Satellite Operations, National Environmental Satellite Data and Information Service, National Oceanic and Atmospheric Administration, Washington, DC 20233. Appointment expires: 12/31/90

Dr. Willie E. May, Chief, Organic Analytical Research Division, National Measurement Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/89

Dr. Alvin H. Sher, Assistant Director for Management Information Technology, National Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/89

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, National Measurement Laboratory, National Institute of Standards and Technology, Boulder, CO 80303. Appointment expires: 12/31/90

Dr. Sheldon Wiederhorn, Scientific Assistant to the Director, Institute for Materials Science and Engineering, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/90

LPRB

Dr. Burton H. Colvin, (Chair), Director, Office of Academic Affairs, Office of the Associate Director for International and Academic Affairs, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/90

Mr. Thomas N. Pyke, Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Washington, DC 20233, Appointment expires: 12/31/90

Dr. Jeffrey D. Rosendhal, Assistant Associate Administrator for Space Science and Applications (Science), National Aeronautics and Space Administration, Washington, DC 20546. Appointment expires: 12/31/89.

For further information contact Mrs. Elizabeth W. Stroud, Chief, Office of Personnel and Civil Rights, National Institute of Standards and Technology, Gaithersburg, MD, telephone 301–975–3000.

Date: July 27, 1989.

Raymond G. Kammer,

Acting Director

[FR Doc. 89–18002 Filed 8–1–89; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on August 10–11, 1989, at the Colonial Hilton Inn, Routes 128/95, Wakefield, MA. The Council will begin meeting on August 10 at 1 p.m. The meeting will reconvene on August 11 at 9 a.m., and will adjourn when the agenda items have been completed.

The first day, discussions will include reports from the Enforcement, Lobster and Scallop Oversight Committees. On the second morning, election of Council officers will take place, followed by reports of the Foreign Fishing, Habitat and Groundfish Committees. There will be brief presentations on government financial assistance programs and United States/Canada fisheries issues. and also an update from the Large Pelagics Committee.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: July 27, 1989.

Richard H. Schaefer,

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

[FR Doc. 89–18025 Filed 8–1–89; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will hold a public meeting on August 10–11, 1989, at the National Marine Fisheries Service, Tiburon Laboratory, 3150 Paradise Drive, Tiburon, CA. The GMT will begin meeting at 8 a.m., on August 11. The proposed agenda will include review of draft stock assessment documents, projections of 1989 catch levels for groundfish species, analysis of proposed measures to extend the joint venture season for Pacific whiting, and long-term sablefish management. Other issues related to West Coast groundfish fisheries management may also be discussed.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 27, 1989.

Richard H. Schaefer,

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

[FR Doc. 89–18026 Filed 8–1–89; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's groundfish fishery management plan (FMP) Rewrite Oversight Group (ROG) will hold a public meeting on August 15–16, 1989, at the Metro Center Building, 2000 SW. First Avenue, Portland, OR. On August 15 the ROG will begin meeting at 8 a.m., in room 145, and on August 16 will continue meeting in room 440. The ROG will review changes made to the Groundfish FMP Amendment #4 document subsequent to the past meeting, and will also develop reporting requirements for catcher/processor and floating processor vessels.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 27, 1989.

Richard H. Schaefer,

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

[FR Doc. 89–18027 Filed 8–1–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

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

ACTION: Issuance of Scientific Research Permit No. 677.

SUMMARY: On May 10 and June 20, 1989, notice was published in the **Federal Register** (54 FR 20174; 54 FR 25891) that an application (P442) had been filed by Audrey Dianne Kopec, Romberg Tiburon Center for Environmental Studies, San Francisco State University, to capture, tag and release a maximum of 100 harbor seals (*Phoca vitulina richardsi*) annually in the San Francisco Bay area. An additional 120 seals may be harassed during tagging operations.

Notice is hereby given that on July 27, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended, (16 U.S.C. 1361–1407) and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the National Marine Fisheries Service issued a Permit for the above activities subject to the Special Conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Rm. 7330, Silver Spring, Maryland 20910; and

Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: July 27, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–17981 Filed 8–1–89; 8:45 am]

BILLING CODE 3510–22–M

[P396B]

Marine Mammals; Permit Modification Request; John G. Shedd Aquarium

Notice is hereby given that the John G. Shedd Aquarium, 1200 South Lakeshore Drive, Chicago, Illinois 60605, has requested a modification to Permit No. 662, issued on April 28, 1989 (54 FR 19934), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Permit No. 662 authorized the importation of six (6) false killer whales (*Pseudorca crassidens*) from Japan for the purpose of public display. The Holder is asking that the permit be modified to allow the option of importing animals from Japan or collecting animals from the waters in and around all main Hawaiian Islands.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, c/o Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice of modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: July 27, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–17980 Filed 8–1–89; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extending an Import Restraint Period and Increasing a Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

July 28, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a restraint period and increasing a limit.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Memorandum of Understanding dated April 12, 1989.

The Governments of the United States and the United Mexican States agreed to extend the current designated consultation level for Category 239 through December 31, 1989 at an increased level.

The implementation of a specific limit under the Special Regime for Category 239 (see 54 FR 20627, published on May 12, 1989) with a sublimit for products not made of U.S. formed and cut fabrics, is being delayed until January 1, 1990 in order to give importers additional time to prepare the proper certification and documentation required for participation in the Special Regime Program.

Shipments of goods qualifying for entry under the Special Regime must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Mexico. Further requirements for participation in the Special Regime are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; and 53 FR 32421, published on August 25, 1988.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 52461, published on December 28, 1988.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

July 28, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 8, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, imports of cotton and man-made fiber textile products in Category 239, produced or manufactured in Mexico and exported during the seven-month period which began on January 1, 1989 and extends through July 31, 1989.

Effective on August 1, 1989, the directive of May 8, 1989 is being amended to extend the restraint period for Category 239 through December 31, 1989 at an increased level of 550,000 kilograms.[1]

The May 8, 1989 directive is amended further to direct Customs to delay until January 1, 1990 the entry of shipments of U.S. formed and cut parts in Category 239 that are re-exported to the United States from Mexico under the provisions of the Special Regime.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-18110 Filed 7-31-89; 11:15 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intention To Prepare a Draft Environmental Impact Statement for Navigation Channel Improvements at Coos Bay, OR

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: The proposed action is to determine the feasiblity of deepening and/or widening the existing deep-draft navigation channel in Coos Bay from the entrance to river mile 15. This investigation has been authorized by Congress pursuant to local appeals for navigation assistance. The existing navigation channel does not adequately and safely handle some of the larger vessels calling at the port. Prospective traffic and potential economies of scale are such that the Port of Coos Bay could more effectively compete for ocean shipments if it could provide safe access to larger vessels. Questions about the proposed action and DEIS can be answered by: Steven J. Stevens, telephone (503) 326-6096, U.S. Army Corps of Engineers, Portland District, Regulatory and Resources Branch, P.O. Box 2946, Portland, Oregon 97208-2946.

SUPPLEMENTARY INFORMATION: The proposed action, authorized under House Document 151, Ninety-First Congress, First Session, is to determine the feasibility for improvements to the Coos Bay Deep-Draft Navigation project. Alternatives identified thus far include:

(1) Channel deepening and widening;

(2) Channel deepening only;

(3) Addition of turning basins to (1) or (2); and

(4) No action.

Dredging actions would primarily include disposal at approved ocean disposal sites. However, upland disposal alternatives will also be investigated. The feasibility study and DEIS will also address the long term effects of additional channel maintenance activities. The scoping process will formally commence in August 1989 with the issuance of a scoping letter. Federal, state and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the significant issues relating to the potential effects of the alternatives. Potentially significant issues to be addressed in the DEIS which are currently identified include: fisheries impacts; water quality impacts (upper bay); salinity impacts; ocean disposal site impacts; secondary impacts resulting from increased commerce developments. Other environmental review and consultation requirements which will be addressed in conjunction with the DEIS include:

(1) Clean Water Act of 1977;

(2) Fish and Wildlife Coordination Act;

(3) Coastal Zone Management Act of 1972, as amended;

(4) Endangered Species Act of 1973, as amended;

(5) Marine Protection, Research and Sanctuaries Act of 1972, as amended;

(6) Cultural Resources Acts;

(7) Executive Order 11988, Flood Plain Management, 24 May 1977;

(8) Executive Order 11990, Protection of Wetlands, 24 May 1977;

(9) Analysis of Impacts on Prime and Unique Farmlands.

A formal scoping meeting has not been scheduled. The need for a scoping meeting will be determined by the nature and extent of comments received in our scoping letter. As previously stated, the scoping letter will be issued in August 1989. The DEIS is scheduled to be made available to the public in September 1990.

Dated: July 20, 1989.

Charles E. Cowan,

Colonel, Corps of Engineers Commanding.

[FR Doc. 89-18051 Filed 8-1-89; 8:45 am]

BILLING CODE 3710-AR-M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Involvement Notification for Proposed Remedial Action at the Grand Junction Projects Office Site, Grand Junction, CO

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of floodplain/wetlands involvement and opportunity for public comment.

SUMMARY: The U.S. Department of Energy (DOE) proposes to conduct remedial action in the Gunnison River Floodplain at the Grand Junction Projects Office Site where an Atomic Energy Commission pilot uranium mill

was formerly located in Grand Junction, Colorado. Grand Junction is located in the west central portion of Colorado in the center of Mesa County. The site will be cleaned up in accordance with the requirements of the comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended. The proposed remedial action entails removing all contaminated material totaling 81,500 cubic yards, of which 33,400 cubic yards lie within the Gunnison River floodplain. These materials would be hauled to the State Repository at the former Climax Uranium Company Uranium Mill Site in Grand Junction. Contaminated material from the Climax Mill and the State Repository will be permanently stabilized at a disposal site selected by DOE under authority of the Uranium Mill Tailings Radiation Control Act. In accordance with DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR 1022), DOE will include a floodplain/wetlands assessment in the Final Remedial Investigation/Feasibility Study (RI/FS) being prepared for the proposed remedial action. The RI/FS will address disposal of the contaminated material at alternative offsite locations and compare these alternatives to onsite stabilization or performing no remedial action. This proposed action will result in no net loss of wetlands. Further information is available from the DOE at the address shown below.

Comments are due on or before August 18, 1989, and should be sent to the following address: U.S. Department of Energy, Office of Defense Waste and Transportation Management, DP-12, Washington, DC 20545.

All comments should refer to the project title.

Issued at Washington, DC, this 23 day of July 1989, for the United States Department of Energy.

John L. Meinhardt,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 89-18053 Filed 8-1-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-37-NG]

Vesgas Co.; Application To Import Natural Gas From Canada and To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorizations to import natural gas from Canada and to export natural gas to Mexico

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 22, 1989, of an application filed by Vesgas Company (Vesgas) for blanket authorizations to import up to 36,500 MMcf of natural gas from Canada and to export up to 29,200 MMcf of natural gas to Mexico. The application requests that the authorizations be approved for separate two-year terms beginning on the dates that the first import and the first export commence. Vesgas intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 1, 1989.

FOR FURTHER INFORMATION:

William C. Daroff, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9516

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Vesgas, a Colorado corporation, with its principal place of business in Denver, Colorado, proposes to import and export natural gas either for its own account or as a broker or agent on behalf of others. According to the application, the authority requested by Vesgas contemplates the importation of supplies of Canadian natural gas for consumption in U.S. markets, and the exportation of domestically produced natural gas for consumption in Mexican markets. Vesgas requests authority to import gas using existing facilities at any point on the international boundary of the United States and Canada. The applicant also requests authority to export gas at existing pipeline facilities in Texas and Arizona at the international boundary of the United States and Mexico.

According to Vesgas, the specific terms of each import and export transaction would be negotiated on an individual basis, including price and volumes, to reflect market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for

any decision on the application must, however, file a motion to intervene or notice of the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., e.d.t., September 1, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procesures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR Section 590.316.

A copy of the Vesgas application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 19, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89-18054 Filed 8-1-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 89-15; Certification Notice-41]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Cogen Energy Systems, Inc., Salt Lake City, UT	07-24-89	Combined Cycle Cogen	45	Sandy, UT.
Virginia Electric and Power Co., Glen Allen, VA	07-17-89	Simple Cycle	[1] 348	Surry County, VA.

[1] The four (4) turbines presently are rated at 85 megawatts each but will be uprated to 87 megawatts each.

Amendments to the FUA on May 21, 1987, (Public Law 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for self certification procedure.

Issued in Washington, DC on July 27, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy.

[FR Doc. 89-18055 Filed 8-1-89; 8:45am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ST89-3742-000 through ST89-4076-000]

Transcontinental Gas Pipe Corp.; Self-Implementing Transactions

July 27, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to section 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before August 11, 1989.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

A "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines—pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's Regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines—pursuant to § 284.303 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date [2]	Transportation rate (cents/MMBTU)
ST89-3742	Transcontinental Gas Pipe Line Corp	Tenngasco Corp	06-01-89	G-S		
ST89-3743	Transcontinental Gas Pipe Line Corp	PSI, Inc	06-01-89	G-S		
ST89-3744	Transcontinental Gas Pipe Line Corp	Citizens Gas Supply Corp	06-01-89	G-S		
ST89-3745	Transcontinental Gas Pipe Line Corp	Chevron U.S.A., Inc	06-01-89	G-S		
ST89-3746	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	06-01-89	B		
ST89-3747	Transcontinental Gas Pipe Line Corp	Pentex Pipeline Co., Inc	06-01-89	B		
ST89-3748	El Paso Natural Gas Co	Northern States Power Co	06-01-89	B		
ST89-3749	United Gas Pipe Line Co	American Central Gas Cos., Inc	06-01-89	G-S		
ST89-3750	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	06-01-89	G-S		
ST89-3751	United Gas Pipe Line Co	Seagull Marketing Services, Inc	06-01-89	G-S		
ST89-3752	Louisiana Resources Co	Florida Gas Transmission Co	06-01-89	C	10-29-89	26.43
ST89-3753	Questar Pipeline Co	Duncan Oil, Inc	06-02-89	G-S		
ST89-3754	Western Gas Supply Co	Northwest Pipeline Corp	06-02-89	C		
ST89-3755	Western Gas Supply Co	El Paso Natural Gas Co	06-02-89	C		
ST89-3756	Williams Natural Gas Co	American Central Gas Marketing Co	06-02-89	G-S		
ST89-3757	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	06-02-89	B		
ST89-3758	ARKLA Energy Resources	Pontchartrain Natural Gas System	06-02-89	B		
ST89-3759	El Paso Natural Gas Co	B & A Pipeline Co	06-02-89	B		
ST89-3760	United Gas Pipe Line Co	Natural Gas Pipeline Co. of America	06-02-89	G		
ST89-3761	United Gas Pipe Line Co	Laser Marketing Co	06-02-89	G-S		
ST89-3762	Northwest Pipeline Corp	Columbia Aluminum Corp	06-02-89	G-S		
ST89-3763	Northwest Pipeline Corp	Northwest Natural Gas Co	06-02-89	G-S		
ST89-3764	Northwest Pipeline Corp	Koch Hydrocarbons Co	06-02-89	G-S		
ST89-3765	Enogex Inc	Phillips Gas Pipeline Co	06-02-89	C	10-30-89	43.57
ST89-3766	Natural Gas Pipeline Co. of America	Lear Gas Transmission Co	06-02-89	B		
ST89-3767	Natural Gas Pipeline Co. of America	Enron Industrial Natural Gas Co	06-02-89	B		
ST89-3768	Tennessee Gas Pipeline Co	Valley Resources, Inc	06-02-89	B		
ST89-3769	Texas Eastern Transmission Corp	FRM, Inc	06-02-89	B		
ST89-3770	Valero Transmission, L.P	El Paso Natural Gas Co	06-02-89	C		
ST89-3771	Valero Transmission, L.P	El Paso Natural Gas Co	06-02-89	C		
ST89-3772	Valero Transmission, L.P	Valero Interstate Transmission Co	06-02-89	C		
ST89-3773	Valero Transmission, L.P	Texas Eastern Transmission Corp	06-02-89	C		
ST89-3774	Valero Transmission, L.P	Transwestern Pipeline Co	06-02-89	C		
ST89-3775	Kentucky West Virginia Gas Co	Auxier Road Gas Co	06-05-89	B		
ST89-3776	Delhi Gas Pipeline Corp	Northern Indiana Public Service Co	06-05-89	C	11-02-89	01.70
ST89-3777	Gas Co. of NM (Div. Public Serv. Co. NM)	Southern California Gas Co	06-05-89	G-HS		
ST89-3778	United Gas Pipe Line Co	OXY U.S.A., Inc	06-05-89	G-S		
ST89-3779	United Gas Pipe Line Co	Ergon Refining Inc	06-05-89	G-S		
ST89-3780	Transcontinental Gas Pipe Line Corp	United Cities Gas Co., SC Div	06-05-89	B		
ST89-3781	Transcontinental Gas Pipe Line Corp	City of Union	06-05-89	B		
ST89-3782	Natural Gas Pipeline Co. of America	Phillips Petroleum Co	06-05-89	G-S		
ST89-3783	Panhandle Eastern Pipe Line Co	National Steel Corp	06-05-89	G-S		
ST89-3784	Panhandle Eastern Pipe Line Co	Anadarko Trading Co	06-05-89	G-S		
ST89-3785	Panhandle Eastern Pipe Line Co	Archer Daniels Midland Co	06-05-89	G-S		

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date [2]	Transportation rate (cents/MMBTU)
ST89-3786	Panhandle Eastern Pipe Line Co	Access Energy Pipeline Corp	06-05-89	B		
ST89-3787	Panhandle Eastern Pipe Line Co	Access Energy Pipeline Corp	06-05-89	B		
ST89-3788	Panhandle Eastern Pipe Line Co	Kansas Power and Light Co	06-05-89	B		
ST89-3789	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-05-89	B		
ST89-3790	Texas Eastern Transmission Corp	East Ohio Gas Co	06-05-89	B		
ST89-3791	Texas Eastern Transmission Corp	Providence Gas Co	06-05-89	B		
ST89-3792	Texas Eastern Transmission Corp	Commonwealth Gas Services	06-05-89	B		
ST89-3793	Texas Eastern Transmission Corp	Boston Gas Co	06-05-89	B		
ST89-3794	Texas Eastern Transmission Corp	Corning Natural Gas Corp	06-05-89	B		
ST89-3795	Texas Eastern Transmission Corp	Stellar Pipeline Co	06-05-89	B		
ST89-3796	Transcontinental Gas Pipe Line Corp	Southwestern Virginia Gas Co	06-05-89	B		
ST89-3797	Transcontinental Gas Pipe Line Corp	Blacksburg Natural Gas System	06-05-89	B		
ST89-3798	Transcontinental Gas Pipe Line Corp	City of Greer	06-05-89	B		
ST89-3799	Transcontinental Gas Pipe Line Corp	City of Fountain Inn	06-05-89	B		
ST89-3800	Transcontinental Gas Pipe Line Corp	City of Kings Mountain	06-05-89	B		
ST89-3801	Texas Eastern Transmission Corp	ELF Aquitaine, Inc	06-06-89	G-S		
ST89-3802	Texas Eastern Transmission Corp	Catamount Natural Gas, Inc	06-06-89	G-S		
ST89-3803	ONG Transmission Co	Phillips Gas Pipeline Co	06-06-89	C	11-03-89	24.32
ST89-3804	Williams Natural Gas Co	Union Pacific Resources Co	06-06-89	G-S		
ST89-3805	ANR Pipeline Co	PSI, Inc	06-06-89	G-S		
ST89-3806	ANR Pipeline Co	Michigan Gas Utilities Co	06-06-89	B		
ST89-3807	ANR Pipeline Co	Trinity Pipeline Co	06-06-89	G-S		
ST89-3808	ANR Pipeline Co	Northern Illinois Gas Co	06-06-89	B		
ST89-3809	ANR Pipeline Co	Panhandle Trading Co	06-06-89	G-S		
ST89-3810	ANR Pipeline Co	Northern Indiana Public Service Co	06-06-89	B		
ST89-3811	ANR Pipeline Co	Michigan Consolidated Gas Co	06-06-89	B		
ST89-3812	ANR Pipeline Co	Access Energy Pipeline Co	06-06-89	B		
ST89-3813	ANR Pipeline Co	Access Energy Pipeline Co	06-06-89	B		
ST89-3814	ANR Pipeline Co	Michigan Gas Utilities Co	06-06-89	B		
ST89-3815	Northwest Pipeline Corp	Apache Corp	06-06-89	G-S		
ST89-3816	Tennessee Gas Pipeline Co	Delta Pipeline Co	06-07-89	G-S		
ST89-3817	Natural Gas Pipeline Co. of America	Monument Pipeline Co	06-07-89	B		
ST89-3818	ANR Pipeline Co	Northern Illinois Gas Co	06-07-89	B		
ST89-3819	Transcontinental Gas Pipe Line Corp	City of Covington	06-07-89	B		
ST89-3820	Northwest Pipeline Corp	Bonneville Fuels Corp	06-07-89	G-S		
ST89-3821	Transcontinental Gas Pipe Line Corp	City of Linden	06-07-89	B		
ST89-3822	Transcontinental Gas Pipe Line Corp	City of Lawrenceville	06-07-89	B		
ST89-3823	Transcontinental Gas Pipe Line Corp	East Central Alabama Gas District	06-07-89	B		
ST89-3824	Transcontinental Gas Pipe Line Corp	City of Hartwell	06-07-89	B		
ST89-3825	Transcontinental Gas Pipe Line Corp	City of Royston	06-07-89	B		
ST89-3826	Transcontinental Gas Pipe Line Corp	City of Madison	06-07-89	B		
ST89-3827	Transcontinental Gas Pipe Line Corp	City of Social Circle	06-07-89	B		
ST89-3828	Transcontinental Gas Pipe Line Corp	City of Sugar Hill	06-07-89	B		
ST89-3829	Transcontinental Gas Pipe Line Corp	City of Toccoa	06-07-89	B		
ST89-3830	Transcontinental Gas Pipe Line Corp	City of Elberton	06-07-89	B		
ST89-3831	Transcontinental Gas Pipe Line Corp	City of Monroe	06-07-89	B		
ST89-3832	Transcontinental Gas Pipe Line Corp	Tri-County Natural Gas Authority	06-07-89	B		
ST89-3833	Transcontinental Gas Pipe Line Corp	City of Bowman	06-07-89	B		
ST89-3834	Transcontinental Gas Pipe Line Corp	City of Buford	06-07-89	B		
ST89-3835	Transcontinental Gas Pipe Line Corp	City of Commerce	06-07-89	B		
ST89-3836	Transcontinental Gas Pipe Line Corp	City of Winder	06-07-89	B		
ST89-3837	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	06-07-89	B		
ST89-3838	Transcontinental Gas Pipe Line Corp	United Cities Gas Co	06-07-89	B		
ST89-3839	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	06-07-89	B		
ST89-3840	Transcontinental Gas Pipe Line Corp	Valero Transmission, L.P	06-07-89	B		
ST89-3841	Transcontinental Gas Pipe Line Corp	City of Rockford	06-07-89	B		
ST89-3842	Transcontinental Gas Pipe Line Corp	City of Alexander City	06-07-89	B		
ST89-3843	Northern Natural Gas Co	Superior Natural Gas Corp	06-07-89	G-S		
ST89-3844	ONG Transmission Co	ANR Pipeline Co	06-08-89	C	11-05-89	24.32
ST89-3845	Natural Gas Pipeline Co. of America	North Shore Gas Co	06-08-89	B		
ST89-3846	Natural Gas Pipeline Co. of America	AMOCO Production Co	06-08-89	G-S		
ST89-3847	Western Gas Supply Co	El Paso Natural Gas Co	06-09-89	C		
ST89-3848	BP Gas Transmission Co	ANR Pipeline Co., et al	06-09-89	C	11-06-89	13.70
ST89-3849	Colorado Interstate Gas Co	Grace Petroleum Corp	06-08-89	G-S		
ST89-3850	Colorado Interstate Gas Co	Williams Gas Marketing Co	06-08-89	G-S		
ST89-3851	Colorado Interstate Gas Co	NAGASCO Marketing, Inc	06-08-89	G-S		
ST89-3852	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	06-08-89	B		
ST89-3853	Northern Natural Gas Co	Trinity Pipeline, Inc	06-08-89	G-S		
ST89-3854	Stingray Pipeline Co	Eagle Natural Gas Co	06-09-89	K-S		
ST89-3855	Natural Gas Pipeline Co. of America	Illinois Power Co	06-09-89	B		
ST89-3856	Natural Gas Pipeline Co. of America	Total Minatome Corp	06-09-89	G-S		
ST89-3857	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp	06-09-89	B		
ST89-3858	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	06-09-89	B		
ST89-3859	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	06-09-89	B		
ST89-3860	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	06-09-89	B		
ST89-3861	Natural Gas Pipeline Co. Of America	Iowa Electric Light & Power Co	06-09-89	B		
ST89-3862	Tennessee Gas Pipeline Co	Coronado Transmission Co	06-12-89	B		
ST89-3863	Tennessee Gas Pipeline Co	North Alabama Gas District	06-12-89	B		
ST89-3864	Seagull Interstate Corp	Enron Industrial Natural Gas Co	06-12-89	B		

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date [2]	Transportation rate (cents/MMBTU)
ST89-3865	El Paso Natural Gas Co.	BP Gas Inc	06-12-89	G-S		
ST89-3866	Northwest Pipeline Corp	Phillips Gas Marketing Co	06-12-89	G-S		
ST89-3867	Natural Gas Pipeline Co. of America	Illinois Power Co	06-12-89	B		
ST89-3868	Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co	06-12-89	B		
ST89-3869	Natural Gas Pipeline Co. of America	Wisconsin Light & Power Co	06-12-89	B		
ST89-3870	Texas Eastern Transmission Corp	Hope Gas, Inc	06-12-89	B		
ST89-3871	Texas Eastern Transmission Corp	B & A Pipeline Co	06-12-89	B		
ST89-3872	Texas Eastern Transmission Corp	Valero Transmission, L.P	06-12-89	B		
ST89-3873	Texas Eastern Transmission Corp	Long Island Lighting Co	06-12-89	B		
ST89-3874	Texas Eastern Transmission Corp	Bay State Gas Co	06-12-89	B		
ST89-3875	Texas Eastern Transmission Corp	Providence Gas Co	06-12-89	B		
ST89-3876	Columbia Gulf Transmission Co	Tennessee Gas Pipeline Co., et al	06-12-89	G		
ST89-3877	ANR Pipeline Co	Southeastern Michigan Gas Co	06-12-89	B		
ST89-3878	ANR Pipeline Co	BP Gas Transmission Co	06-12-89	B		
ST89-3879	ANR Pipeline Co	Tymco Oil Co	06-12-89	G-S		
ST89-3880	ANR Pipeline Co	Llano, Inc	06-12-89	B		
ST89-3881	ANR Pipeline Co	BP Gas Transmission Co	06-12-89	B		
ST89-3882	Transwestern Pipeline Co	Dolphin Energy, Inc	06-13-89	G-S		
ST89-3883	Northern Natural Gas Co	City of Preston, et al	06-13-89	B		
ST89-3884	El Paso Natural Gas Co	Hadson Gas Systems, Inc	06-13-89	G-S		
ST89-3885	El Paso Natural Gas Co	V.H.C. Gas System, L.P	06-13-89	G-S		
ST89-3886	ONG Transmission Co	Ozark Gas Transmission System	06-14-89	C	11-11-89	24.32
ST89-3887	Panhandle Eastern Pipe Line Co	OXY U.S.A., Inc	06-14-89	G-S		
ST89-3888	Panhandle Eastern Pipe Line Co	Chrysler Motors Corp	06-14-89	G-S		
ST89-3889	Northwest Pipeline Corp	Williamette Industries, Inc	06-14-89	G-S		
ST89-3890	Northwest Pipeline Corp	Columbus Energy Corp	06-14-89	G-S		
ST89-3891	Panhandle Eastern Pipe Line Co	Southeastern Michigan Gas Co	06-14-89	B		
ST89-3892	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	06-15-89	B		
ST89-3893	Natural Gas Pipeline Co. of America	Brooklyn Interstate Natural Gas Corp	06-15-89	G-S		
ST89-3894	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc	06-15-89	B		
ST89-3895	El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM)	06-15-89	B		
ST89-3896	El Paso Natural Gas Co	Independents Gas Services	06-15-89	G-S		
ST89-3897	Transcontinental Gas Pipe Line Corp	City of Bessemer City	06-15-89	B		
ST89-3898	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	06-15-89	G-S		
ST89-3899	Northern Natural Gas Co	Tamarack Energy, Inc	06-15-89	G-S		
ST89-3900	Northern Natural Gas Co	Cabot Energy Marketing Corp	06-15-89	G-S		
ST89-3901	Northern Natural Gas Co	United Texas Transmission Co	06-15-89	B		
ST89-3902	Northern Natural Gas Co	West Texas Gas, Inc	06-15-89	B		
ST89-3903	Cavallo Pipeline Co	Enron Industrial Natural Gas Co	06-15-89	C		
ST89-3904	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	06-15-89	B		
ST89-3905	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	06-15-89	B		
ST89-3906	Southern Natural Gas Co	Enron Gas Marketing, Inc	06-15-89	G-S		
ST89-3907	Southern Natural Gas Co	Texaco, Inc	06-15-89	G-S		
ST89-3908	Southern Natural Gas Co	South Georgia Natural Gas Co	06-15-89	G-S		
ST89-3909	K N Energy, Inc	Williams Gas Co	06-16-89	B		
ST89-3910	Transcontinental Gas Pipe Line Corp	City of Danville	06-16-89	B		
ST89-3911	Transcontinental Gas Pipe Line Corp	City of Laurens	06-16-89	B		
ST89-3912	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	06-16-89	B		
ST89-3913	Texas Gas Transmission Corp	Western Kentucky Gas Co	06-16-89	B		
ST89-3914	Texas Gas Transmission Corp	Western Kentucky Gas Co	06-16-89	B		
ST89-3915	Texas Gas Transmission Corp	Enron Gas Marketing, Inc	06-16-89	G-S		
ST89-3916	Texas Gas Transmission Corp	City of Lafayette	06-16-89	B		
ST89-3917	Texas Gas Transmission Corp	CNG Transmission Corp	06-16-89	G		
ST89-3918	Texas Gas Transmission Corp	Enron Gas Marekting, Inc	06-16-89	G-S		
ST89-3919	Columbia Gulf Transmission Co	Niagara Mohawk Power Corp	06-16-89	B		
ST89-3920	Columbia Gulf Transmission Co	Virginia Natural Gas Co	06-16-89	B		
ST89-3921	Columbia Gulf Transmission Co	Exxon Corp	06-16-89	G-S		
ST89-3922	Columbia Gulf Transmission Co	Exxon Corp	06-16-89	G-S		
ST89-3923	Columbia Gulf Transmission Co	Hunt Oil Co	06-16-89	G-S		
ST89-3924	Columbia Gulf Transmission Co	New York State Electric and Gas Co	06-16-89	B		
ST89-3925	Columbia Gulf Transmission Co	Mobil Natural Gas, Inc	06-16-89	G-S		
ST89-3926	Texas Eastern Transmission Corp	Pennsylvania Gas and Water Co	06-16-89	B		
ST89-3927	Texas Eastern Transmission Corp	Baltimore Gas and Electric Co	06-16-89	B		
ST89-3928	Tennessee Gas Pipeline Co	Consolidated Gas Trans. Corp., et al	06-16-89	G		
ST89-3929	Tennessee Gas Pipeline Co	Meth Corp	06-16-89	G-S		
ST89-3930	Texas Gas Transmission Corp	Westvaco Corp	06-19-89	G-S		
ST89-3931	Texas Gas Transmission Corp	Texaco Gas Marketing, Inc	06-19-89	G-S		
ST89-3932	Texas Gas Transmission Corp	Pennzoil Products Co	06-19-89	G-S		
ST89-3933	Texas Gas Transmission Corp	Borden, Inc	06-19-89	G-S		
ST89-3934	Tennessee Gas Pipeline Co	City of Holyoke Gas and Electric Dept	06-19-89	B		
ST89-3935	Tennessee Gas Pipeline Co	Westfield Gas & Electric Light Dept	06-19-89	B		
ST89-3936	Valero Transmission, L.P	Natural Gas Pipeline Co. of America	06-19-89	C		
ST89-3937	Valero Interstate Transmission Co	Valero Transmission, L.P	06-19-89	B		
ST89-3938	Tennessee Gas Pipeline Co	CNG Transmission Corp	06-19-89	G		
ST89-3939	Transwestern Pipeline Co	V.H.C. Gas System, L.P	06-19-89	G-S		
ST89-3940	United Gas Pipe Line Co	Amalgamated Pipeline Co	06-19-89	B		
ST89-3941	El Paso Natural Gas Co	Meridian Oil Trading, Inc	06-19-89	G-S		
ST89-3942	El Paso Natural Gas Co	Cabot Energy Marketing Corp	06-19-89	G-S		
ST89-3943	El Paso Natural Gas Co	Union Oil Co. of CA	06-19-89	G-S		

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date [2]	Transportation rate (cents/MMBTU)
ST89-3944	Northern Natural Gas Co	NGP Pipeline Co	06-19-89	B		
ST89-3945	Northern Natural Gas Co	Centran Corp	06-19-89	G-S		
ST89-3946	Columbia Gulf Transmission Co	New Orleans Public Service, Inc	06-19-89	B		
ST89-3947	Columbia Gulf Transmission Co	Philbro Distributors Corp	06-19-89	G-S		
ST89-3948	Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	06-19-89	B		
ST89-3949	Enogex Inc	Peoples Natural Gas Co	06-19-89	C	11-16-89	43.57
ST89-3950	Louisiana Resources Co	Anrpipeline Co., et al	06-20-89	C	11-17-89	26.43
ST89-3951	Natural Gas Pipeline Co. of America	Midcon Marketing Corp	06-20-89	G-S		
ST89-3952	South Georgia Natural Gas Co	City of Jasper	06-20-89	B		
ST89-3953	ANR Pipeline Co	Consolidated Fuel Corp	06-20-89	G-S		
ST89-3954	United Gas Pipe Line Co	Excel Resources, Inc	06-20-89	B		
ST89-3955	United Gas Pipe Line Co	Tenngasco Corp	06-20-89	G-S		
ST89-3956	Williston Basin Interstate P/L Co	MGTC, Inc	06-20-89	B		
ST89-3957	Williston Basin Interstate P/L Co	Coastal States Gas Transmission Co	06-20-89	B		
ST89-3958	Williston Basin Interstate P/L Co	Quivira Gas Co	06-20-89	B		
ST89-3959	Williston Basin Interstate P/L Co	Associated Intrastate Pipeline Co	06-20-89	B		
ST89-3960	Williston Basin Interstate P/L Co	MGTC, Inc	06-20-89	B		
ST89-3961	Williston Basin Interstate P/L Co	Quivira Gas Co	06-20-89	B		
ST89-3962	Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	06-20-89	B		
ST89-3963	Williston Basin Interstate P/L Co	Wyoming Gas Co	06-20-89	B		
ST89-3964	Williston Basin Interstate P/L Co	Longhorn Pipeline Co	06-20-89	B		
ST89-3965	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	06-21-89	B		
ST89-3966	ONG Transmission Co	Southern California Gas Co	06-21-89	C	11-18-89	24.32
ST89-3967	Natural Gas Pipeline Co. of America	Total Minatome Corp	06-21-89	G-S		
ST89-3968	Panhandle Eastern Pipe Line Co	Consolidated Fuel Corp	06-21-89	G-S		
ST89-3969	Panhandle Eastern Pipe Line Co	Hadson Gas Systems, Inc	06-21-89	G-S		
ST89-3970	Northern Natural Gas Co	Sonat Marketing Co	06-23-89	G-S		
ST89-3971	United Gas Pipe Line Co	Laser Marketing Co	06-23-89	G-S		
ST89-3972	United Gas Pipe Line Co	Gulf States Utilities	06-23-89	G-S		
ST89-3973	United Gas Pipe Line Co	Kogas Inc	06-23-89	G-S		
ST89-3974	United Gas Pipe Line Co	Neches Gas Distribution Co	06-23-89	B		
ST89-3975	Trunkline Gas Co	Consumers Gas Marketing, Inc	06-23-89	G-S		
ST89-3976	Trunkline Gas Co	Conoco, Inc	06-23-89	G-S		
ST89-3977	Trunkline Gas Co	Natural Gas Clearinghouse, Inc	06-23-89	G-S		
ST89-3978	Trunkline Gas Co	Natural Gas Clearinghouse, Inc	06-23-89	G-S		
ST89-3979	Trunkline Gas Co	Semco Energy Services, Inc	06-23-89	G-S		
ST89-3980	Trunkline Gas Co	Gastrak Corp	06-23-89	G-S		
ST89-3981	Trunkline Gas Co	Tejas Power Corp	06-23-89	G-S		
ST89-3982	Trunkline Gas Co	Union Electric Co	06-23-89	B		
ST89-3983	Arkla Energy Resources	Cornerstone Natural Gas Co	06-23-89	B		
ST89-3984	Arkla Energy Resources	Cabot Transmission Corp	06-23-89	B		
ST89-3985	ANR Pipeline Co	Stellar Pipeline Co	06-23-89	B		
ST89-3986	Panhandle Eastern Pipe Line Co	Union Gas Limited	06-23-89	B		
ST89-3987	Panhandle Eastern Pipe Line Co	Consumers Gas Marketing, Inc	06-23-89	G-S		
ST89-3988	Transcontinental Gas Pipe Line Corp	TPC Pipeline, Inc	06-23-89	B		
ST89-3989	ANR Pipeline Co	Wisconsin Gas Co	06-23-89	B		
ST89-3990	Arkansas Oklahoma Gas Corp	Arkla Energy Resources	06-26-89	G-HT		
ST89-3991	Monterey Pipeline Co	Southern Natural Gas Co	06-26-89	C	11-23-89	24.40
ST89-3992	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	06-27-89	B		
ST89-3993	Tennessee Gas Pipeline Co	Ultramar Oil and Gas Ltd	06-27-89	G-S		
ST89-3994	Colorado Interstate Gas Co	Southern California Gas Co	06-26-89	B		
ST89-3995	Columbia Gas Transmission Corp	Endevco Oil and Gas Co	06-22-89	G-S		
ST89-3996	Tennessee Gas Pipeline Co	Graham Energy Marketing Co	06-23-89	G-S		
ST89-3997	Tennessee Gas Pipeline Co	Yuma Gas Corp	06-26-89	G-S		
ST89-3998	Northern Natural Gas Co	General Atlantic Resources, Inc	06-26-89	G-S		
ST89-3999	Columbia Gulf Transmission Co	New Orleans Public Service, Inc	06-26-89	B		
ST89-4000	Columbia Gulf Transmission Co	Louisiana Resources Co	06-26-89	B		
ST89-4001	Transcontinental Gas Pipe Line Corp	Union Pacific Resources Co	06-26-89	G-S		
ST89-4002	Stingray Pipeline Co	Louisiana Gas Marketing Co	06-26-89	B		
ST89-4003	Stingray Pipeline Co	Eastex Gas Transmission Co	06-26-89	B		
ST89-4004	Stingray Pipeline Co	Gulf Ohio Corp	06-26-89	K-S		
ST89-4005	Stingray Pipeline Co	Koch Hydrocarbons	06-26-89	K-S		
ST89-4006	Stingray Pipeline Co	Superior Natural Gas Corp	06-26-89	K-S		
ST89-4007	United Gas Pipe Line Co	Ergon Refining Inc	06-27-89	G-S		
ST89-4008	CNG Transmission Corp	Pennzoil Products Co	06-27-89	G-S		
ST89-4009	CNG Transmission Corp	Empire Natural Gas Corp	06-27-89	G-S		
ST89-4010	CNG Transmission Corp	Energy Buyers Service Corp	06-27-89	G-S		
ST89-4011	CNG Transmission Corp	Energy Buyers Service Corp	06-27-89	G-S		
ST89-4012	CNG Transmission Corp	Aluminum Co. of America	06-27-89	G-S		
ST89-4013	CNG Transmission Corp	Endevco Marketing Co	06-27-89	G-S		
ST89-4014	CNG Transmission Corp	Stone Resource & Energy Corp	06-27-89	G-S		
ST89-4015	CNG Transmission Corp	IESCO	06-27-89	G-S		
ST89-4016	Lone Star Gas Co	Northern Illinois Gas Co	06-28-89	C		
ST89-4017	Questar Pipeline Co	Stauffer Wyoming Pipeline Co	06-28-89	G-S		
ST89-4018	Tennessee Gas Pipeline Co	Philbro Distributors Corp	06-28-89	G-S		
ST89-4019	Natural Gas Pipeline Co. of America	Marathon Oil Co	06-28-89	G-S		
ST89-4020	Natural Gas Pipeline Co. of America	Enogex Service Corp	06-28-89	G-S		
ST89-4021	K N Energy, Inc	Illinois Power Co	06-28-89	B		
ST89-4022	K N Energy, Inc	Northwestern Public Service Co	06-28-89	B		

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date[2]	Transportation rate (cents/MMBTU)
ST89-4023	K N Energy, Inc.	Golden Gas Energies, Inc	06-28-89	B		
ST89-4024	K N Energy, Inc.	Northern Illinois Gas Co	06-28-89	B		
ST89-4025	K N Energy, Inc.	Associated Intrastate Pipeline Co	06-28-89	B		
ST89-4026	K N Energy, Inc.	Peoples Natural Gas Co	06-28-89	B		
ST89-4027	K N Energy, Inc.	Northern Intrastate Pipeline Co	06-28-89	B		
ST89-4028	K N Energy, Inc.	Northwestern Public Service Co	06-28-89	B		
ST89-4029	Valley Gas Transmission, Inc.	Gulf Energy Marketing Co	06-29-89	G-S		
ST89-4030	United Gas Pipe Line Co	Graham Energy Marketing Co	06-29-89	G-S		
ST89-4031	United Gas Pipe Line Co	Apache Transmission Corp.	06-29-89	B		
ST89-4032	BP Gas Transmission Co	ANR Pipeline Co., et al	06-29-89	C	11-26-89	13.70
ST89-4033	Algonquin Gas Transmission Co	Providence Gas Co	06-29-89	B		
ST89-4034	Algonquin Gas Transmission Co	Providence Gas Co.	06-29-89	B		
ST89-4035	Algonquin Gas Transmission Co	Providence Gas Co	06-29-89	B		
ST89-4036	Williams Natural Gas Co	Kansas Power and Light Co	06-29-89	G-S		
ST89-4037	Williams Natural Gas Co	Chevron U.S.A., Inc	06-29-89	G-S		
ST89-4038	Williams Natural Gas Co	Reliance Gas Marketing Co	06-29-89	B		
ST89-4039	Williams Natural Gas Co	PSI, Inc	06-29-89	G-S		
ST89-4040	Williams Natural Gas Co	Mountain Iron & Supply Co	06-29-89	G-S		
ST89-4041	Williams Natural Gas Co	Stone Container—Resources & Energy Div	06-29-89	G-S		
ST89-4042	Trunkline Gas Co	City of Greenup	06-29-89	B		
ST89-4043	Trunkline Gas Co	Union Gas Limited	06-29-89	B		
ST89-4044	Trunkline Gas Co	Consumers Gas Co	06-29-89	B		
ST89-4045	Trunkline Gas Co	Unifield Natural Gas Group, L.P	06-29-89	G-S		
ST89-4046	Valero Transmission, L.P	Northern Natural Gas Co	06-29-89	C		
ST89-4048	Natural Gas Pipeline Co. of America	Union Pacific Resources Co	06-29-89	G-S		
ST89-4049	Natural Gas Pipeline Co. of America	ONG Transmission Co.	06-29-89	B		
ST89-4050	Panhandle Eastern Pipe Line Co	Union Texas Products Corp	06-29-89	G-S		
ST89-4051	Texas Gas Transmission Corp	United Cities Gas Co	06-29-89	B		
ST89-4052	Texas Gas Transmission Corp	United Cities Gas Co	06-29-89	B		
ST89-4053	Texas Gas Transmission Corp	PSI, Inc	06-29-89	G-S		
ST89-4054	Texas Gas Transmission Corp	Tejas Power Corp	06-29-89	G-S		
ST89-4055	Texas Gas Transmission Corp	TXG Gas Marketing Co	06-29-89	G-S		
ST89-4056	Texas Gas Transmission Corp	Enmark Gas Corp	06-29-89	G-S		
ST89-4057	Texas Gas Transmission Corp	Philbro Distributors Corp	06-29-89	G-S		
ST89-4058	Valero Transmission, L.P	United Gas Pipe Line Co	06-30-89	C		
ST89-4059	Valero Transmission, L.P	El Paso Natural Gas Co	06-30-89	C		
ST89-4060	BP Gas Transmission Co	ANR Pipeline Co., et al	06-30-89	C	11-27-89	13.70
ST89-4061	Natural Gas Pipeline Co. of America	Enron Gas Marketing, Inc	06-30-89	G-S		
ST89-4062	Natural Gas Pipeline Co. of America	Apache Corp	06-30-89	G-S		
ST89-4063	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	06-30-89	B		
ST89-4064	Texas Gas Transmission Corp	Conoco, In	06-30-89	G-S		
ST89-4065	Texas Gas Transmission Corp	Michigan Consolidated Gas Co	06-30-89	B		
ST89-4066	Texas Gas Transmission Corp	Manville Sales Corp	06-30-89	G-S		
ST89-4067	Trunkline Gas Co	Transtate Gas Service Co	06-30-89	G-S		
ST89-4068	Southern Natural Gas Co	City of Denham Springs	06-30-89	G-S		
ST89-4069	Louisiana Resources Co	Louisiana Gas Marketing Co	06-30-89	C	11-27-89	26.43
ST89-4070	Tennessee Gas Pipeline Co	Nashville Gas Co	06-30-89	B		
ST89-4071	Tennessee Gas Pipeline Co	Columbia Gulf Transmission Co	06-30-89	G		
ST89-4072	Gas Transport, Inc	Hope Gas, Inc	06-30-89	B		
ST89-4073	Black Marlin Pipeline Co	Shell Offshore Inc., et al	06-30-89	G-S		
ST89-4074	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	06-30-89	G		
ST89-4075	United Gas Pipe Line Co	Arkla Energy Marketing Co	06-30-89	G-S		
ST89-4076	Tennessee Gas Pipeline Co	Equitable Resources Marketing Co	06-30-89	G-S		

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 89-17965 Filed 8-1-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TM89-14-20-000; TM89-13-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 26, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 21, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective May 1, 1989

Second Revised Twenty-eighth Revised Sheet No. 204

Proposed to be effective June 1, 1989

Second Revised Twenty-ninth Revised Sheet No. 204

Proposed to be effective July 1, 1989

Substitute Thirtieth Revised Sheet No. 204

Proposed to be effective August 1, 1989

Alternate Twenty-seventh Revised Sheet No. 205

Seventeenth Revised Sheet No. 211

Algonquin states that pursuant to section 7 of Rate Schedule F-4, it is filing Alternate Twenty-seventh Revised Sheet No. 205 to concurrently track rate changes made by its pipeline supplier, Texas Eastern in the underlying service, as set forth in Texas Eastern's Quarterly PGA filing dated June 30, 1989. The rate changes represents an increase of 46.5 cents per MMBtu in the demand charge and a decrease of 1.20 cents per MMBtu in the commodity charge.

Algonquin states that in a filing dated June 30, 1989 in Docket No. RP89-49-000, Algonquin's pipeline supplier, National Fuel Gas Supply Corporation ("National") motioned to place into effect revised rates for the service

underlying Algonquin's Rate Schedule F-3. Additionally, National filed an Interim PGA also dated June 30, 1989 to revise lower its estimated cost of purchased gas. Algonquin states that it is filing Substitute Thirtieth Revised Sheet No. 204 to concurrently track the rate changes found in National's motion and Interim PGA filings. Substitute Thirtieth Revised Sheet No. 204 represents increases of 29.0 cents per MMBtu in the demand charge, 0.19 cents per MMBtu in the WRQ charge and a decrease of 16.24 cents per MMBtu in the commodity charge.

Furthermore, Algonquin states that it is filing Second Revised Twenty-eighth Revised Sheet No. 204 and Second Revised Twenty-ninth Revised Sheet No. 204 for the sole purpose of correcting a typographical error in the Commodity PSP-II charge which was incorrectly stated as $0.0008 in the original filing of such sheets. The appropriate Commodity PSP-II rate is $0.0080.

Algonquin notes that copies of this filing were served upon the affected parties 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 August 3, 1989. 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. 89-17961 Filed 8-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-47-006]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

July 26, 1989.

Take notice that on July 21, 1989, East Tennessee Natural Gas Company (East Tennessee) filed the following tariff sheets to amend Volume No. 1 of its FERC Gas Tariff, effective September 1, 1989:

Fifty-First Revised Sheet No. 4
Seventh Revised Sheet No. 119
Sixth Revised Sheet No. 120
Twelfth Revised Sheet No. 122
Fourth Revised Sheet No. 122A

East Tennessee states that the purpose of this filing is to comply with the directive in the April 5, 1989 letter order in Docket No. RP85-47 that East Tennessee file revised tariffs to reflect AOS rates that include demand charges at an imputed 100 percent load factor and make corresponding adjustments to its PGA clause.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected 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. All such protests should be filed on or before August 2, 1989. 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; *Provided, however,* That any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17962 Filed 8-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-2-001]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

July 26, 1989.

Take notice that on July 20, 1989, East Tennessee Natural Gas Company (East Tennessee) filed Substitute Original Sheet No. 5A to its FERC Gas Tariff to be effective July 1, 1989.

East Tennessee states that the purpose of this filing is to track the revised charges implemented by Tennessee Gas Pipeline Company in Docket No. RP88-191-010 filed July 14, 1989. East Tennessee is flowing these charges to its customers pursuant to Article 30 of its FERC gas tariff.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected 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. All such protests should be filed on or before August 2, 1989. 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; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17963 Filed 8-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-9-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Tariff

July 26, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 20, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Effective May 1, 1989

Third Substitute Thirteenth Revised Sheet No. 50

Effective June 1, 1989

Substitute Fourteenth Revised Sheet No. 50

Effective August 1, 1989

Second Substitute Fifteenth Revised Sheet No. 50

Texas Eastern states that these sheets are filed pursuant to Section 4.F of Texas Eastern's Rate Schedule SS-2 and Section 4.F of Texas Eastern's Rate Schedule SS-3 which provide for an automatic rate adjustment to flow through any changes in CNG Transmission Corporation's (CNG) Rate Schedule GSS rates which underlie Texas Eastern's Rate Schedule SS-2 and SS-3.

Texas Eastern states that on May 30, 1989 CNG filed tariff sheets revising Rate Schedule GSS rates to be effective May 1, 1989 and June 1, 1989. These tariff sheets were accepted by the Commission on July 11, 1989 in Docket

No. RP89-124-002. The May 30 filing was made in compliance with an April 28, 1989 order from the Commission in Docket No. RP89-124. The April 28 order accepted tariff sheets filed by CNG on March 31, 1989, but also required CNG to refile tariff sheets to provide for the accrual of carrying charges beginning on May 1, 1989 associated with take-or-pay costs incurred by CNG. Pursuant to Rate Schedule SS-2 and SS-3 of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1, any change in CNG's GSS rates are flowed through to Texas Eastern's SS-2 and SS-3 rates. CNG's May 30 filing results in a decrease of $0.0002 in the injection charge of Texas Eastern's SS-2 and SS-3 rates. The attached Schedule A of the filing reflects these calculations tracking the GSS rate changes through Texas Eastern's SS-2 and SS-3 rates effective May 1, 1989.

Texas Eastern states that section 4.F of its Rate Schedules SS-2 and SS-3 states that changes in Texas Eastern's rates which reflect changes in CNG's Rate Schedule GSS rates shall become effective without suspension coinciding with the effective date of the change in CNG's GSS rates. Texas Eastern respectfully requests that the Commission waive any of its rules and regulations necessary to permit the tariff sheets filed herein to become effective on the dates proposed, corresponding with the effective date of the changes in CNG's GSS rates as accepted by the Commission.

Texas Eastern has before the Commission for approval, tariff sheets filed May 22, 1989 in Docket Nos. RP85-177-061, RP88-67-012, and CP88-136-005 and filed June 30, 1989 in Docket No. TQ89-3-17-000. In the event the above listed tariff sheets are not approved or are altered in any way by the Commission's decision, Texas Eastern will refile the above listed tariff sheets to reflect the Commission's decision.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 2, 1989. 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. 89-17964 Filed 8-1-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3623-8]

Stratospheric Ozone Protection Advisory Committee and Request for Candidates

SUMMARY: The Environmental Protection Agency (EPA) is proposing to establish a new Advisory Committee under the Federal Advisory Committee Act (FACA). The committee's purpose would be to provide informed advice on policy and technical issues that relate to domestic and international aspects of the Montreal Protocol on Substances that Deplete the Ozone Layer. The Advisory Committee also will assist the Agency in serving the public interest during the transition to substitutes for ozone depleting chemicals.

At this time, EPA requests nominations of candidates for membership on the Advisory Committee. The membership of the committee will represent a balance of interested persons with diverse perspectives and professional qualifications and experience to contribute to the functions of the Advisory Committee. Members will be drawn from: Business and industry; educational and research institutions; government bodies; non-government and environmental groups; and international organizations.

DATE: Submit nominations of candidates no later than August 31, 1989. Any interested person or organization may submit the names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, organization, position, address, and telephone number. Candidates will be asked to submit a resume of their background, experience, qualifications and other relevant information as a part of the review process.

ADDRESS: Submit suggestions for the list of candidates to: David F. Lee, Advisory Committee Nominations, Global Change Division (ANR-445), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David F. Lee at the above address, or call 202-475-7497. The Agency will not formally acknowledge or respond to nominations.

SUPPLEMENTARY INFORMATION: The proposed purpose of the Stratospheric Ozone Protection Advisory Committee is to provide advice and counsel to the Assistant Administrator, Office of Air and Radiation, on issues that affect domestic and international activities relating to the Montreal Protocol. As reflected in the Protocol, the scientific evidence strongly supports reductions on a worldwide basis in the use of ozone-depleting chemicals. The Advisory Committee will be a part of EPA's efforts to serve the public interest and to address the global nature of the ozone layer problem. The Advisory Committee will assist the Agency in the consideration of specific technical, science, trade and policy issues.

Proposed Establishment

A Federal agency must comply with requirements of the Federal Advisory Committee Act (FACA) when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, a non-statutory advisory committee is established only after consultation with the General Services Administration. EPA has prepared a charter and has initiated the requisite consultation process.

Participants

The committee shall not exceed 25 participants; however, meetings will be open to all interested parties. Committee members shall serve two-year terms.

EPA has tentatively identified the following list of possible interests and parties: User and Producer Industries, Public Interest Groups, Federal Government, State Officials, Educational/Research Institutions.

The Advisory Committee shall meet at least twice a year, plus such meetings of subcommittees as the committee deems necessary. No honoraria or salaries are contemplated in association with membership on the Advisory Committee, but compensation for travel and nominal daily expense while attending meetings may be provided.

The Agency intends to hold the initial meeting of the Advisory Committee in early fall of 1989. Suggestions for the list of candidates should be submitted no later than August 31.

Dated: July 27, 1989.

Robert Axelrad,

Acting Director, Office of Atmospheric and Indoor Air Programs.

FR Doc. 89-18060 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

[PP 4G3047 and PP 5G3217/T580; FRL-3622-9]

Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the herbicide pyridate in or on certain raw agricultural commodities. These renewals were requested by Agrolinz, Inc.

DATES: These temporary tolerances expire May 1, 1990.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of July 27, 1988 (53 FR 28265), stating that temporary tolerances had been established for residues of the herbicide pyridate [0-(6-chloro-3-phenyl-4-pyridazinyl)-S-octylcarbonothioate] derived from its application in or on corn grain, corn silage, and corn fodder at 0.03 part per million (ppm) (PP 4G3047) and in or on peanut nutmeat, peanut hay, and peanut hulls at 0.03 ppm (PP 5G3127).

Agrolinz, Inc., 1755 N. Kirby Parkway, Suite 300, Memphis, TN 38119-4393, has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permits 42545-EUP-1 and 42545-EUP-2, which were issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used will not exceed the quantity authorized by the EUP.

2. Agrolinz, Inc., will immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company will also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of EPA or the Food and Drug Administration.

3. This temporary tolerance expires May 1, 1990. Residues remaining in or on the above raw agricultural commodities after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, provisions of the EUP/temporary tolerance. This temporary tolerance may be revoked if the EUP is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

Authority: 21 U.S.C. 346(j).

Dated: July 6, 1989.

Franklin D. Gee,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-17844 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50693; FRL-3623-4]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

239-EUP-115. Extension. Chevron/Valent Chemical Company, 15049 San Pablo Avenue, P.O. Box 4010, Richmond, CA 94804-0010. This experimental use permit allows the use of 240 pounds of the herbicide 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoate on 1,200 acres of cotton to evaluate the control of various weeds. The experimental use permit is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 2, 1989 to April 1, 1991. A temporary tolerance for residues of the active ingredient in or on cotton has been established. (Larry Schnaubelt, PM 23, Rm. 235, CM#2, (703-557-1830))

279-EUP-117. Issuance. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 3,500 pounds of the herbicide 2-(2-chlorophenyl)methyl-4,4dimethyl-3-isoxazolidinone on 3,500 acres of cotton to evaluate the control of broadleaf weeds. The permit is authorized only in the States of Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 12, 1989 to June 12, 1990. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

279-EUP-118. Issuance. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 900 pounds of the herbicide 2-(2-chlorophenyl)methyl-4,4dimethyl-3-isoxazolidinone on 1,800 acres of field corn to evaluate the control of broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from June 12, 1989 to June 12, 1990. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

8340-EUP-10. Renewal. Hoechst Celanese Corporation, Route 202-206 North, Somerville, NJ 08876. This experimental use permit allows the use of 2,310 pounds of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate on 1,540 acres of soybeans, tree and vine crops, and non-crop uses. The program is authorized in the States of Alabama, Arkansas, California, Delaware, Florida,

Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia. The experimental use permit was previously effective from January 29, 1988 to January 12, 1989; the permit is now effective from June 5, 1989 to January 13, 1990. This permit is issued with the limitation that the labeling accepted on June 29, 1988, will be used for all shipments under the renewal of this EUP. (Larry Schnaubelt, PM 23, Rm. 235, CM#2, (703–557–1830))

264–EUP–74. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 1,136 pounds of the plant regulator ethephon on 4,544 acres of field and sweet corn to evaluate lodging. The program is authorized only in the States of Colorado, Illinois, Iowa, Kansas, Minnesota, Nebraska, New York, North Carolina, Oregon, Washington, and Wisconsin. The experimental use permit is effective from June 20, 1989 to June 20, 1991. A temporary tolerance for residues of the active ingredient in or on field and sweet corn has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–2800))

612–EUP–1. Renewal. Unocal, Unocal Chemicals Division, 1414 Fenwick Lane, Silver Spring, MD 20910. This experimental use permit allows the use of 808,543 pounds of the nematicide sodium tetrathiocarbonate on 4,000 acres of grapefruit, grapes, oranges, and potatoes to evaluate the control of various nematodes and phylloxera. The program is authorized only in the States of Arizona, California, Florida, Oregon, and Washington. The experimental use permit was previously effective from March 15, 1987 to December 1, 1988; the pez.mit is now effective from May 3, 1989 to November 15, 1989. Temporary tolerances for residues of the active ingredient in or on grapefruit, grapes, oranges, and potatoes have been established. (Susan Lewis, PM 21, Rm. 227, CM#2, (703–557–1900))

59639–EUP–1. Issuance. Valent U.S.A. Corporation, 1333 North California Boulevard, Walnut Creek, CA 94596–8025. This experimental use permit allows the use of 52 pounds of the herbicide (E)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one on 104 acres of cotton to evaluate the control of weeds. The experimental use permit is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 6, 1989 to June 6, 1991. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Larry Schnaubelt, PM 23, Rm. 235, CM#2, (703–557–1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: July 14, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–17916 Filed 8–1–89; 8:45 am]

BILLING CODE 6560–50–M

[PF–522; FRL–3622–8]

Merck, Sharp & Dohme Research Laboratories; Amendment of Pesticide Petition and Food Additive Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of pesticide petition (PP) 7F3553 and food additive petition (FAP) 7H5541 for the fungicide thiabendazole by Merck, Sharp & Dohme Research Laboratories.

ADDRESS: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (H–7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 25, 1987 (52 FR 45237), EPA issued a notice of filing of PP 7F3553 and FAP 7H5541 by Merck, Sharp & Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887, for the fungicide thiabendazole [2-(4-thiazolyl) benzimidazole]. PP 7F3553 proposed amending 40 CFR 180.242 by establishing a regulation to permit residues of the fungicide in or on corn grain at 20.0 parts per million (ppm) and revoking the present tolerance of 10 ppm on grapes. The proposed analytical method for determining residues was a spectrofluorometer. FAP 7H5541 proposed amending 21 CFR 561.380 (recodified as 40 CFR 186.5550 in the **Federal Register** of June 29, 1988 (53 FR 24667)), by establishing a regulation to permit the residues of the fungicide in or on corn bran at 125 ppm, corn fines at 40 ppm, corn germ at 30 ppm, and corn soapstock at 25 ppm and by revoking the present tolerance of 150 ppm on grape pomace (dry or wet).

Merck, Sharp & Dohme Research Laboratories has submitted to EPA revisions to the petitions. PP 7F3553 has been revised to propose the following tolerances: In 40 CFR 180.242(a), establishment of a tolerance for residues of thiabendazole in or on the raw agricultural commodity corn grain (post-H) at 25 ppm and the retention of the 10-ppm tolerance for the raw agricultural commodity grapes; and in 40 CFR 180.242(b) establishment of tolerances and amendment of existing tolerances for combined residues of thiabendazole and its metabolite 5-hydroxythiabendazole in the following raw agricultural commodities: Meat byproducts (except kidney) of poultry and meat byproducts (except liver and

kidney) of cattle, goats, hogs, horses, and sheep at 0.1 ppm; poultry kidney at 0.2 ppm; and kidney and liver of cattle, goats, hogs, horses, and sheep at 0.4 ppm.

FAP 7H5541 has been revised to propose in 40 CFR 185.5550 establishment of food additive tolerances for residues of thiabendazole in or on the following food commodities resulting from the postharvest application of thiabendazole to the raw agricultural commodity corn grain: Corn, milled fractions (except bran) (post-H) at 40 ppm and corn bran (post-H) at 145 ppm.

FAP 7H5541 has also been revised to propose in 40 CFR 186.5550 establishment of feed additive tolerances for residues of thiabendazole in or on the following processed feed commodities for animal feed resulting from the postharvest application of thiabendazole to the raw agricultural commodity corn grain: Corn, milled fractions (except bran and soapstock) (post-H) at 40 ppm, corn bran (post-H) at 145 ppm, and corn screenings (post-H) at 400 ppm. The feed additive tolerance of 150 ppm for grape pomace (wet or dry) is retained.

Authority: 21 U.S.C. 346a and 348.

Dated: July 6, 1989.

Franklin D. Gee,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-17842 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180816; FRL-3622-5]

Receipt of Application for Emergency Exemption To Use Triflumizole; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the pesticide triflumizole (CAS 68694-11-1) to treat 245 acres of nursery and greenhouse grown Spathiphyllum varieties to control Cylindrocladium root and petiole rot.

The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before August 17, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180816," should be submitted by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4360).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Terraguard 50W on *Spathiphyllum* spp. to control Cylindrocladium root and petiole rot. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant states that *Cylindrocladium spathiphylli* was introduced into Florida around 1977 by movement of infected plants from the tropics. Dissemination of this disease pathogen was easily accomplished by transfer of infected seedlings, and contaminated seeds and plants.

The Applicant states that research on efficacy has shown the registered alternatives to be less effective in controlling Cylindrocladium on Spathiphyllums than triflumizole. Benomyl provided the best control of the registered fungicides tested. However, benomyl applied at rates necessary to achieve control is phytotoxic to the plants and is not effective at rates low enough to avoid phytotoxicity.

The 1985 Florida foliage production was estimated to have a wholesale value of $272 million. Sales of Spathiphyllum are estimated to represent 10 percent of this value. Seventy-one percent of Spathiphyllum sold is produced by growers who are having problems controlling Cylindrocladium. Spathiphyllum losses to Cylindrocladium are estimated to be 8 percent of the total crop value (about $1.8 million). Available methods of control are not expected to provide economic control next season.

The Applicant plans to treat up to 245 acres using 14,700 pounds of product (7,350 pounds active ingredient). Applications are proposed for a period of one year from the date of approval. Applications of 4 to 8 ounces of Terraguard 50W in 100 gallons of water will be applied as a soil drench or through chemigation every two to four weeks or as needed to Spathiphyllum grown in greenhouse, interiorscapes, or commercial nurseries.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt: of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations. Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Florida Department of Agriculture and Consumer Services.

Dated: July 14, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-17843 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3623-6]

City Industries Site; proposed settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the City Industries Site, Winter Park, Florida, with The Agricultural Research Service of the United States Department of Agriculture (ARS). EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Mrs. Carolyn McCall, Investigation Support Assistant, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, (404) 347-5059.

Written comments may be submitted to the person above by 30 days from date of publication.

Dated: July 24, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 89-18061 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

The Boston Bank of Commerce Employee Stock Ownership Trust, et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 18, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *The Boston Bank of Commerce Employee Stock Ownership Trust,* Boston, Massachusetts; to acquire 41.9 percent of the voting shares of The Boston Bank of Commerce, Boston, Massachusetts.

B. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Amsterdam-Rotterdam Bank, N.V., Amsterdam, The Netherlands,* Stichting Amro, Amsterdam, The Netherlands; to become a bank holding company by acquiring 43.18 percent of the voting shares of European American Bancorp, New York, New York, and thereby indirectly acquire European American Bank, New York, New York.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amboy Bancopr,* Amboy, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Amboy, Amboy, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Allegiant Bancopr, Inc.,* Kahoka, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Allegiant National Bank, formerly Commerce Bank of Kahoka, N.A., Kahoka, Missouri.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Las Cruces B.R.G., Inc.,* Las Cruces, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the Rio Grande, N.A., Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, July 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17985 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

Huntington Bancshares Incorporated; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Huntington Bancshares Incorporated,* Columbus, Ohio; to retain 14.04 percent of the voting shares of Money Station, Inc., Columbus, Ohio,

and thereby engage in providing data processing, data transmission services, data base maintenance, and telecommunication services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17986 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

Lisco State Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lisco State Company*, Lisco, Nebraska; to acquire 28.33 percent of the voting shares of O&F Cattle Company, and thereby indirectly acquire Nebraska State Bank, Oshkosh, Nebraska.

In connection with this application, applicant also proposes to acquire O&F Insurance Agency, and thereby engage in general insurance agency activities from the community of Oshkosh, Nebraska and in Garden County, Nebraska, both of which have a total population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Applicant also proposes to indirectly engage in the direct lending activities now being conducted by O&F Cattle Company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17987 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

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 August 16, 1989.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mr. Alvin J. Siteman*, St. Louis, Missouri; to acquire an additional 2.2 percent of the voting shares of Mark Twain Bancshares, Inc., St. Louis, Missouri, for a total of 20 percent, and thereby indirectly acquire Mark Twain Bank, St. Louis, Missouri; Mark Twain Illinois Bank, St. Louis, Missouri; and Mark Twain Kansas City, Kansas City, Missouri.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Christopher James Dinsdale*, Sterling, Colorado; Thomas Stephen Dinsdale, Grand Island, Nebraska; Janet Lynn Dinsdale Barclay, Grand Island, Nebraska; Jane Dinsdale Rogers, Omaha, Nebraska; and John Sidney Dinsdale, Papillion, Nebraska; to each acquire an additional 3.06 percent of the voting shares of The Weld State Company, Central City, Nebraska, for a total of 18.03 percent, and thereby indirectly acquire First Security Bank of Craig, Craig, Colorado, and The First Security Bank, Fort Lupton, Colorado.

2. *Robert A. Green*, Chickasha, Oklahoma; to acquire an additional 18.43 percent for a total of 29.46 percent; Liberty Drug, Inc., Chickasha, Oklahoma (owned by Robert A. Green) to acquire 4.99 percent; and Elizabeth D. Green, Chickasha, Oklahoma (wife of Robert A. Green) to acquire 5.68 percent of the voting shares of First Alex Bancshares, Inc., Alex, Oklahoma, and thereby indirectly acquire First National Bank of Alex, Alex, Oklahoma.

Board of Governors of the Federal Reserve System, July 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17988 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will aslo 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 August 15, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Georgia M. Wegman*, Seven Hills, Ohio; to acquire an additional 1.45 percent of the voting shares of The Citizens Savings Bank Company, Pemberville, Ohio.

Board of Governors of the Federal Reserve System, July 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17989 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

National City 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 presentaion 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 August 18, 1989.

A. **Federal Reserve Bank of Cleveland,** John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation,* Cleveland, Ohio; to engage *de novo* through its subsidiary, Financial Communications Exchange, Inc., Cleveland, Ohio, in management consulting to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Star Financial Group, Inc.,* Marion, Indiana; to engage *de novo* through its subsidiary, Star BandCard Services, Inc., Marion, Indiana, in credit card services as a bank card processing center for unaffiliated financial institutions pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve Ssytem, July 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17990 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). A similar notice listing all currently certified laboratories will be published bi-monthly, and updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is restored to full certification undr the Guidelines.

FOR FURTHER INFORMATION CONTACT: Division of Applied Research (formerly the Office of Workplace Initiatives), National Institute on Drug Abuse, Room 10A-53, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guideines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant labortory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections. In accordance with Subpart C of the Guidelines, the following laboratories meet the standards set forth in the Guidelines:

(Submitted for publication in the **Federal Register** on August 1, 1989)

American BioTest Laboratories, Inc., 3350 Scott Boulevard, Building 15, Santa Clara, CA 95054, 408-727-5525

American Medical Laboratories, 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100

Bio-Analytical Technologies, 2356 North Lincoln Ave., Chicage, IL 60614, 312-880-6900

Center For Human Toxicology, 417 Wakara Way, Rm. 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117

Chem-Bio Corporation, 140 E. Ryan Road, Oak Creek, WI 53154, 800-365-3840

CompuChem Laboratories, Inc., Western Division, 600 West North Market Boulevard, Sacramento, CA 95834, 916-923-0840 (name changed: formerly ChemWest Analytical Laboratories, Inc.)

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263

Doctors and Physicians Laboratory, 801 E. Dixie Ave., Lessburg, FL 32748, 904-787-9006

DrugScan, Inc., 1119 Mearns Road, P.O. Box 2969, Warminster, PA 18974, 215-674-9310

ElSohly Laboratories, Inc., 1215½ Jackson Avenue, Oxford, MS 38655, 601-236-2609

Environmental Health Research & Testing Inc., 1075 South 13th Street, Birmingham, AL 35205-9998, 205-934-0958
Harris Medical Laboratory, 1401 Pennsylvania Avenue, P.O. Box 2981, Forth Worth, TX 76104, 817-878-5600
Laboratory of Pathology of Seattle, Inc., 1229 Madison Street, Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672
Laboratory Specialists, Inc., 113 Jarrell Drive, P.O. Box 435, Belle Chasse, LA 70037, 504-392-7961
Med Arts/South Community Hospital, 1001 Southwest 44th Street, Oklahoma City, OK 73109, 405-636-7041
MedTox Laboratories, Inc., 402 West County Road D, St. Paul, MN 55112, 612-636-7466
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 312-595-3888
MetPath, Inc., One Malcolm Ave., Teterboro, NJ 07608, 201-393-5000
National Center for Forensic Science, A Division of Maryland Medical Laboratory, Inc., 1901 Sulphur Spring Road, Baltimore, MD 21227, 301-247-9100 (name changed: formerly Maryland Medical Laboratories, Inc.)
National Psychopharmacology Lab, Inc., 9320 Park West Boulevard, Knoxville, TN 37923, 800-615-251-9492/615-690-8101
Nichols Institute, 7323 Engineer Road, San Diego, CA 92111, 619-278-5900
Northwest Toxicology, Inc., 1141 East 3900 South, Salt Lake City, UT 84124, 800-322-3361
POLA, Inc., 100 Corporate Court, South Plainfield, NJ 07080, 201-769-8500
PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 800-446-5177/415-328-6200
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600
Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614-889-1061
SmithKline Bio-Science Laboratories, 2201 W. Campbell Park Drive, Chicago, IL 60612, 312-885-2010 (name changed: formerly International Toxicology Laboratories, Inc.)
SmithKline Bio-Science Laboratories, 1777 Montreal Circle, Tucker, GA 30084, 404-934-9205
SmithKline Bio-Science Laboratories, 8000 Sovereign Row, Dallas, TX 75247 (name changed: formerly International Clinical Laboratories), 214-638-1301
SmithKline Bio-Science Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447
South Bend Medical Foundation, Inc., 530 North Lafayette Blvd., South Bend, IN 46601 219-234-4176
Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800-338-0166

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

[FR Doc. 89-18166 Filed 8-1-89; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topics to be discussed are food safety issues and the tampon absorbency labeling proposal.

DATES: Thursday, August 10, 1989, 1 p.m. to 3 p.m.

ADDRESSES: 1421 Third Avenue SE., Conference Room C, Rochester, MN 55904.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Avenue, Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 26, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-18004 Filed 8-1-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2026]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Office, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 25, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: American Housing Survey—1990 Metropolitan Sample.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: The 1990 American Housing Survey—Metropolitan Sample is a longitudinal

study that collects current information on the quality, availability, and cost of housing in 11 selected metropolitan areas. It also provides information on demographic and other characteristics of the occupants. The data collected will be used by Federal and local government agencies to evaluate housing issues.

Form Number: AHS-61, 62, 63, 66, 67, 68, 590.

Respondents: Individuals or Households.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Interviews:							
Occupied Units	39,270		1		0.62		24,217
Vacant Units	2,338		1		.33		779
Reinterviews	2,338		1		.16		390

Total Estimated Burden Hours: 25,386.

Status: Revision.

Contact: Duane T. McGough, HUD (202) 755–5060; Leonard J. Norry, Census, (301) 763–8550; John Allison, OMB, (202) 395–6880.

Date: July 25, 1989.

Proposal: Flexible Subsidy/Capital Improvement Loan Programs, 24 CFR Part 219 and Forms.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: These forms facilitate the analyses necessary to determine eligible project problems and dollar needs, to assure best use of funds, and to track completion of tasks and the flow of funds.

Form Number: HUD-9823A/B; 9824A; 9835/A/B.

Respondents: State of Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, Small Businesses or Organizations.

Frequency of Submission: Monthly, Quarterly, and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
9823A	40		12		1		480
9823B	40		4		2		320
9824A	40		4		20		3,200
9835 (Flexible Subsidy)	40		1		4		160
Capitol Impr. (partial)	57		1		2		114
Capital Impr. (complete)	3		1		4		12
9835A (Flexible Subsidy)	40		1		4		160
Capital Improvement	3		1		4		12
9835B (Flexible Subsidy)	40		1		1		40
Capital Improvement	60		1		1		60

Total Estimated Burden Hours: 4,558.

Status: Reinstatement.

Contact: James Tahash, HUD (202) 426–3970; John Allison, OMB, (202) 395–6880.

Date: July 25, 1989.

Proposal: Monthly Reports for Establishing Net Income-Forms HUD 93479, 93480 and 93481.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Accounting reports submitted by selected owners and agents of Multifamily Projects will be used to monitor compliance with contractual agreements and to analyze cash flow trends as well as occupancy and rent collection levels. The reports will alert field staff of the need for remedial actions to correct deficiencies or the need for more aggressive servicing action.

Form Number: HUD-93479, 93480, 93481.

Respondents: Businesses of Other For-profit, Non-Profit Instittuions.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Monthly Reports	4,000		12		3.5		168,000
Recordkeeping	4,000		1		1.0		4,000

Total Estimated Burden Hours: 172,000.

Status: Extension.

Contact: Gray Campbell, HUD (202) 426-3944; John Allison, OMB, (202) 395-6880.

Date: July 25, 1989.

[FR Doc. 89-17940 Filed 8-1-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-09-4212-14; WYW 102169]

Conveyance and Opening Order; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of public land and conveyance and order providing for opening of public land in Lincoln County.

SUMMARY: This notice advises the public of the completion of an exchange of land between the United States, Bureau of Land Management, and Frank A. Mau, William P. Mau, and Kathryne Mau Smith. This order opens the land acquired by the United States to the operation of the public land laws.

EFFECTIVE DATE: At 9:30 a.m. on August 12, 1989, the land described in paragraph 2 shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. This action conforms to existing land use plans, and the land will be managed under the guidance provided by these plans. The land described in paragraph 1 was segregated from appropriation under the public land laws, including the mining laws, by Notice of Realty Action WYW 102169 published July 22, 1988, in the **Federal Register** (53 FR 27771). The segregative effect of that notice terminated upon issuance of the patent on February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, BLM Wyoming State Office, 2515 Warren Avenue, Cheyenee, Wyoming 82001, (307) 772-2074.

SUPPLEMENTARY INFORMATION: 1. In accordance with the provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the following Federal land, surface estate only, has been conveyed to Frank A. Mau, William P. Mau, and Kathryne Mau Smith, of Boerne, Texas; Mesa Del Sol, Arizona; and Rock Springs, Wyoming; respectively:

Sixth Principal Meridian

T. 19 N., R. 105 W.,
Sec. 22, lots 10-15;
Sec. 28, lots 2, 6, 7, 12.
The land described aggregates 401.91 acres.

All minerals in lots 10 and 15 of sec. 22, T. 19 N., R. 105 W., are outstanding of record in third parties.

2. In exchange for the above land, the United States acquired the following non-Federal land from Frank A. Mau, William P. Mau, and Kathryne Mau Smith:

Sixth Principal Meridian

T. 23 N., R. 116 W.,
Portion of lot 37;
Sec. 1: lots 2-7, SW¼NE¼, S½SW¼, W½SE¼;
Sec. 2: lots 1-5, S½NW¼, SW¼, S½SE¼;
Sec. 3: lots 1-2, SE¼NE¼, NE¼SE¼;
Sec. 11: N½NE¼, NE¼NW¼;
Sec. 12: W½NE¼, E½NW¼, NW¼NW¼, NE¼SW¼, NW¼SE¼.
T. 24 N., R. 116 W.,
Sec. 35, Portion of lot 2.
The land described aggregates 1,666.77 acres.

The lands are also described and recorded in Lincoln County as the Bowie Wheat Tracts 1-15, 20-45.

Dated: July 13, 1989.

F. William Eikenberry,

Associate State Director.

[FR Doc. 89-18001 Filed 8-1-89; 8:45 am]

BILLING CODE 4310-22-M

[UT-060-4410-08]

San Juan Resource Management Plan; Utah

AGENCY: Bureau of Land Management (BLM), Utah, Interior.

ACTION: Notice of protest period for the Proposed San Juan Resource Management Plan (RMP).

SUMMARY: The protest period for the San Juan RMP has been established as ending on August 30, 1989.

SUPPLEMENTARY INFORMATION: Notice of availability of the proposed resource management plan was published in the **Federal Register**, Vol. 54, No. 134, Friday, July 14, 1989. Due to confusion as to the close of the protest period, August 30, 1989, has been established as the official close of the protest period. Protests must be made in accordance with the provisions of 43 CFR 1610.5-2. Protests must be received by the Director of BLM, 18th and C Streets NW., Washington, DC 20240, by August 30, 1989.

FOR FURTHER INFORMATION CONTACT: Ed Scherick, San Juan Resource Area Manager, Bureau of Land Management, Box 7, Monticello, Utah 84535, (801) 587-2141.

Dated: July 27, 1989.

James M. Parker,

State Director.

[FR Doc. 89-18000 Filed 8-1-89; 8:45 am]

BILLING CODE 4310-DQ-M

DEPARTMENT OF THE INTERIOR

[AA-230-09-6310-02]

Deferral of Payments on High-Priced Timber Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; adoption of final policy.

SUMMARY: The Bureau of Land Management hereby gives notice of adoption of a final policy on the modification of payment procedures for certain high-priced timber sales. Under this policy, the terms of payment on a qualifying timber sale may be modified to allow the purchaser to defer payments in an amount equal to the difference between the average current contract value and the value of sales at current average bid rates on that Bureau of Land Management District at time of modification plus $50 per thousand board feet (MBF). The deferred amount will be paid with interest over a 5-year period under the terms of a fully secured promissory note. The procedure is authorized only for high-priced sales bid prior to January 1, 1982. The 5-year deferral period will allow purchasers an opportunity to improve their cash flow by deferring large immediate payment obligations and to mix a portion of their high-priced sales with lower-priced sales in their portfolios and, thus, obtain a more economical operating base. The intended effect is to encourage purchasers to perform high-priced sales rather than to default them.

EFFECTIVE DATE: This policy is effective August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Lyndon Werner, Division of Forestry, Bureau of Land Management, Department of the Interior, 1800 'C' Street, NW., Washington, DC 20240, telephone (202) 653-8864.

SUPPLEMENTARY INFORMATION:

Background and Need for Policy

On August 2, 1988 [53 FR 31965], the Bureau of Land Management published

an interim policy to allow holders of certain high-priced timber sales to defer payments to avoid sale defaults. Public comment was invited prior to adoption of the final policy on deferred payments. During the late 1970's, a combination of strong demand for timber, predicted price trends based on levels of inflation at that time, and predictions of a softwood timber supply shortage resulted in unprecedented prices for Federal timber sales particularly in California, Oregon, and Washington. Before this timber could be harvested, lumber prices fell dramatically in response to a collapse in the housing market precipitated by a general economic recession.

Recognizing the dilemma, the Department of the Interior granted grace period extensions beginning in November 1981; further extensions were granted in August 1983 on contacts bid period to January 1, 1982, under the President's 5-year extension program, which extended the currently uncompleted contracts to 1988 and 1989. And, the Timber Contract Payment Modification Act was passed in 1984 permitting the return to the Government of 274 Bureau of Land Management contracts totalling 1.28 billion board feet valued at $430 million. These actions and substantially improved forest products markets have all eased the financial burden of many timber purchasers and lessened the risk of default on remaining high-priced contracts.

However, some purchasers in Oregon still hold substantial volumes in high-priced sales bid prior to 1982. As of April 1989 there were about 270 million board feet of high-priced timber under contract in 87 sales. This volume remains under contract primarily because the amounts held by purchasers at the time of buy-out application exceeded the volume entitlement under the Federal Timber Contract Payment Modification Act. Purchasers have extended these sales under the extension authorizations. The majority of these remaining contracts are due to expire on December 31, 1989. A small number of contracts were further extended into 1991 through the purchase of extension-credit fire salvage sales. The Federal government's exposure to default on these sales will increase substantially if market conditions deteriorate. Seventy percent of the high-priced sale value is held by purchasers considered to be in a high-risk situation. The Government could lose $20 million if the high-priced sales in these portfolios are defaulted.

It is important that the agency have procedures in place to try to avoid significant default, because default-delayed harvest results in many adverse economic, resource management, and environmental effects. The economies of many communities particularly in the West are heavily dependent upon the employment generated by the harvest and manufacture of timber from the Bureau of Land Management's forest land. Timber sale defaults interrupt the flow of timber and, thereby, interrupt employment. Employment impacts of default affect not only loggers and mill workers, but also affect others dependent upon the income of timber workers. Defaults also reduce receipts to the Federal Treasury and, thus, the revenue sharing payments to local counties which are based on those receipts.

The liability for damages due the Government arising from default could result in a number of timber firms seeking bankruptcy. Under bankruptcy procedures, the United States would become an unsecured creditor. Usually few or no assets are available for payment after all the secured creditors are satisfied in the proceedings. Even if the firms do not declare bankruptcy, default collection activities are expensive and can result in small dollar returns compared to the amount of damage payments due the Government. In short, contract performance of these high-priced sales provides the best economic return to and protection for Federal, State, and local governments as well as to timber dependent communities. Accordingly, the Bureau of Land Management is implementing a procedure to encourage holders of high-priced pre-1982 volume to perform contracts rather than to default them.

An interim policy to allow deferral of payments on these high-priced sales was published in the **Federal Register** on August 22, 1988; the policy was implemented on September 1, 1988.

Response to Public Comments

The Bureau of Land Management received comments on the interim policy from 13 individuals and entities. Comments came from a Federal Agency Office, individual timber sale purchasers, a consulting forester, a timber sale purchaser association, attorneys, a surety representative, and local citizens of communities affected by the policy. Most of the responses came from the Pacific Northwest. Seven of the respondents supported the policy either in its entirety or with suggested modifications. Five of the respondents were not in favor of the policy. Most of those against the policy provided additional suggestions for consideration should the policy be finally adopted. Most of the comments against the policy rejected the idea that the Government should provide additional relief for purchasers who have not performed on the high-priced contracts.

The following summarizes the major comments and suggestions received and the agency's response to these in the final policy. The final policy reflects full consideration of all comments received. A number of minor changes were made to procedurally clarify the policy.

General Comments

A major issue raised by several respondents was whether the proposal provided additional contract relief. Those holding contracts and in need of additional time to amortize the high values were in support of the procedures. Others felt that the relief afforded to purchasers from the 1984 buy-out legislation and the agency's 5-year extension program was sufficient and that holders of the remaining high-priced contracts should be required to complete them fully in the current contract term or default them and suffer the consequences. Some respondents felt that any change in contract terms at this date would not be fair to purchasers who did perform their high-priced contracts and would reward irresponsible bidding practices and erode the concept that contracts must be performed as specified under their terms and conditions.

The Bureau of Land Management has given much consideration to whether this deferred payment policy rewards poor bidding practices or erodes the fundamental tenets of contracting. The agency is confident that the deferred payment policy does neither. Experience clearly demonstrates that default of sales leads to losses by the Government and economic disruption; avoiding default is clearly in the public interest. In summary, the Bureau of Land Management has decided that performance of the remaining high-priced sales provides the greatest benefit to the public. The policy requires purchasers to perform contracts removing the entire volume and paying the full contract price. There is no relief from payments due the United States granted under the policy. The policy changes only the schedule of when full payment will be received, requiring interest for any period the payment is delayed, and a fully secured promissory note.

Comments on Specific Features of the Policy

Promissory Note Procedures

The interim policy stated the deferred payment modification was to be authorized only after receipt of a properly prepared and executed promissory note, on a form provided by the Bureau of Land Management, for the total amount of the deferred stumpage value. The note must be fully secured by a form of security acceptable to the Bureau of Land Management and allow for unconditioned payment upon demand by the Bureau of Land Management. The note requires quarterly payments to amortize the amount of the note. Interest is assessed against the accrued amount of deferral or the remaining note balance, whichever is less. The interest rate is equal to the average market yield of outstanding treasury obligations with 5 years remaining to maturity. The note period is generally for 5 years.

The provision for selection of the Treasury rate of interest received the most comments of any feature of the interim policy. The respondents indicated that the rate was too low and, thereby, was a subsidy to qualifying purchasers. This was stated to be particularly unfair to purchasers who had performed contracts and to competitors who must pay the commercial rate of interest to borrow current working funds. Six respondents indicated that such a subsidy was not warranted and that rates for the program should be at the corporate borrowing rate, prime rate, or higher. The Bureau of Land Management has analyzed this issue and concurs that the interest rate should be increased. It was not the agency's intent to provide a low-cost borrowing alternative for firms that are capable of securing funds from commercial sources. The Bureau of Land Management utilized a Forest Service survey of the banks in the Pacific Northwest and the results of Forest Service discussions with Federal Reserve Bank representatives. Based on inputs received, the final policy raises the rate of interest charged under the promissory note to the prime rate of interest as determined by the Federal Reserve.

The prime rate of interest listed in the Federal Reserve Statistical Release H. 15, Selected Interest Rates, Instrument, Back Prime Loan will be used. The Selected Interest Rates (H.15) release for February, May, August, and November will be used as the basis for the promissory note quarterly interest charges. The rate used from the Selected Interest Rates sheet will be the average monthly rate listed respectively for the months of January, April, July, and October. This revised rate basis is determined to be at least equal to commercial bank rates for a fully secured loan. The prime rate requirement will be required as of the effective date of the final policy.

Two respondents indicated that the 10-year term for the promissory note was too long, that firms should be capable of amortizing the deferred amount in 5 years. There was further comment that the criteria for granting the additional term which was to be based on "compelling need" were not adequately specified. The Bureau of Land Management has established explicit criteria for the determination of compelling need. These criteria have been used since implementation of the interim policy and are being incorporated in the final policy.

The following information is needed to support the granting of additional promissory note term beyond 5 years: Purchaser must provide a financial projection for the deferral period beyond 5 years. The projection must be examined by an independent Certified Public Accountant (CPA), with an accompanying report. The CPA's examination and report must comply with professional pronouncements issued by the American Institute of Certified Public Accountants (AICPA)—Auditing Standards Board "Statement on Standards For Accountants' Services On Prospective Financial Information"—specifically the 1985 pronouncement entitled "Financial Forecasts and Projections" and the related "Forecast/Projections Guide" and "Forecast/Projection Statement." The CPA will produce all reports referred to in the pronouncement including the Statement of Financial Position, Results of Operations, Statement of Cash Flows (in accordance with FASB 95 the Projected Financial Statements will include a "Statement of Cash Flows" (direct method) in place of the Statement of Changes in Financial Position") and Summaries of Significant Assumptions and Accounting Policies. This projection must disclose projected cash flow and working capital balances for the period required. The deferral period beyond 5 years can only extend to the point where either the cumulative cash flow or working capital become positive, taking into account the deferral payments.

One respondent indicated that the Bureau of Land Management should allow use only of corporate sureties, irrevocable letters of credit, or securities of the United States as security for bonding on the promissory note. The respondent felt the use of assets as security for the note could leave the Government with an asset that is subject to depreciation or a loss in value due to a change in market.

The agency does not agree that forms of security should be limited. Accordingly, the final policy allows consideration of all forms of security specified in the Bureau of Land Management timber sale regulations. However, personal or other new forms of security would only be approved after full analysis of their value and determination of collection potential. The Bureau of Land Management is not going to accept "at risk" security, but believes it reasonable to retain the capability to consider alternative forms of security, if such forms meet the test of securing the government's interests.

One respondent was concerned that the Bureau of Land Management was requiring the purchasers to maintain the sale performance bond until final payment of the promissory note. The Bureau of Land Management has not changed the performance bond requirements; the bond may be reduced as currently prescribed in the contact based on payment of the non-deferred portion of the unpaid balance of the purchase price and the value of other contract requirements.

Four respondents wanted the Bureau of Land Management to permit the use of the performance bond as security for the payment obligation under the promissory note. This option is within the discretion of the Authorized Officer subject to the current contractual obligations against the performance bond and the requirement for full security for the promissory note.

Sales Eligible for Modification

Under the interim policy, to be eligible for payment deferral, timber sales must meet the following criteria: (1) The bid date must be prior to January 1, 1982; (2) the remaining stumpage must have an average value per MBF that exceeds the average bid value for the previous 6-calender months on the Bureau of Land Management District where the sale is located by at least $50; and the contract must have sufficient contract period remaining to allow for removal of remaining timber prior to expiration of the contract.

Some of the respondents objected to the procedure of allowing sales to be deferred on a categorical basis. They agreed that the pre-1982 sales were uneconomic to harvest but disagreed that all purchasers holding pre-1982 inventories should be granted a

modification for deferred payments. One respondent indicated that purchasers who recently acquired sales through third party agreements (assignment) were aware of the potential losses resulting from the high-priced sales. The respondent stated that allowing a purchaser to defer payment on sales that were recently acquired would not be necessary because the liability of the high-priced timber was considered in the business transaction and compensated for in the price for the assumption of the contracts. Two respondents indicated that purchaser need, as well as sales criteria, should be considered in granting the deferral. These respondents felt that only purchasers that had a financial necessity for the deferral should be allowed to defer payment. It was suggested that a case-by-case approach that looks at the total financial condition of the applicant would be fairer and more equitable to the responsible firms of the industry that have completed their high-priced sales.

All of the programs to resolve the economic problems created by the high-priced bidding expectations of the late 1970's and early 1980's were categorical. The various extension procedures, the legislative initiative, and the Federal Timber Contract Payment Modification Act, were applied to selected sales; sales bid prior to January 1, 1982. All purchasers holding sales were allowed to participate. The Bureau of Land Management will continue to apply selection criteria in the same manner established for previous initiatives for resolving the high-priced sale situation. The primary reason the respondents requested additional purchaser selection criteria was to eliminate the perceived financial advantage afforded by the low cost borrowing rate in the interim policy. The decision to use the prime rate of interest in the promissory note for the final policy eliminates any financial advantage associated with borrowing funds at the lower Treasury obligations rate of interest. Therefore, there is no need for additional screening criteria for applicants. The final policy will continue to use only the categorical sales selection criteria.

Two respondents suggested that the determination of high-priced sales using the average District bid value plus $50 established a floor rate that was too low. There was concern that the prices currently paid for low-value salvage material would produce an average bid value that was too low and allow sales that were not actually high-priced to qualify for deferral. A review of the sales sold during the past 6 months reveals all fire salvage sales were previously sold. In addition, the past 6 months' sales contained a lower percentage of salvage volume than normally sold due to the reduced quantity of "old-growth" sales. Therefore, the use of the most recent 6-month average District bid plus $50 does not establish a floor rate that is too low relative to the quality of timber contained in the high-priced sales. The final policy will continue to use the 6-month average District bid plus $50 as the floor rate for qualification and for computing the value which may be deferred.

Three respondents indicated that purchasers should not be allowed to select individual sales for deferral but rather should be required to submit their entire high-priced portfolios for deferral. This suggestion was made to ensure that a purchaser did not elect for deferral on the more profitable sales and be allowed to default on the less profitable offerings. The Bureau of Land Management feels that the individual sale selection process should be allowed as indicated in the interim policy. Due to changing market demands, a purchaser has no way of determining whether sales can be logged in future markets. The decision to defer payment is market driven and is dependent on dollar margins resulting from prices received for lumber. It would be extremely difficult for a purchaser to make an aggregate decision affecting sales that will be logged in future years. Moreover, exposing sureties and banks to a purchaser's total liability for the entire high-priced sales portfolio would make it virtually impossible for a firm to get the needed security for the program.

Modification of Payments

Under the interim policy payment specifications for timber stumpage removed under the contract can be modified to allow payment deferral. The deferred payment rate per MBF is determined at the time of modification. The deferred value will be the difference between the average current contract value in MBF and the current average bid value of the District sales plus $50. The Authorized Officer determines the District sales average value using sales sold in the 6-calendar months immediately prior to the request for modification. Modification of the contract is contingent on the prior execution of a promissory note for the estimated amount of payment to be deferred.

The comments from respondents on the procedures for modification of payments suggested the Bureau of Land Management should consider a species pricing criterion for determining high-priced sales rather than average tract value. The Bureau of Land Management intends to use the average remaining value in MBF and average bid value in MBF as criteria for determining both qualifying sales and the amount of the deferral. The actual deferral is accomplished on an individual cutting area basis for those cutting areas that have average remaining value per MBF above the average District bid per MBF plus $50. Species bids on individual sales result from a variety of purchaser bidding strategies; a wide range in values and the lump-sum type of contract used make it very difficult to determine a meaningful average species price. The Bureau of Land Management feels that an average tract value determination is more representative for the high-priced value determination and computation of the deferral amount.

One respondent suggested that rather than being $50 per MBF in all cases, the additional value to be added to the District average bid value should be determined on a percentage basis. All but two of the remaining pre-1982 sales are in western Oregon. Review of the 6-month average bid rates for Oregon indicates that a 10 percent add-on would produce a floor rate of $233 per MBF. The floor rate calculated with the $50 increment gives an average of $262 per MBF. The high-priced sale definition used by the agency for Oregon sales previously was sale values in excess of $225 per MBF. However, since the effective date of the interim policy improving market conditions have raised the average bid by over $50 per MBF, thereby revising the definition to $250–$275 per MBF. This analysis indicates that the $50 add-on gives the better approximation of high-priced sales. Accordingly, the final policy retains the $50 add-on.

Modification of Payment Guarantee Requirements of the Contract

No comments were received from respondents on this section.

Limitation on Application on Deferred Payment Modifications

Under the interim policy, retroactive payment deferral is not allowed for previously harvested volumes. Moreover, the performance bond cannot be reduced under the deferred payment procedures.

The use of the term "harvested" in the interim policy prompted one respondent to suggest that the Bureau of Land Management should consider that all timber cut but not yet removed should be eligible for inclusion in the payment

deferral program. The respondent indicated that inclusion in the deferral program of as much eligible timber as possible can serve only to further the goal of encouraging contract performance. The final policy now specifies that payments cannot be retroactively modified for previously billed volumes. The deferred rates will be effective for all applicable volume removed during the initial billing period. All volume reported on the initial monthly cutting report for billing for the monthly period during which the modification becomes effective will be charged for under the deferred rate procedures.

Breach

No comments were received on this section. Therefore, these provisions of the interim policy are adopted in the final without change.

Further Comments

Four respondents provided suggestions that the Bureau of Land Management provide relief for high-priced timber sales contracts by adopting a "test case" proposal offered by one of the lumber firms in southwest Oregon. The Secretary of the Interior reviewed this proposal and decided that it should not be authorized. The proposal was declined on the basis of equity to those purchasers that have met their contractual obligations and the fair expectation of the Government to performance of valid contractual obligations.

Key Features of the Final Policy

Having considered the comments received, the Bureau of Land Management is adopting a final policy on modification of timber sale contracts to allow payment deferral on high-priced sales with the changes noted in the foregoing discussion of comments. The key features of the final policy are listed below:

Key Features of the Final Policy.

Sales Eligible for Modification.

To be eligible for payment deferral modifications, timber sale contracts must meet the following criteria:

1. The bid date must be prior to January 1, 1982;

2. The remaining stumpage must have an average value per thousand board feet (MBF) that exceeds the average bid value for the previous 6 calendar months for the Bureau of Land Management District in which the sale is located, plus $50 per MBF.

3. The contract must have sufficient contract period remaining to allow for removal of the timber remaining in cutting areas included in a payment deferral modification prior to expiration of the contract.

The January 1, 1982, date was selected because Congress has already in the Federal Timber Contract Payment Modification Act identified the period immediately prior to this date as a bidding period when cumulative market effects resulted in excessive bidding for Federal Timber.

Authorized officials of current holders of qualifying contracts must request payment deferral in writing. The current holder is the entity currently recognized by the Bureau of Land Management as being legally responsible for contract performance. The Bureau of Land Management is not limiting the procedure to companies who bid the sales.

For contracts having multiple cutting areas, one or more cutting areas may be included in a modification. However, the Bureau of Land Management will not approve modification requests where a default of cutting areas not included in a modification would result in a non-viable resale opportunity.

Requests for modification of a qualifying contract must be submitted prior to a billing date for timber covered by the modification. A deferred payment agreement, promissory note, and additional securities must be fully executed prior to the due date for payment of non-deferred amounts for covered timber.

Final Policy and Promissory Note Procedures

The final policy for existing high-priced sales will provide guidance to Authorized Officers in the exercise of their existing authorities to administer Bureau of Land Management timber sale contracts. Modification of specified high-priced sales to implement this deferred payment policy will be in the public interest. In accordance with the contract terms, the Government will receive full contract value. The current holder of a timber sale contract determined by the Bureau of Land Management to be a high-priced contract will pay for timber under that contract at the contract price. Under this policy, the terms of payment will be modified allowing the Government to defer an amount of payment equal to the difference between the current average bid value for the Bureau of Land Management District in which that sale is located at time of modification, plus $50, and the average current contract value per MBF. The difference between the average bid value, plus $50, and the current contract value (deferred payment) will be paid with interest, over a maximum of 10 years under the terms of a fully secured promissory note. In most cases note terms will be 5 years or less and may be approved by the Authorized Officer. Application for note terms from 6 to 10 years must show evidence of need based on compelling circumstances. Purchasers must provide the State Director with a financial projection to support the need for a promissory note term beyond 5 years. The projection must be examined by an independent CPA with an accompanying report.

The CPA examination and report must comply with professional pronouncements issued by the AICPA—Auditing Standards Board "Statement On Standards For Accountants' Services On Prospective Financial Information"—specifically the 1985 pronouncement entitled "Financial Forecasts and Projections" and the related "Forecast/Projections Guide" and "Forecast/Projection Statement". A CPA must produce all reports referred to in the pronouncement including the Statement of Financial Position, Results of Operations, Statement of Cash Flows [in accordance with FASB 95 the Projected Financial Statements will include a "Statement of Cash Flows" (direct method) in place of the Statement of Changes in Financial Position"] and Summaries of Significant Assumptions and Accounting Policies. This projection must disclose projected cash flow and working capital balances for the period requested. The deferral period beyond 5 years can only extend to the point where either the cumulative cash flow or working capital become positive, taking into account the deferral payments.

The State Director will coordinate the granting of the additional note term with the Regional Forester of the Forest Service if the purchaser has Forest Service sales that meet qualifications for deferral under the Forest Service policy for deferred payments.

Interest on accruing deferred value will be paid quarterly following the due date of non-deferred payment for the harvest of timber covered by a deferred payment agreement. The full amount of deferred payment, as estimated by the Bureau of Land Management, specified in the promissory note will require equal quarterly payments to amortize the amount of the note with payments to commence the first January 1 following the execution of the note. The other quarterly payment due dates will be April 1, July 1, and October 1. Prior to the completion of harvest, interest paid will be calculated on the total amount of accrued deferred value or the remaining balance of the note, whichever is less,

and billed quarterly. Upon completion of harvest, interest paid will be calculated on the remaining balance of the note. Thus, only the contract terms necessary to change the timing of payment to the Government will be modified. The deferred payment modification will be authorized only after receipt of a properly prepared and executed promissory note, on a form approved by the Bureau of Land Management for the total amount of the deferred stumpage value. The note must be fully secured by a form of security acceptable to the Bureau of Land Management on a form approved by the Bureau of Land Management, and allow for the unconditioned payment upon demand by the Bureau of Land Management.

The security amount must be sufficient to cover the entire amount of the note. The contract holder or surety, where applicable, may make pre-payment of all or a portion of the outstanding remainder of the note on the date of any quarterly payment. The amount of the bond security may be reduced to reflect the current amount of the promissory note obligation during the note period. The note payments may be assumed by the surety if the principal is unable to make the quarterly payments.

The interest rate will be adjusted at each payment and will be equal to the prime rate of interest listed in the Federal Reserve Statistical Release H.15, Selected Interest Rates, Instrument, Bank Prime Loan. The Selected Interest Rates (H.15) release for February, May, August, and November will be used as the basis for the promissory note interest charges. The rate used from the Selected Interest Rates sheet will be the average monthly rate listed respectively for the months of January, April, July and October.

Modification of Payments

Under the policy, the payments for stumpage will be reduced by a deferred amount covered by a promissory note. The deferred payment rate per thousand board feet will be determined at the time of modification. The deferred value will be the difference between the current average bid value for the Bureau of Land Management District in which the sale is located, plus $50 per thousand board feet, and the average current contract value in thousand board feet.

The Authorized Officer will use the average for the 6 full calendar months immediately prior to the request for modification in determining the amount of the payment deferred. Only high-priced timber within individual cutting areas shown on the contract's Exhibit "B" having an average per thousand board feet bid value that is above the current 6 month average per thousand board feet bid value, plus $50 per thousand board feet, for the Bureau of Land Management District, will be eligible for payment deferral. The total deferred payment amount allocated to each of such areas will be directly proportional to the contract value of the areas. Amounts of deferred and non-deferred payments will be computed by the Bureau of Land Management at the time a purchaser requests a deferred payment modification. The determination of the amount subject to deferral will be calculated based on unhauled volumes as determined by the Bureau of Land Management to be on the contract area at the time of the most recent billing date for the contract.

More than one note per sale, executed annually, will be considered for sales expected to require more than one year for harvest. For the multiple note procedure, the amount of the note will be based on the volume scheduled for removal in an approved logging plan. A single note may be based upon nothing smaller than an individual cutting area or road right-of-way within a cutting area. The average current contract value for the estimated volume to be removed will be used to determine the amount of payment deferral for the multiple note procedure. This will allow the note and interest amount to reflect estimated seasonal removal volumes. This will preclude having to charge for principal and interest on large volumes that have to be scheduled for logging in successive years. For billing purposes, multiple notes can be consolidated.

The $2 per thousand board feet fee for administration of extended contracts will be paid in conjunction with payment of the non-deferred value.

Modification of the Payment Guarantee Requirements of the Contract

The requirements of the contract related to advance installments and payment guarantees in lieu of deposits will be satisfied by installments or payment guarantees equal to the revised current payment amounts as established under the formula for calculating deferred payments. The Government is protected as to the amount of the deferred payment by the fully secured promissory note. In the event of an overcut, advance cash installments or payment guarantee in lieu of installments must equal the total non-deferred and deferred value for cut timber specified in the deferred payment agreement but not covered by the promissory note. This requirement will assure that the value of the volume harvested above the estimated volumes is covered by payment guarantee. Full payment or revision of the promissory note must be made for the deferred value associated with the overcut.

Limitation on Application of Deferred Payment Modifications

Retroactive payment deferrals will not be allowed for previously billed volumes under the policy. The performance bond amount will not be reduced under the deferred payment procedures until the non-deferred value is paid in full at which time the contract provision for performance bond reduction will apply.

Breach

Failure to make a note payment is a breach of the provision for deferred payment and could result in suspension of operations. A defaulted note could result in contract cancellation.

Implementation of Final Policy

The key change between the interim and final policy is the use of the prime rate of interest for the promissory note interest requirement. To effect the transition between the interim policy and the final policy on interest rate requirements for promissory notes, the date of postmark of the purchaser's request for modification of a sale will be used to determine the interest rate basis to be used in the promissory note. Requests postmarked on or after the effective date of the final policy will be subject to promissory note charges at the prime rate of interest as provided in the final policy. Sales modifications requested under the interim policy will be subject to promissory note charges equal to the average market yield of outstanding Treasury obligations with 5 years remaining to maturity.

However, to receive notes with the interest rate provided in the interim policy, purchasers must execute the modifications requested under the interim policy and applicable promissory notes prior to December 31, 1989. All promissory notes executed after December 31, 1989, will require note interest charges at the prime rate of interest. These limitations are necessary to avoid negating the higher interest requirements of the final policy.

Regulatory Impact

This action has been reviewed under U.S. Department of the Interior policy and procedures as well as submitted to the Office of Management and Budget for review pursuant to Executive Order (E.O.) 12291. It has been determined that this policy does not have the effects of a major rule as defined in E.O. 12291. The

procedure implemented by this policy will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs for consumers, individual industries, Federal, State, or local government agencies or geographic regions, and will not have significant adverse effects on the ability of United States-based industries to compete with foreign-based enterprises in domestic or export markets. It does not change the total amount a purchaser will pay for Bureau of Land Management timber, although it will affect the timing of when a purchaser will have to pay the full price for stumpage under a Bureau of Land Management contract. The deferred payment will be made under the terms of a fully secured promissory note. The note will require interest charges as consideration for payment deferral.

The timing of payments to the Government will be delayed but the note interest will compensate for the deferral. The risk of nonpayment will be avoided by requiring a fully secured promissory note. Counties that share in revenues generated from Bureau of Land Management timber sales will experience a short-term deferral in receipts. However, the short-term effects are likely to have far less adverse impact than if these sales were defaulted. Since purchasers will eventually pay the full contract value, the long term receipts to affected counties will be far greater than will be received if the sales are defaulted and the timber resold. The proposed procedures will contribute to the economic well-being of timber-dependent communities, and the orderly flow of timber to market and receipts to the Treasury will strengthen the orderly accomplishment of forest management objectives, and reduce administrative costs associated with collection of claims against defaulting purchasers.

It has also been determined that this policy will not have significant economic impact on a substantial number of small entities. The policy works to preserve the long range revenues to affected counties and to maintain employment in the area and, thus, reduces the certain adverse economic impacts these entities will certainly experience in the event of default and bankruptcy of purchasers of these high-priced sales.

Based on both past experience and environmental analysis, it has been determined that the final policy will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from analysis in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

Furthermore, utilization of this policy is at a qualifying purchaser's discretion and a written request is not required in any specified format. The policy would not result in additional procedures or paperwork as defined in the Paperwork Reduction Act and 5 CFR Part 1320.

Hillary A. Oden,

Acting Deputy Director.

[FR Doc. 89-17991 Filed 8-1-89; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 22, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 17, 1989.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Orange County

Hotel San Clemente, 114 Avenida Del Mar, San Clemente, 89001149

Ventura County

Women's Improvement Club of Hueneme, 239 E. Scott St., Port Hueneme, 89001150

ILLINOIS

Champaign County

Alpha Xi Delta Sorority Chapter House (Fraternity and Sorority Houses at the Urbana—Champaign Campus of the University of Illinois MPS), 715 W. Michigan Ave., Urbana, 89001110

Beta Theta Pi Fraternity House (Fraternity and Sorority Houses at the Urbana—Champaign Campus of the University of Illinois MPS), 202 E. Daniel St., Champaign, 89001108

Kappa Sigma Fraternity House (Fraternity and Sorority Houses at the Urbana—Champaign Campus of the University of Illinois MPS), 212 E. Daniel St., Champaign, 89001109

Cook County

Bohlander, Jacob, House, 316 N. 4th Ave., Maywood, 89001113

Kane County

Geneva Country Day School, 1250 South St., Geneva, 89001111

Knox County

Walnut Grove Farm, Knox Station Rd., 1 mi. S of Knoxville, Knoxville vicinity, 89001114

Lake County

Catlow Theatre, 112—116 W. Main St., Barrington, 89001112

KANSAS

Cherokee County

Schermerhorn, Edgar Backus, House, 803 E. 5th St., Galena, 89001146

Montgomery County

Blakeslee Motor Company Building, 211 W. Myrtle, Independence, 89001145

KENTUCKY

Jefferson County

Warehouse A, Brown—Forman Corporation, 18th and Howard Sts., Louisville, 89001144

MASSACHUSETTS

Barnstable County

Provincetown Historic District, Roughly bounded by US 6, W end of Commercial St., Provincetown Harbor, and SE end of Commercial St., Provincetown, 89001148

Wellfleet Center Historic District, Roughly bounded by Cross St., Holbrook Ave., Maine, E. Main and School Sts., and Duck Creek, Wellfleet, 89001147

NEW YORK

Livingston County

Alverson—Copeland House (Lima MRA), 1612 Rochester St., Lima, 89001133

Barnard Cobblestone House (Lima MRA), 7192 W. Main St., Lima, 90001122

Bristol House (Lima MRA), 1950 Lake Ave., Lima, 89001135

Cargill House (Lima MRA), 1839 Rochester St., Lima, 89001126

Clark Farm Complex (Lima MRA), 7646 E. Main Rd., Lima, 89001125

Dayton House (Lima MRA), 7180 W. Main St., Lima, 89001131

DePuy, William, House (Lima MRA), 1825 Genesee St., Lima, 89001127

Draper House (Lima MRA), 1764 Rochester St., Lima, 89001140

Ganoung Coblestone Farmhouse (Lima MRA), 2798 Popular Hill Rd., Lima, 89001120

Godfrey House and Barn Complex (Lima MRA), 1325 Rochester Rd., Lima, 89001134

Harden House (Lima MRA), 7343 E. Main St., Lima, 89001142

Harmon, William, House (Lima MRA), 1847 Genesee St., Lima, 89001130

Leech—Lloyd Farmhouse and Barn Complex (Lima MRA), 1589 and 1601 York St., Lima, 89001117

Leech—Parker Farmhouse (Lima MRA), 1537 York St., Lima, 89001116

Markham Cobblestone Farmhouse and Barn Complex (Lima MRA), 6857 Heath—Markham Rd., Lima, 89001119

Martin Farm Complex (Lima MRA), 1301 Bragg St., Lima, 89001136

Morgan Cobblestone Farmhouse (Lima MRA), 6870 W. Main Rd., Lima, 89001118

Moses, Ogilvie, Farmhouse (Lima MRA), 2150 Clay St., Lima, 89001123
Moses, Zebulon, Farm Complex (Lima MRA), 2770 Clay Rd., Lima, 89001132
Peck, J. Franklin, House (Lima MRA), 7347 E. Main St., Lima, 89001128
Peck, Thomas, Farmhouse (Lima MRA), 7955 E. Main Rd., Lima, 89001137
School No. 6 (Lima MRA), 6679 Jenks Rd., Lima, 89001121
Spencer House (Lima MRA), 7372 E. Main St., Lima, 89001124
Stanley House (Lima MRA), 7364 E. Main St., Lima, 89001129
Vary, William L., House (Lima MRA), 7378 E. Main St., Lima, 89001141
Warner, Asahel, House (Lima MRA), 7136 W. Main St., Lima, 89001139
Warner, Matthew, House (Lima MRA), 7449 E. Main St., Lima, 89001138

TEXAS

Washington County

Walker, James, Log House, Co. Rd. 80, Brenham vicinity, 89001143

Virginia

Charles City County

North Bend, VA 619, Weyanoke vicinity, 89001107

The following action is being considered for the following property:

Louisiana

Iberia Parish

Broussard, Amant, House, 1400 E. Main St., New Iberia 80001729, Proposed Move

[FR Doc. 89-17960 Filed 8-1-89; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-294]

Certain Carrier Materials Bearing Ink Compositions To Be Used in a Dry Adhersive-Free Thermal Transfer Process and Signfaces Made by Such a Process; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Respondents Signtech Inc., Acme Wiley Corp., Dualite Inc., Fairmont Sign Company, Graflex Inc., Harlan Law Corp., McHenry Industries, Persona Inc., and Superior Electrical Advertising.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary of the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any such person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1805.

By order of the Commission.

Issued July 25, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-18040 Filed 8-1-89; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-301]

Certain Imported Artificial Breast Prostheses and the Manufacturing Processes Therefor; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 2, 1989, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Amoena Corporation, 2150 Newmarket Parkway, Suite 116, Marietta, Georgia 30067. Supplements to the complaint were filed on July 6 and 21, 1989. The complaint, as supplemented, alleges violations of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain imported artificial breast prostheses, made abroad by a process covered by claim 1 of U.S. Letters Patent 4,249,975; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on July 27, 1989, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain imported artificial breast prostheses, made abroad by a process allegedly covered by claim 1 of U.S.

Letters Patent 4,249,975, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Amoena Corporation, 2150 Newmarket Parkway, Suite 116, Marietta, Georgia 30067.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Otto Thaemert, Textil-und, Kunstoff Gesell.mit, Beschr. Haftung & Co. KG, Im. Steinkamp 12, 3006 Burgwedel, Federal Republic of Germany

Tertulin Eberl, Gesellschaft fuer, Orthopaed. produkte Gmbh, Nonnenwaldstr 25, 8122 Penzberg, Federal Republic of Germany

Prometel G.A.R.L., Z.i. des Bourguignons, APT. 84400 France

Tru Life Nocton Ltd., Unit 3, Cookstown Industrial Estate, Belgard Road, Tallaght, Co., Dublin, Ireland

Airway Division of Surgical Appliances, 3960 Rosslyn Drive, Cincinnati, Ohio 45209

Tri-Hawk, 849 South Broadway, Los Angeles, California 90014

Jobst Corporation, P.O. Box 653, 651-53 Miami Street, Toledo, Ohio 43694

Tru Life, Incorporated, 450 Portage Trail, Cuyahoga Falls, Ohio 44222

Hemispheres Marketing Company, Ltd., 6501 N.W. 36th Street, Miami, Florida 33166

Almost U, 1245 Park Street, Peekskill, New York 10566.

(c) Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401J, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the name respondents in accordance with sections 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057, 33063 (Aug. 29, 1988). Pursuant to § § 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33059 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued July 28, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-18041 Filed 8-1-89; 8:45 am]

BILLING CODE 7020-01-M

[Investigation No. 337-TA-284]

Certain Electric Power Tools, Battery Cartridges, and Battery Chargers; Not to Review Initial Determination; Schedule for Filing Written Submissions on Remedy, The Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice; request for briefs and written comments.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") concerning violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. However, as discussed below, the Commission has adopted only those portions of the ID which pertain to the following issues: Jurisdiction over the parties and the subject matter of the investigation; complaints' right to use the alleged trademarks and whether they are *de jure* functional, inherently distinctive, and have acquired secondary meaning; likelihood of confusion; false representation; false advertising; passing off; and all the elements necessary for a section 337 violation based on registered trademark infringement. Those portions of the ID collectively have become the Commission's final determination concerning violation of section 337 in this investigation. Since those findings and conclusions are dispositive of the question of whether each respondent has or has not violated section 337, the Commission has taken no position on other issues adjudicated in the ID in connection with the alleged violation of section 337.

Since the ID holds that there has been a violation of section 337 by one respondent, the Commission directs the parties to submit briefs and requests written comments from other agencies, and interested persons on the issues of appropriate relief, the public interest, and bonding, as described below.

ADDRESSES: Copies of all nonconfidential documents filed in this investigation, including the ID, are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 500 E. Street SW., Room 112, Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION: The subject investigation was instituted to determine whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 (1982) and Supp. VI 1988) in the importation or sale of certain electric power tools, battery cartridges, and battery chargers from Taiwan. The complainants are Makita U.S., Inc. and its subsidiary Makita Corporation of America (collectively, "Makita" or "complainants"). The complaint alleged that each respondent has engaged in one or more of the following unfair acts in the importation or sale of accused merchandise: (1) Common-law trademark infringement; (2) registered trademark infringement; (3) false representation; (4) false advertising; or (5) passing off. The complaint also alleged that unfair acts (1) and (3)-(5) have a threat or effect of destroying or substantially injuring a domestic industry or preventing the establishment of such an industry. Makita's allegation covered more than 100 imported products and more than 50 domestic products. *See* 53 FR 31112 (Aug. 17, 1988) as amended by 53 FR 45787 (Nov. 23, 1988).

On June 2, 1989, the presiding ALJ issued an ID holding that there has been no violation of section 337 by any respondent except one who was found to have infringed complainants' registered trademark in the importation or sale of an accused Taiwanese product. Complainants and two groups of respondents filed petitions for review of the ID. Various parties filed responses opposing one or more of the petitions in whole or in part.

After considering the ID, the petitions, and the responses, the Commission determined not to review the ID, but to adopt only those portions that relate to the following matters: (1) Jurisdiction over the parties [1] and the subject matter of the investigation; (2) whether complainants have a right to use the designs and color claimed as common-law trademarks and whether those designs and color are *de jure* functional, are inherently distinctive, or have acquired secondary meaning; (3) whether there is a likelihood of confusion between complainants' products and respondents' imported products; (4) whether any respondent has engaged in passing off false representation, or false advertising in the importation or sale of accused merchandise; and (5) whether any respondent has engaged in registered trademark infringement in the importation or sale of accused products in violation of section 337(a)(1)(C) (within the meaning of section 337(a) (2), (3), and (4)). The aforesaid portions of the ID collectively have become the Commission's final determination concerning violation of section 337 in this investigation. *See* interim Commission rule 210.53(h) (53 FR 33043, Aug. 29, 1988) (to be codified at 19 CFR 210.53(h)).

The Commission takes no position on the ID's adjudication of other issues relating to the alleged violation of section 337.[2] This includes the issue of complainants' readiness to commence domestic production of certain products. The Commission accordingly vacates the order in the ID requiring complainants to submit verified progress reports on that subject on or before September 1, 1989. The Commission does adopt, however, the ID's disposition of various motions and ancillary matters not related to the alleged violation of section 337 (*e.g.*, the motions to strike and the *in camera* treatment of certain materials and information).

Since the Commission has found that a violation of section 337 has occurred, the Commission may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in the respondent in question being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorney are also requested to submit a proposed remedial order(s) for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on August 7, 1989. Reply submissions on these issues must be filed no later than the close of business on August 14, 1989. No further submissions will be permitted unless otherwise ordered by the Commission.

Interested government agencies and members of the public also may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on August 14, 1989.

COMMISSION HEARING: The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

ADDITIONAL INFORMATION: All parties, government agencies, and interested persons that file written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

The 18-month statutory deadline for completing this investigation is February 20, 1990. *See* 19 U.S.C. 1337(b)(1).

Dated: July 31, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-18154 Filed 8-1-89; 8:45 am]

BILLING CODE 7020-02-M

[1] *Correction:* The ID erroneously states at pages 7, 10, and 252 that the Commission does not have *in personam* jurisdiction over respondent Mechanics Products, Inc., because that company was not served with copies of the complaint and notice of investigation. A signed, dated, certified mail return receipt on file in the Office of the Secretary indicates that Mechanics Products did in fact receive copies of the aforesaid documents on September 6, 1988. The Commission thus has *in personam* jurisdiction over respondent Mechanics Products.

[2] Chairman Brunsdale and Vice Chairman Cass adopted the entire ID as their final determination concerning the violation of section 337.

[Investigations Nos. 701-TA-300 (Preliminary) and 731-TA-438 (Preliminary)]

Limousines From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty and antidumping investigations Nos. 701-TA-300 (Preliminary) and 731-TA-438 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of limousines,[1]

[1] For purposes of these investigations, limousines are defined as extended wheelbase and expanded seating capacity motor vehicles principally designed for the transport of persons, of a cylinder capacity exceeding 1,500 cubic centimeters, and having spark-ignition internal combustion reciprocating piston engines of six or more cylinders (gasoline-engine powered).

provided for in subheadings 8703.23.00, 8703.24.00, and 9802.00.50 of the Harmonized Tariff Schedule of the United States (previously under items 692.10 and 806.20 of the Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Canada and to be sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by September 7, 1989.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), and part 201, subparts A through E (19 CFR Part 201), as amended by 54 FR 13672 (April 5, 1989).

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Trimble (202–252–1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on July 24, 1989, by Southampton Coachworks, Ltd., Farmingdale, NY.

Participation in the investigation. Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 15, 1989 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Trimble (202–252–1193) not later than August 11, 1989, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before August 17, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of sections 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7), as amended by 54 FR 13672 (April 5, 1989) and 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), may comment on such information in their written brief, and may also file additional written comments on such information no later than August 21, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: July 25, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–18042 Filed 8–1–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–296]

Certain Phenylene Sulfide Polymers and Polymer Compounds, and Products Containing Same; Add Commission Investigative Attorney

Before Paul J. Luckern, Administrative Law Judge.

Notice is hereby given that, as of this date, George C. Summerfield, Esq. and John R. Kroeger, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorneys in the above-cited investigation instead of George C. Summerfield, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: July 27, 1989.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436

[FR Doc. 89-18043 Filed 8-1-89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 2, 1989, Abbott Laboratories, Attn: D-297, Abbott Park, Abbott Park, Illinois 60064-3500, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance benzoylecgonine (9187).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 1, 1989.

Dated: July 20, 1989.

G.T. Gitchel,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-17966 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

James M. Esper, D.O.; Revocation of Registration

On May 10, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause proposing to revoke DEA Certificate of Registration, AE7182443, assigned to James M. Esper, D.O., Women's Health Care Centre, Ltd., Edinboro, Pennsylvania. The statutory predicate for the Order to Show Cause was that Dr. Esper's continued registration with DEA was inconsistent with the public interest based upon his issuing prescriptions for controlled substances in the names of patients and individuals who never received the controlled substances, and his plea of guilty, on February 11, 1989, in the Court of Common Pleas of Erie County, Pennsylvania to 21 controlled substance-related felonies and six misdemeanor counts of illegal dispensing of controlled substances.

A registered mail return receipt indicates that the Order to Show Cause was received at Dr. Esper's office on May 23, 1989. More than 30 days have passed since the Order to Show Cause was received, and no response or request for a hearing has been received by DEA. Therefore, the Administrator concludes that Dr. Esper has waived his opportunity for a hearing on the issues raised in the Order to Show Cause, and pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based upon the investigative file.

The Administrator finds that Dr. Esper was the subject of an investigation by the Pennsylvania Bureau of Narcotics Investigations and Drug Control (BNIDC). The investigation was initiated when BNIDC Agents noted that Dr. Esper was writing numerous Schedule II prescriptions for his relatives and office employees. The pharmacists who filled these prescriptions indicated that the prescriptions were presented by Dr. Esper and two of his employees. Subsequent interviews of the individuals whose names appeared on the prescriptions revealed that several of the patients never received the controlled substances prescribed for them. Of the prescriptions collected from area pharmacies by BNIDC Agents which listed Dr. Esper as the prescribing physician, 12 were written in the name of Dr. Esper's nurse for Percodan, Dexedrine and Zydone, Schedule II and Schedule III controlled substances. In an interview with the nurse, she indicated that she received the drugs from three of the prescriptions; she gave the remainder of the controlled substances to Dr. Esper. She also identified 55 prescriptions for controlled substances written in various patients' names which she personally filled at the pharmacy and gave the controlled substances to Dr. Esper.

Dr. Esper was arrested by BNIDC Agents on May 25, 1988, and was charged with 26 felony counts and nine misdemeanor counts relating to illegal dispensing of controlled substances. On February 11, 1989, Dr. Esper pled guilty, in the Court of Common Pleas of Erie County, Pennsylvania, to six counts of furnishing false or fraudulent material information in records or other documents required to be kept by Pennsylvania's Controlled Substance Act, 15 counts of acquiring or obtaining possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge, and six counts of administering, dispensing or prescribing of controlled substances not in good faith, in the course of professional practice. On April 6, 1989, Dr. Esper was sentenced to confinement in the Erie County Jail for no less than 29 months and 29 days and no more than 59 months and 29 days, restitution to the State of Pennsylvania in the amount of $13,934.20, and 15 years probation. DEA was not aware of Dr. Esper's conviction at the time that the Order to Show Cause was issued. The felony conviction alone is a sufficient ground for revocation of a DEA registration.

The Administrator of DEA may revoke a DEA Certificate of Registration based solely upon the registrant's conviction of a felony relating to controlled substances. See: 21 U.S.C. 824(a)(2). Several United States Courts of Appeal have held that such a felony conviction is clearly sufficient to warrant revocation of a DEA registration. See: *Pearce* v. *U.S. Dept. of Justice, Drug Enforcement Admin.*, 867 F.2d 253 (6th Cir. 1988); *Fourth Street Pharmacy* v. U.S. Dept of Justice, 836 F.2d 1137 (8th Cir. 1988); and *Fitzhugh* v. *Drug Enforcement Admin.*, 813 F.2d 1248 (D.C. Cir. 1987).

The Administrator finds that Dr. Esper has been convicted of felony violations of Pennsylvania law relating to controlled substances. His prescribing of highly abused controlled substances with knowledge that they were not for a legitimate medical purpose, nor for the individuals whose names appeared on the prescriptions, clearly demonstrates that Dr. Esper should no longer be registered with DEA.

Accordingly, having concluded that there is a lawful basis for the revocation of Dr. Esper's DEA Certificate of Registration, AE7182443, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AE7182443, previously issued to James M. Esper, D.O., be, and it hereby is, revoked. Any pending applications for renewal of that registration are hereby denied.

This order is effective September 1, 1989.

Dated: July 20, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-17967 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Subtances; Registration

By Notice dated March 3, 1989, and published in the **Federal Register** on March 14, 1989, (54 FR 10596), McNeilab Inc., DBA First State Chemical Co., Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Concentrate of poppy straw (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1311.42, the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as an importer of the basic classes of controlled substances listed above is granted.

Dated: July 20, 1989.

G.T. Gitchel,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-17968 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated March 3, 1989, and published in the **Federal Register** on March 14, 1989, (54 FR 10597, McNeilab Inc., DBA First State Chemical Co., Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 20, 1989.

G.T. Gitchel,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-17969 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated February 28, 1989, and published in the **Federal Register** on March 9, 1989 (54 FR 10057), Smithkline Chemicals, Division Smithkline Chemicals Beckman Co., 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine, its salts, optical isomers and salts of its optical isomers (1100)	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 20, 1989.

G.T. Gitchel,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-17970 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-22, 466]

Alco Power, Inc., Auburn, NY; Negative Determination Regarding Application for Reconsideration

By an application dated June 20, 1989, the workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 19, 1989 and published in the **Federal Register** on May 23, 1989 (54 FR 22379).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Auburn were previously certified for adjustment assistance under TA-W-18,513 issued on January 7, 1987. That certification expired on January 7, 1989. The instant petition was filed to continue the adjustment assistance benefits.

The conditions necessary for certification are not the same now as they were in 1987. Certification TA-W-18,513 was based on the transfer of diesel engine production to Canada. The transfer of production to Canada was completed in 1987.

Currently the Auburn plant produces engine parts. The subject denial is based on the fact the increased import criterion of the Group Eligibility Requirements of the Trade Act of 1974 was not met. Since the expiration of TA-W-18,513, engine parts production has not been transferred from the Auburn plant to Canada or other foreign sources. Further, the Auburn plant did not import component parts similar to those produced at Auburn during the first quarter of 1989. Investigation findings also show that production and sales of engine parts increased in the first two months of 1989 compared to the same period in 1988.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or

misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC. this 21st day of July 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-17997 Filed 8-1-89; 8:45am]

BILLING CODE 4510-30-M

[TA-W-22,725]

Dougherty Brothers Co., Buena, NJ; Negative Determination Regarding Application for Reconsideration

By an application dated June 23, 1989, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 6, 1989 and published in the Federal Register on July 3, 1989 (54 FR 27955).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners claim that tylenol containers and birth control trays were imported and contributed to a decline in sales and production at Buena. It is also claimed that that injection blow molding machines used in the production of plastic bottles and eye droppers were sent outside the U.S.

The workers produced plastic containers and eye droppers for the pharmaceutical industry. The Buena plant closed on January 31, 1989.

The Department's denial was based on the fact that the increased import criterion and the "contributed importantly" test of the Trade Act were not met. U.S. aggregate imports of plastic bottles were negligible in the 1986-1988 period. The "contributed importantly" test is generally demonstrated through a survey of the firm's customers. The Department's survey of the firm's major customers accounted for nearly all the subject firm's sales decline in 1988 compared to 1987. The survey revealed that none of the customers imported plastic containers or droppers while decreasing their purchases from Dougherty Brothers.

Investigation findings show that limited production of tylenol containers occurred in the period 1984-1985 as a test run and for training prior to transferring that production to Puerto Rico. Also birth control trays have not been purchased at Buena since 1987. The production of these items are outside the period relevant to the petition. The Department found that most of the production at Buena relevant to the period of the petition was transferred to other domestic locations including Puerto Rico. A domestic transfer of production would not provide a basis for certification. Also, the overseas transfer of machinery used in the production of plastic bottles and eye droppers would not, in itself, provide a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC. this 21st day of July 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-17996 Filed 8-1-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,780]

Jaclyn, Inc., West New York, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 5, 1989 applicable to all workers of Jaclyn, Incorporated, West New York, New York. The certification was published in the Federal Register on July 3, 1989 (54 FR 27956).

The Department is amending the certification to show the correct location of the worker group as West New York, New Jersey. The notice, therefore is amended by deleting West New York, New York and inserting West New York, New Jersey.

The amended notice applicable to TA-W-22,780 is hereby issued as follows:

All workers of Jaclyn, Incorporated, West New York, New Jersey who became totally or partially separated from employment on or after July 1, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of July 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-17998 Filed 8-1-89; 8:45 am]

BILLING CODE 4510-30-M

TA-W-22,499; Riverton, WY et. al.]

Pathfinder Mines Corp.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 18, 1989 applicable to all workers of Pathfinder Mines Corporation, Riverton, Wyoming and St. George, Utah.

Based on new information from the company, workers at the San Francisco, California corporate office worked exclusively for the Pathfinder Mines Corporation's mines in Wyoming whose workers currently are under certification for adjustment assistance. The notice, therefore is amended by including the San Francisco, California corporate office which closed in October 1988.

The amended notice applicable to TA-W-22,499 and TA-W-22,500 is issued as follows:

All workers of Pathfinder Mines Corporation's corporate office in San Francisco, California (TA-W-22,449A) who became totally or partially separated from employment on or after January 27, 1988 and before November 30, 1988 and all workers of the Riverton, Wyoming office (TA-W-22,499) and St. George, Utah office (TA-W-22,500) who became totally or partially separated from employment on or after January 27, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of July 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-17999 Filed 8-1-89; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-335 and 50-389]

Florida Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 20, Appendix A, footnote d-2(c) to Florida Power & Light Company (the licensee), for the St. Lucie Plant, Unit Nos. 1 and 2 (the facility), located in St. Lucie County, Florida.

Environmental Assessment

Identification of Proposed Action

Footnote d-2(c) of Appendix A to 10 CFR part 20 states, "No allowance is to be made for use of sorbents against radioactive gases or vapor." The proposed exemption would allow the use of a radioiodine protection factor of 50 when using Scott Aviation 631-TEDA-H canisters at the facility. The proposed exemption is in response to the licensee's application dated February 3, 1988, as supplemented by letters dated May 5, 1988, June 23, 1988, May 4, 1989, and clarified by conference calls on October 4, 1988 and March 15, 1989.

The Need for the Proposed Action

The proposed exemption is needed to facilitate certain operations at the facility in areas where airborne radioiodine levels necessitate respiratory protection for workers. The requested exemption would allow utilization of air-purifying respirators in lieu of supplied-air or self-contained apparatuses. A supplied-air respirator can limit a worker's efficiency because the worker is restricted to the areas within the reach of his air-supply hose. A self-contained breathing apparatus is usually very heavy and cumbersome, and has a limited air supply. Therefore, a person using this type of apparatus is less mobile and less efficient in performing his duties. Air-purifying respirators, on the other hand, are lightweight, and their use would reduce the worker's physical work effort and time spent in the work area, and thereby result in less personal radiation exposure.

Environmental Impacts of the Proposed Action

The proposed exemption involves a change in the installation or use of the facility's components located entirely within the restricted area as defined in 10 CFR part 20. The staff has determined that the proposed exemption will result in a small increase in the amount of low-level solid waste due to the disposal of used sorbent canisters. However, the proposed exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite. Because the use of air-purifying respirators will allow the plant workers to perform their jobs more efficiently than could be done using supplied-air or self-contained apparatuses, this exemption will most likely reduce the individual or cumulative occupational radiation exposure at the St. Lucie Plant by decreasing worker time spent in radiation areas. The exemption will not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded there are no significant environmental impacts for the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. Such an action would not reduce environmental impacts of the plant operation.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement for the St. Lucie Plant, Unit 1, dated June 1973, or in the Final Environmental Statement for the St. Lucie Plant, Unit 2, dated May 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult with any 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 on 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 February 3, 1988, as supplemented May 5, 1988, June 23, 1988, and May 4, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Rockville, Maryland this 26th day of July 1989.

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. 89-18045 Filed 8-1-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Maintenance Practices and Procedures; Postponed

The ACRS Subcommittee on Maintenance Practices and Procedures scheduled for Tuesday, August 8, 1989 has been postponed indefinitely. This meeting was published in the **Federal Register** on Friday, July 21, 1989 (54 FR 30620).

Date: July 25, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-17938 Filed 8-1-89; 8:45 am]

BILLING CODE 7590-01-M

Illinois Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

[Docket No. 50-461]

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-62 issued to the Illinois Power Company [1] (IP), and Soyland Power Cooperative, Inc. (Soyland) (the licensee), for operation of Clinton Power Station, Unit 1 (CPS) located in DeWitt County, Illinois.

The amendment consists of proposed changes to the CPS Technical Specifications to remove the cycle specific parameter limits. These limits will be maintained in a "Core Operating Limits Report". The Technical Specifications will be revised to reference this report. The Technical Specifications will also be revised to add administrative controls for the Core Operating Limits Report. These administrative controls will require that the values in the report be established using NRC approved methodologies, and

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

that copies of the report be supplied to the NRC immediately after it is issued. This proposed change is in response to NRC Generic Letter 88-16.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 1, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Paul C. Shemanski: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Sheldon Zabel, Esquire; Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 6, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 26th day of July 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III-2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89-18046 Filed 8-1-89; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Proposed Wildlife Amendments to the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan; Hearings

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed wildlife amendments to the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan, hearings and opportunity to comment.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then.

On July 13, 1989, the Council voted to initiate procedings pursuant to section 4(d)(1) of the Northwest Power Act to amend the program's wildlife measures. This notice contains a brief description of the proposed amendments, describes how to obtain a full copy of the proposed amendments and background information concerning them, and explains how to participate in the amendment process. Comments are solicited on the merits of the proposed amendments.

Public Comment: All written comments must be received in the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon 97204, by 5 p.m. Pacific time on September 30, 1989. Comments should be submitted to Dulcy Mahar, Director of Public Involvement, at this address. Comments should be clearly marked "Wildlife Comments."

After the close of written comment, and up to the time of the Council's final decision on the proposed amendments, the Council may hold consultations with interested parties to clarify points made in written comment.

Hearings: Public hearings will be held in Idaho, Montana, Oregon and Washington, beginning in September 1989. If you wish to obtain a schedule of the hearings, contact the Council's Public Involvement Division, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis in the Public Involvement Division. Requests to reserve a time period for oral comments must be received no later than two work days before the hearing.

Final Action: The Council expects to take final action on the proposed wildlife amendments later this year. The actual date on which the Council will make its final decision will be announced in accordance with applicable law and the Council's practice of providing notice of its meeting agendas.

FOR FURTHER INFORMATION CONTACT: A fuller version of this notice, including a paper entitled "Northwest Power Planning Council Proposed Wildlife Amendments, Background and Text of Proposed Amendments," has been prepared that explains the reasons for the rulemaking, the process to date, summarizes the proposal itself, responds to certain issues raised in earlier comments, and sets out the text of the proposed amendments. In addition, the Council staff prepared an issue paper in October 1987, entitled "Wildlife Mitigation Planning," which discusses the background of this issue and identifies alternatives the Council has considered. Those wishing to receive a copy of either paper should contact the Council's Public Involvement Division at the addresss or telephone numbers listed above.

SUPPLEMENTARY INFORMATION: 1. *Reasons for the rulemaking:* Losses of wildlife and wildlife habitat have occurred in the Columbia River Basin as a result of hydroelectric development. The Northwest Power Act calls for the Council to adopt measures to protect, mitigate, and enhance wildlife and wildlife habitat adversely affected by this development. Until now, the Council's wildlife program has addressed only the effects of individual projects. As individual wildlife mitigation plans have been submitted to the Council, concerns have been expressed about the overall scope and cost of the wildlife program. The proposed amendments were prompted by these concerns.

2. *The process to date:* Since 1982, the Council, the region's fish and wildlife agencies and Indian tribes, and the Bonneville Power Administration have been studying the effects of hydropower development on wildlife, and developing mitigation plans. The Council approved mitigation plans for Libby and Hungry Horse dams in Montana in 1987. Mitigation plans also have been submitted to the Council for the Palisades, Black Canyon, Anderson Ranch, Grand Coulee, and Willamette Basin projects. More recently, a mitigation plan has been submitted for the Albeni Falls project in Idaho. In September 1988, the Council staff released an issue paper (Wildlife Mitigation Planning, 88–10, September 23, 1988) that sought comment on wildlife mitigation alternatives and policies to guide the wildlife program. The Council received written and oral comment over a 4 1/2 month period, and held further oral consultations after the close of written comment. The Albeni Falls plan was submitted too late to be included in the issue paper. Copies of the Albeni Falls mitigation plan are available from the Council's Public Involvement Division at the address and telephone numbers given above.

3. *Proposed amendments:* Principal proposals are:

- To establish an interim, 10-year goal to protect, mitigate, and enhance up to one-half of the wildlife and wildlife habitat losses attributable to Federal hydropower facilities in the Columbia River Basin;
- To accept wildlife loss estimates developed by wildlife agencies and Indian tribes as a starting point for mitigation at the Palisades, Anderson Ranch, Black Canyon, Albeni Falls, Grand Coulee, and Willamette River Basin hydropower projects;
- To authorize use of wildlife mitigation plans as a starting point for the identification of wildlife priorities;
- To create a process and standards to establish priorities for and guide implementation of wildlife plans and projects for the Federal hydropower projects; and
- To adopt general guidelines for wildlife mitigation at non-Federal hydropower projects in the Columbia Basin.

Edward Sheets,

Executive Director.

[FR Doc. 89–17992 Filed 8–1–89; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27060; File No. SR–MSE–89–6]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Incorporated Relating to Various Pricing Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1989, the Midwest Stock Exchange Inc., ("MSE" 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 MSE, pursuant to Rule 19b–4 of the Act, submitted a proposed rule change to implement various changes to its Transaction Fee Schedule. The text of the proposed fee changes is available for inspection and copying at the Commission's Public Reference Section and at the Exchange.[1]

[1] The Exchange proposes that in calculating the value charge, as set forth in the schedule, only the first 50,000 shares will be valued on non-cross trades executed after a firm has reached $250,000,000 of billable value during the month. In addition, with respect to credits and discounts for round lot orders entered through the MAX and MAX–OTC Systems, the Exchange proposes that the order entering member firm will receive a network utilization credit of $.20 per trade and that an accumulated yearly value charge discount will be applied against a firm's net transaction fees. After having reached a qualifying accumulated net billable value level, the firm will receive the scheduled discount throughout the remainder of the year, or until it reaches the next highest accumulated net billable value level. Discounts will be applied according to the following schedule:

Continued

Accumulated net billable value	Discount (percent)
5.0 to 7.5 Billion	5
7.5 to 10.0 Billion	10
10.0 to 15.0 Billion	15
15.0 Billion +	25

Monthly net transaction fee	Discount (percent)
$50,000 to $75,000	10
$75,000 to $100,000	20
$100,000 +	25

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to restate MSE's Transaction Fee Schedule and to amend it to provide an incentive for customers to execute larger block size trades on the Exchange.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of dues, fees and other charges among Exchange members and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSE does not believe that any burden will be placed on competition as a result of the proposed rule change.

In addition, a monthly discount will be applied against net transaction fees according to the following schedule:

The proposed rule change also will provide that in no event will any credit be applied to the extent that a firm's monthly Exchange bill will be less than zero.

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) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-89-6 and should be submitted by August 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-17951 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27062; File No. SR-NASD-88-19]

Self-Regulatory Organizations; Amended Proposed Rule Change by National Association of Securities Dealers, Inc. relating to the OTC Bulletin Board Display Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 20, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the amendment 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

On June 9, 1988, the NASD submitted a proposed rule change (designated File No. SR-NASD-88-19), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to establish the OTC Bulletin Board Display Service ("Bulletin Board Service" or "Service"). The Service is an electronic quotation medium for securities traded over-the-counter ("OTC") that are not included in the NASDAQ System or listed on a national securities exchange (collectively referred to as "Bulletin Board Securities"). Basically, the Service will enable participating market makers to enter quotes or indications of trading interest in Bulletin Board Securities and to update their entries on a real-time basis. The principal operational features of the Service were fully described in File No. SR-NASD-88-19 under item 3, "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change." [1] This Amendment does not effect a material change in that description nor does it alter the terms of Amendment Nos. 1 and 2, which are hereby incorporated by reference.[2]

[1] This description was also contained in the Commission's notice that solicited public comments on File No. SR-NASD-88-19. *See* Release No. 34-25949 (July 28, 1988); 53 FR 29096 (August 2, 1988).

[2] Amendment No. 1 was submitted on August 10 1988 and describes the unsolicited indicator that market makers could attach to a bid or offer being displayed on behalf of a retail customer. Amendment No. 2, submitted on February 2, 1989, incorporated various modifications that reflect a working agreement between the NASD and Commerce Clearing House, Inc./National Quotation Bureau, Inc. and the fees applicable to market makers opting to use the Service.

Amendment No. 3 to File No. SR-NASD-88-19 proposes a change in the manner in which market makers would be permitted to quote certain Bulletin Board Securities. This change solely affects the quotation of foreign securities/ADRs of issuers that are exempt from the Act's reporting requirements pursuant to Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) thereunder (hereinafter referred to as "foreign exempt securities"). With respect to these securities, the NASD is amending its original proposal to permit only a static display of market makers' quotations or indications of interest, subject to updating once each morning and once each afternoon. More specifically, market makers will be permitted to update their individual quotes/indications in foreign exempt securities daily between 9 and 9:30 a.m. (ET) and between noon and 12:30 p.m. (ET).[3] Thus, each market maker in a foreign exempt security will be allowed a maximum of two updates per day in each of those securities. The NASD will enforce compliance with this operational requirement through an automated surveillance report. The new report will identify every instance in which a market maker updates his quote in a foreign exempt security outside the prescribed time periods or enters multiple update within those periods in a particular foreign exempt security. Such occurrences will be viewed as apparent violations of the Service's operational requirements and be forwarded to the NASD's Market Surveillance Committee for review and possible disciplinary action. Adjudication of such referrals may result in limitations upon or suspension of the market maker's quote update capability respecting participation in the Bulletin Board Service, and/or a disciplinary sanction pursuant to Article III, Section 1 of the NASD Rules of Fair Practice.[4]

Finally, the NASD proposes to uniquely identify each foreign exempt security displayed through the Service. This display feature will alert users to the static nature of quotation information available on such securities through the Bulletin Board Service. To identify the universe of foreign exempt securities covered by this Amendment, the NASD will rely on the Commission's most recent publication of issuers filing information to claim the Rule 12g3-2(b) exemption.[5]

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 an 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 principal purpose of this filing is to allay concerns, which were raised by the Commission staff and the New York and American Stock Exchanges,[6] that inclusion of foreign exempt securities in the Service would negate the issuers' current exemption from the Exchange Act's reporting and disclosure requirements. That exemption is provided by Rule 12g3-2(b) under the Act and is not available for foreign securities/ADRs quoted in an "automated inter-dealer quotation system." When Rule 12g3-2 was last amended in 1983, the foregoing phrase was added to eliminate the exemption's availability for foreign securities/ADRs admitted to the NASDAQ market after October 5, 1983.[7] However, "automated inter-dealer quotation system" is not defined in Rule 12g3-2 and could be interpreted to include electronic quotation media along the lines of the Bulletin Board Service. Although the Service lacks many of the NASDAQ market's operational characteristics (particularly affirmative action by an issuer to seek inclusion), the Commission staff believes that the Service's features are sufficiently similar to NASDAQ as to jeopardize maintenance of the Rule 12g3-2(b) exemption *vis-a-vis* issuers of foreign exempt securities quoted in the Service.

Amendment No. 3 to File No. SR-NASD-88-19 is designed to allow inclusion of foreign exempt securities in the Service without nullifying the issuers' continued exemption under Exchange Act Rule 12g3-2(b). This result is justified by the static nature of quotation information that will be available on foreign exempt securities under the terms of this amendment. Specifically, while market makers may update their quotes at any time in most Bulletin Board Securities, foreign exempt securities may only be updated twice daily. Consequently, market makers in these securities are most likely to insert non-firm quotes or unpriced indications of interest. By restricting market makers' update capabilities with respect to foreign exempt securities, the Service's capacity to display quotation information on such issues amounts to an electronic delivery of static information. In this regard, the Service resembles the National Quotation Bureau, Inc.'s ("NQB") delivery of static information on securities quoted in the Pink Sheets™ to vendors that market screen-based services for accessing such information. Given that NQB's Pink Sheets™ include several hundred foreign exempt securities, the Commission apparently views screen-based access to static quotes/indications on those securities as not constituting their quotation in an "automated inter-dealer quotation system" for purposes of the Rule 12g3-2(b) exemption. Accordingly, the NASD hereby requests comparable treatment of foreign exempt securities quoted in the Service, on a static basis, pursuant to the terms of this Amendment.

Statutory Bases

In its initial filing (dated June 9, 1988) to gain approval of the Bulletin Board Service, the NASD cited sections 11A(a)(1), 15A(b) (6) and (11) of the Act as providing the statutory bases for the Service. Further, the NASD explained how the Service's design and operational features would further the statutory intent of each provision. Because the instant Amendment does not materially modify the Service's operational features and only impacts a small subset of prospective Bulletin Board Securities, the NASD hereby reiterates its original statement on the statutory bases that could sustain the Commission's approval of the Service.

As noted above, Amendment No. 3 to File SR-NASD-88-19 would establish

[3] An update may consist of a market maker inserting a new priced quotation or substituting an unpriced indication for a priced entry. Market makers in foreign exempt securities (and in all other Bulletin Board Securities) will have the option of designating their priced entries as firm or non-firm quotations.

[4] Article III, section 1 requires NASD members to observe high standards of commercial honor and just and equitable principles of trade. During the Service's pilot period, the standard contract governing market maker participation will reference the limitations applicable to quotation of foreign exempt securities.

[5] *See, e.g.*, Release No. 34-25902 (July 13, 1988), 53 FR 27418-32 (July 20, 1988.

[6] *See*, respectively, letters to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc., dated October 13, 1988, and from Carrie E. Dwyer, Senior Vice President, and General Counsel, American Stock Exchange, Inc., dated October 14, 1988.

[7] Release No. 34-20264 (October 6, 1983).

certain restrictions on the manner in which market makers could quote foreign exempt securities via the Service. Section 15A(b)(11) of the Act empowers the NASD to regulate the form and content of quotations distributed on OTC securities. Such regulations, however, must be structured to produce fair and informative quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. The NASD believes that its modified procedures for quotation of foreign exempt securities in the Service are consistent with the regulatory objectives in section 15A(b)(11) of the Act.

Finally, the NASD notes that sections 15A(b) (2) and (7) of the Act require the capacity to enforce members' compliance with NASD rules through systematic surveillance and appropriate self-regulatory action. In conjunction with implementation of the Service, as hereby amended, the NASD will have an automated capability for monitoring compliance with the unique requirements governing quotation of foreign exempt securities. Any failure to observe those requirements will be reviewed by the NASD's Market Surveillance Committee for appropriate regulation action including the possible imposition of a disciplinary sanction pursuant to Article III, Section 1 of the NASD Rules of Fair Practice.

In sum; the NASD believes that ample statutory bases exist for the Commission's approval of File No. SR-NASD-88-19 in this amended form.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amendment No. 3 to File No. SR-NASD-88-19 does not impose any burden on competition. The more restrictive procedures for quoting foreign exempt securities in the Service will apply with equal force to all market makers utilizing the Service to quote such securities. Likewise, market maker participation in the Service remains voluntary as to all Bulletin Board Securities. The principal effect of this Amendment is to assure equal treatment, in relation to application of the Rule 12g3-2(b) exemption, among providers of screen-based services displaying static quotation information on foreign exempt securities traded OTC.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD did not solicit or receive comments on Amendment No. 3 to File No. SR-NASD-88-19.

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 date, 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 submissions, 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 August 23, 1989.

For the Commission, by the Division Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc: 89-18017 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27065; File No. SR-NASD-89-29]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Examination Specifications and Study Outline for the Direct Participation Programs Limited Representative ("Series 22") Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1989, the National Association of Securities Dealers, Inc. ("NASD") 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 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 hereby submits amendments to the examination specifications and study outline for the Direct Participation Programs Limited Representative ("Series 22") qualifications examination. The amendments delete material pertaining to programs that are no longer generally offered, revise materials pertaining to taxation, and include new material pertaining to recently effective regulations affecting direct participation programs. The number of questions per examination and the examination time are unaffected by the amendments.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

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

Pursuant to section 15A(g)(3) of the Act, the NASD is authorized to prescribe standards of training, experience, and competence for persons associated with NASD members. To this end, the NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether

amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Act, which authorizes the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the amendments to the Series 22 examination specifications and study outline 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

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 August 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18018 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27066; File No. SR-NASD-89-28]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Amendments to the Examination Specifications and Study Outline for the Direct Participation Programs Limited Principal ("Series 39") Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1989, the National Association of Securities Dealers, Inc. ("NASD") 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 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 hereby submits amendments to the examination specifications and study outline for the Direct Participation Programs Limited Principal ("Series 39") qualifications examination. The amendments add new questions to the section concerning financial responsibility rules, delete questions from the section pertaining to the structure of direct participation programs (which material is covered by the Series 22 examination), add questions concerning Commission Rules 15c2-4 and 10b-9, and update material concerning NASD and Commission rules. In addition, candidates will be required to obtain a score of 70% on both the entire examination and the section pertaining to financial responsibility. The number of questions per test and the testing time are unchanged.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

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

Pursuant to section 15A(g)(3) of the Act, the NASD is authorized to prescribe standards of training, experience, and competence for persons associated with NASD members. To this end, NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Act, which authorizes the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the amendments to the Series 39 examination specifications and study outline 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

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 August 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16019 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27067; File No. SR-NASD-89-27]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Study Outline and Specifications for Series II Examination, Assistant Representative—Order Processing.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1989, the National Association of Securities Dealers, Inc. ("NASD") 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 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 National Association of Securities Dealers, Inc. ("NASD") hereby submits the examination specifications and study outline for the registration category of Assistant Representative—Order Processing. The examination will be designated Series II. These items do not involve any textual changes to the NASD's By-Laws, Schedules to the By-Laws, rules, practices or procedures. The amendment ot Schedule C of the By-Laws setting forth the registration category has been filed separately (*see* SR-NASD-88-26) and approved by the Commission on June 12, 1989 (Securities Exchange Act Release No. 26920 (June 12, 1989), 54 FR 26289, (June 22, 1989).

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

It is the NASD's responsibility under section 15A(g)(3) of the Securities Exchange Act of 1934 ("Act") to prescribe standards of training, experience, and competence for persons associated with NASD members. Pursuant to this statutory obligation, the NASD has developed examinations that are administered to establish that persons associated with NASD members have attained specified levels of competence and knowledge.

The Assistant Representative—Order Processing category will apply to those persons associated with a member who record and submit unsolicited orders from the member's existing customers in all products except municipal securities and direct participation programs. They will not be able to share in transaction-based compensation, open new accounts, or render investment advice, and must be under the direct supervision of a registered principal. Accordingly, the examination, as reflected in the specifications and study outline, will cover the fundamentals of securities products and markets, the documentation of customer accounts, providing price information, and order processing, as well as the basic industry structure and regulations concerning these functions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the new registration category or the study outline and specifications impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments regarding the study outline and specifications were neither solicited nor received. Comments regarding the Assistant Representative—Order Processing registration category were solicited and are discussed in SR-NASD-88-26 and the related approval order of the Commission.[1]

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 procedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interest 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,

[1] *See* Securities Exchange Act Release No. 26920, *Supra.*

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 August 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18020 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-825]

Application and Opportunity for Hearing: GNLV, CORP.

July 27, 1989.

Notice is hereby given that GNLV, CORP. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person, not later than August 21, 1989, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18021 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2361; Amdt. #1]

Kentucky (And Contiguous Counties in the States of West Virginia, Virginia & Tennessee); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notices of Amendment to the President's declaration dated July 8, 12, and 13, 1989, to include the counties of Breathitt, Letcher, Hagoffin, Owsley, Pike, and Whitley, in the Commonwealth of Kentucky, as a result of damages from severe storms and flooding, and to establish the incident period as June 15 through and including July 6, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Lee, McCreary, Morgan, and Wolfe, in the Commonwealth of Kentucky; Mingo County in the State of West Virginia; Buchanan, Dickerson, and Wise Counties in the State of Virginia; and Campbell and Scott Counties in the State of Tennessee, may be filed until the specified date at the previously designated location.

The number assigned to the State of West Virginia for economic injury is 679100 and for the State of Virginia the economic injury number is 679200.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on August 29, 1989, and for economic injury until the close of business on March 30, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 24, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-17955 Filed 8-1-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2354; Amdt. #6]

Louisiana (and Contiguous Counties in the States of Texas, Arkansas & Mississippi); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated July 13, 1989, to include the parishes of Jackson and Webster, in the State of Louisiana, as a result of damages from severe storms and flooding which occurred May 4 through May 27, 1989.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

This notice is being issued for record purposes only, as the termination date for filing applications for physical damage closed on July 18, 1989. However, the termination date for filing applications for economic injury remains the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 25, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-17956 Filed 8-1-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2368; Amdt. #1]

Louisiana (and Contiguous Counties in the State of Arkansas); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated July 20, 1989, to include the parishes of Bienville, Bossier, Jefferson Davis, Lafayette, St. Landry. Vermilion, Vernon, and Webster, in the State of Louisiana, as a result of damages from Tropical Storm Allison beginning on June 25, 1989.

In addition, applications for economic injury from small businesses located in the contiguous parishes of Acadia, Caddo, Claiborne, and Lincoln, in the State of Louisiana, and Columbia, Lafayette, and Miller Counties, in the State of Arkansas, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as

contiguous or primary counties for the same occurrence.

The number assigned to the State of Arkansas for economic injury is 679900.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on September 16, 1989, and for economic injury until the close of business on April 18, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 25, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-17957 Filed 8-1-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 07/07-0094]

Midland Capital Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company (SBIC) under the Provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Midland Capital Corp. (Applicant), One Petticoat Lane, Suite 110, 1020 Walnut Street, Kansas City, Missouri 64106, with the Small Business Administration pursuant to 13 CFR 107.103 (1989).

The proposed Officers, Directors and Shareholders of the Applicant will be as follows:

Name	Title or position	Percent of ownership
Neil E. Sprague, 1216 West 73rd Street, Kansas City, MO 64114.	President and Manager.	
Ronald L. Blunt, 318 Huntington Road, Kansas City, MO 84113.	Vice President/ Director.	
Lee H. Greif, 8607 Cedar, Prairie Village, KS 66207.	Vice President/ Director.	
Kendrick T. Wallace 5845 Windsor Drive, Fairway, Kansas 66205.	Secretary	
Jeffery L Gibbs, 3601 Central Avenue, Kansas City, MO 64111.	Assistant Secretary.	
Midland Bank, One Petticoat Lane, Suite 110, 1020 Walnut Street, Kansas City, MO 64106.	Shareholder	60
College Boulevard National Bank, 4650 College Boulevard, Overland Park, KS 66211.	Shareholder	28
Tower Bank, 1314 North 38th Street, Kansas City, KS 66102.	Shareholder	12

The Applicant, a Missouri corporation, is expected to begin operations with $1,000,000 of private capital. The Applicant will conduct its activities in the States of Missouri and Kansas.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in Kansas City, Missouri and Kansas City, Kansas.

(Catalog of Federal Domestic Assistance Program No 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 27, 1989.

[FR Doc. 89-17959 Filed 8-1-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-7-44; Dockets 46110 and 46111]

Applications of Flight International, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Flight International, Inc., fit and awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than August 11, 1989.

ADDRESSES: Objections and answers to objections should be filed in Dockets 46110 and 46111 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. Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: July 26, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-17942 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-62-M

[Order 89-7-45] Order to show cause.

Fitness Determination of Central States Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination.

SUMMARY: The Department of Transportation is proposing to find Central States Airlines, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: July 26, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-17943 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-62-M

[Order 89-7-38; Dockets 46252 and 46271]

Applications of Pacific Interstate Airlines, Inc. for Certificate of Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not (1) find Pacific Interstate Airlines, Inc. (PIA) (and its corporate successor, Carnival Air Lines, Inc. (CAL)) fit, willing, and able to provide interstate, overseas, and foreign scheduled air transportation of passengers, property, and mail; and (2) approve the transfer of the certficate of public convenience and necessity currently held by PIA for interstate and overseas air transportation to CAL; and (3) issue a certificate of public convenience and necessity to CAL authorizing the carrier to provide foreign scheduled air transportation between the United States, on the one hand, and the Bahamas, on the other.

DATES: Persons wishing to file objections should do so no later than August 10, 1989.

ADDRESSES: Objections and answers to objections should be filed in Dockets 46252 and 46271 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 Atachment A to the order.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2343.

Dated: July 25, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-17941 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Parts Manufacturers Approval Program Evaluation

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Notice of availability.

SUMMARY: The Parts Manufacturers Approval Evaluation, Phase 2 Report provides the results of the second phase of an independent study conducted for the FAA of parts manufacturer approval (PMA) procedures. The report also contains the independent study team's recommendations for standardization of the PMA procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Kaplan, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-110, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-9596.

SUPPLEMENTARY INFORMATION:

Background

Parts manufacturer approval (PMA) is a means by which the FAA approves production of replacement parts for aircraft and engines. The PMA replacement parts may be manufactured by someone other than the original equipment manufacturer (OEM).

Pursuant to Chapter 14 of the CFR Federal Aviation Regulations, part 21, § 21.303(c)(4), a PMA can be obtained by two methods: (1) Submitting "Test reports and computations necessary to show that the design of the part meets the airworthiness requirements of the Federal Aviation Regulations applicable to the product on which the part is to be installed," or; (2) Showing "that the design of the part is identical to the design of a part that is covered under a type certificate." This second method of approval, commonly known as "identicality," involves comparing the design data submitted by the PMA applicant to data which the OEM submitted to get the original design approval of the aircraft, engine, or propeller.

The FAA issued notices of proposed rulemaking (NPRM) in 1977 and 1981 intending to simplify and clarify the PMA process. The public comments and discourse in response to the NPRM revealed extensive confusion and controversy about PMA, and indicated that PMA procedures may not be uniform among FAA aircraft certification offices (ACO). PMA holders claimed that many of the provisions of the NPRM's were anticompetitive and a barrier to market entry for small businesses. OEM's claimed that FAA's data comparison procedure constitutes unauthorized and unfair use of their data, and some OEM's have denied FAA access to their data for PMA purposes.

In July of 1984, the FAA, commissioned an independent study team to evaluate the PMA process and to make recommendations aimed at alleviating the confusion and controversy over PMA rulemaking proceedings. The purpose of the study was to identify the key PMA issues; to identify current PMA policies and procedures; to develop alternatives to current PMA regulations, policies and procedures; and to prepare the required analyses to support selected alternatives. With the initiation of the study, the FAA withdrew the pending NPRM's and decided to delay any regulatory activity until the study was completed. Phase I of the study, which developed alternatives to current PMA regulations, policies, and procedures, was completed in December 1984.

The Phase 2 report, as a continuation of the Phase I report, evaluates those alternatives and several issues common to all the alternatives. The Phase 2 report concludes that there are procedural inconsistencies in PMA as currently practiced in the FAA, and recommends that the FAA standardize PMA procedures through revised advisory material and an employee training course. The report further recommends that the FAA: (1) Emphasize the marking of all PMA parts; (2) Not create a class of non-safety significant parts; (3) Provide procedures to allow PMA on replacement parts for TSO articles and; (4) Issue an advance notice of proposed rulemaking inviting public comment on the advisability of revising the regulations to include distributors, as well as manufacturers and installers, of aircraft replacement and modification parts.

How to Obtain Copies

Copies of the "Part Manufacturers Approval Program Evaluation, Phase 2 Report" may be obtained by mailing a check or money order in the amount of $20.00 per copy to COMSIS Corporation, 8737 Colesville Road, Suite 1100, Silver Spring, MD 20910.

Issued in Washington, DC, on July 26, 1989.

John K. McGrath,

Acting Assistant Director, Aircraft Certification Service.

[FR Doc. 89-18015 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Kent and Ottawa County, Michigan

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 proposed construction of M-6, the Grand Rapids South Beltline

from I-196 to I-96 in Ottawa and Kent County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Kirchensteiner, District Engineer, Federal Highway Administration, 123 W. Allegan Street, Room 211, Lansing, Michigan 48933, Telephone: (FTS) 374-1851 or (Commercial) (517) 377-1851 or Mr. Andrew J. Zeigler, Resources Specialist, Project Services Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone: (517) 373-3251.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation, (MDOT), is preparing an Environmental Impact Statement (EIS) for a new State trunkline from I-196 to I-96 in Kent and Ottawa County, Michigan. The proposed project is approximately 20 miles in length and is needed to improve east-west travel service to a rapidly-developing area in southern Kent and Ottawa County, and function as a bypass around Grand Rapids, Michigan. The limits for the study extend between I-196 near 8th Avenue on the west and I-96 near Witneyville on the east. The alignment alternatives pass between 60th and 68th streets. Alternatives under consideration include (1) taking no action; (2) upgrading the existing road network; construction of a new facility either as (3) a boulevard (controlled access) having at-grade intersections with the local streets; or (4) a freeway (limited access) to be built as a divided highway with access at selected interchanges with major highways and separated by structures from other local roads; and (5) a transit alternative to assess the feasibility of expanding the existing bus system and reduce projected highway travel demand by 2 to 3 percent in the corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interests in this proposal. The U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service and Michigan Department of Natural Resources are requested to be cooperating agencies on this project. A scoping document has been prepared identifying the alternatives and the potential social, economic, and environmental issues involved. This document has been provided to the above agencies and is available to all interested agencies, organizations, and individuals on request. Comments on the scoping document and issues identified are invited from the above agencies and other interested parties. Requests for a copy of the scoping document or any comments submitted should be addressed to the above contact persons, or in Michigan, by calling the toll-free information line for this project (1-800-255-4354). When calling from out-of-state, contact may be made by using (312) 668-3788. The closing date for comments is August 28, 1989. An extensive public involvement program will be conducted as part of the project. Opportunities to voice comments and concerns, and to be kept informed of key developments throughout this study will be provided by newsletters and comment forms, a toll-free information line, newspaper/radio/TV announcements and public information meetings.

A prestudy meeting was held on March 22, 1989, to provide the public with an overview of the project scope and schedule, public and agency involvement process, and an opportunity to discuss the proposed action. On May 2, 1989, a scoping meeting with Federal, State, and local agencies was conducted. On May 17, 1989, a meeting with coalition and advisory groups was held. Accordingly, no additional scoping meetings are planned at this time. The Draft EIS is scheduled for completion in November 1990, and will be made available for public and agency review and comment.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on July 25, 1989.

James A. Kirschensteiner,

District Engineer, Lansing, Michigan.

[FR Doc. 89-17946 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-22-M

Proposed Sierra Road Interchange (IR 15-4(65)197); Lewis and Clark County, MT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lewis & Clark County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Environmental and Project Development Engineer, Federal Highway Administration, 301 South Park Street, Drawer 10056, Helena, Montana 59626-0056, Telephone: (406) 449-5310; or Mr. Steve Kologi, Chief, Preconstruction Section, Montana Department of Highways, 2701 Prospect Street, Helena, Montana 59620, Telephone: (406) 444-6242.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Montana Department of Highways will develop a Federal-aid highway project on Interstate Highway 15 (I-15) in Lewis & Clark County north of Helena. The proposed project will consist of the construction of a new interchange to provide a new point of access onto I-15. There are currently two locations being studied for an interchange, Alternative A and Alternative B. The No-Action Alternative is also being analyzed.

Alternative A

Construct an interchange at the crossing of I-15 over Sierra Road, with reconstruction of a portion of Sierra Road and the frontage road east of I-15 to improve safety.

Alternative B

Construct an interchange at the intersection of Forestvale and I-15, with new construction of a one-half mile extension of Forestvale to I-15.

Alternative A is located approximately four miles north of the existing Cedar Street interchange in Helena. Alternative B is located approximately three and one-half miles north of the same interchange.

Incorporated into and studied with the various alternatives will be design variations of grade and alignment.

The purpose of this project is to provide an additional point of access onto I-15. This will allow more traffic to use I-15 which will reduce traffic on the heavily traveled North Montana Avenue and improve convenience and safety.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of formal scoping meetings will be held in the Helena area as well as a public hearing; no firm dates have been established. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified; comments and suggestions are invited from all interested parties.

Comments and/or questions concerning this proposed action and the EIS should be directed 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 on Federal programs and activities apply to this program.)

Issued on: July 25, 1989.

D.C. Lewis,

Assistant Division Administrator, Montana Division, Helena.

[FR Doc. 89-17993 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

On January 24, 1989, Ms. Elizabeth A. Dolan, of the Center for Auto Safety (CAS), petitioned NHTSA to conduct a Formal Defect Investigation leading to the recall of 1983 through 1988 Ford "F" model trucks and chassis cabs regarding an alleged defect involving fuel explusion and vehicle fires.

The petitioner alleges that high exhaust temperatures lead to high underbody and fuel tank temperatures in the subject "F" model vehicles. It is further alleged that these high temperatures lead to fuel boiling in the fuel tanks, fuel expulsion, and fires.

The subject vehicles are equipped with electric fuel pumps which circulate fuel through the carburetor, the unused fuel being returned to the fuel tank. In passing through the engine compartment, the fuel is heated and returned to the tank at a higher temperature. The larger engines in these vehicles are equipped with dual thermactor air pumps and conventional mufflers, and the smaller engines with single air pumps and catalysts in the exhaust system. Recirculating fuel and burning hydrocarbons in the exhaust system have led to high exhaust and fuel tank temperatures and safety recalls of Ford's "E" model vans and chassis. According to Ford, the forward location of the engine, the much larger engine compartment with better air flow, and the higher ground clearance have prevented the problem from affecting the "F" models.

For furnished the results of extreme service testing that it conducted with "F" series vehicles. The maximum tank pressures recorded during these tests would not pose a fuel expulsion problem.

All reports of fuel expulsion and fires which NHTSA received from CAS, Ford, and directly from owners were anlyzed and compared to complaint and fire rates for vehicles recalled for fuel expulsion and to the entire vehicle population. This analysis determined the rate of fuel expulsion and fires for the "F" model trucks to be very low.

Based on the low reported fire rate of the Ford "F" models there does not appear to be a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the alleged fuel expulsion and fire potential would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1989.

Robert Hellmuth,

Acting Associate Administrator for Enforcement.

[FR Doc. 89-17958 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP89-02, Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; Fleetwood Enterprises Inc.

This notice grants the petition by Fleetwood Enterprises, Inc. (Fleetwood) of Riverside, California, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.120 Federal Motor Vehicle Safety Standard (FMVSS) No. 120 "Tire Selection and Rim for Motor Vehicles Other Than Passenger Cars." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Paragraph S5.1.1 of FMVSS No. 120 requires that each vehicle equipped with pneumatic tires for highway service shall be equipped with tires that meet the requirements of FMVSS No. 119, and with rims that are listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S5.1 of FMVSS No. 119. Fleetwood manufactured 74 travel trailers between July 1988 and October 1988 that failed to comply with S5.1.1 of FMVSS No. 120. Goodyear specified that P205/75R15 and ST205/75R15C tires be used in conjunction with 5½ inch or 6-inch wide rims. Fleetwood used these tires on the above mentioned travel trailers with 5-inch wide rims.

Fleetwood supported its petition for inconsequential noncompliance with the following:

(1) Fleetwood performed a subjective test of the overall handling of the noncomplaint tire and rim combination on similarly designed travel trailers, and found the trailers performed satisfactorily.

(2) Goodyear Tire and Rubber Company tested the noncomplaint tire and rim combination with the Department of Transportation's bead unseat, high speed and durability tests. In all cases, the tires passed the tests.

(3) Goodyear has petitioned the Tire and Rim Association for a change in listing, to approve the P205/75R15 and the ST205/75R15C for use with a 5-inch wide rim.

No comments were received on the petition.

The agency has learned that the Tire and Rim Association has granted Goodyear's petition, and that the 1990 Handbook will add the 5-inch wide rim to the list of those approved for use with the two types of 205/75R15 tires. This renders the existing noncompliance purely technical in nature. Further, both Fleetwood's subjective tests and Goodyear's objective tests to Federal performance requirements are represented as demonstrating that no safety problem exists.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety. Accordingly, its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: July 27, 1989.

Barry Felrice,

Associate Administrator for Research and Development.

[FR Doc. 89-17944 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-59-M

Federal Railroad Administration

[FRA Emergency Order No. 12]

Boston and Maine Corp., Berkshire Scenic Railway Museum, Inc.; Emergency Order Prohibiting Passenger Service

The Federal Railroad Administration (FRA), Department of Transportation, has determined that considerations of public safety necessitate the issuance of this Emergency Order prohibiting passenger service on a line of track between Lee and Lennox, Massachusetts (milepost 7.0 to milepost 10.5) (a segment of the "Canaan Branch") owned by the Boston and Maine Corporation.

FRA has reason to believe that the Berkshire Scenic Railway Museum, Inc., a "railroad" subject to its safety jurisdiction pursuant to the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 431(e), 438, as amended, intends to provide passenger service over a portion of the Canaan Branch as early as today.

On the basis of detailed inspections of this track by FRA's regional director and track safety specialist yesterday and today, FRA is convinced that operation of passenger trains over this line would pose an unacceptable threat to the safety of such passengers.

Under the FRA track safety regulations (49 CFR Part 213), it is the responsibility of the track owner to maintain its track so as to meet the maintenance standards prescribed in the regulation (see subparts B, C, D, and E) for one of six classes of track and to operate trains in accordance with the speed limitations applicable to the class of track to which a given line of track is maintained (see § 213.9). For example, the maximum allowable operating speed for freight trains on class 1 track is 10 miles per hour, and on class 6 track it is 110 miles per hour. However, under § 213.4, a track owner may designate a segment of track as "expected" track (*i.e.*, track not maintained to meet the standards set for class 1 track in subparts B, C, D, and E) so long as, among other things, no "revenue passenger train" is operated over that segment (§ 213.4(e)(2)).

Of course, whether passengers are transported for hire or not is irrelevant to FRA's larger responsibility for the safety of operations by any railroad subject to FRA's emergency order authority under the 1970 Safety Act. That is, while FRA believes the intended operations will be "revenue" passenger operations, their character as such is not relevant to FRA's exercise of its emergency authority over all railroad operations. Indeed, as FRA stated when it issued the excepted track provision: "the adoption of this section or any section in this part is not construed by FRA as precluding the use of FRA's statutory authority to abate a particular hazard." 47 FR 39398, 39399 (1982).

This segment of track clearly fails to meet class 1 standards, the lowest class of track over which passenger service is permitted by FRA regulation. However, the Boston and Maine Corporation has designated this track as excepted track. Accordingly, no maintenance requirements apply to this track with respect to roadbed, track geometry, or track structures. For example, there are no requirements relating to track gage, alinement, crossties, rail joints, track surface, ballast, rail end mismatch, rail fastenings, or tie plates.

On July 27, 1988, FRA carefully inspected the portion of the segment of track in question between mileposts 7.2 and 8.5. In that 1.3 mile segment, FRA found 171 defective conditions representing 171 individual failures to meet the standards of class 1 track. Inspection today of the two miles between mileposts 8.5 and 10.5 revealed an additional 304 defective conditions. Thus, on 3.3 of the 3.5 miles of track in question, FRA has found a total of 475 defects keeping this track from qualifying for classification at FRA's lowest class of track.

Many of these defects pose particularly serious threats to safety. For example, at four different locations, FRA found track gage to be between 58 and ¼ inches and 58 and ½ inches, presenting the distinct possibility of derailment at those points. Five center-cracked joint bars were found, any one of which could fail under the next train to pass over it. In one 39-foot segment of track, only three nondefective ties were found. Four significant crosslevel defects were noted. Many loose joint bars were recorded; these can lead to gage-side mismatch that can cause derailment.

FRA concludes that the transportation of passengers on this line would pose a significant and unacceptable threat to their safety. Accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 delegated to me by the Secretary of Transportation (49 CFR 1.49(m)), it is ordered:

1. That the Boston and Maine Corporation shall not conduct or permit the operation of any passenger service of any kind over the line of track between Lee and Lennox, Massachusetts, (milepost 7.0 to milepost 10.5) unless and until that track is maintained to FRA class 1 standards as set forth in 49 CFR Part 213.

2. That the Berkshire Scenic Railway Museum, Inc., shall not conduct any passenger service of any kind over the line of track between Lee and Lennox, Massachusetts, (milepost 7.0 to milepost 10.5) unless and until that track is maintained to FRA class 1 standards as set forth in 49 CFR Part 213.

This Order shall remain in effect until this line of track is maintained to FRA class 1 standards.

Each violation of this Order, *i.e.*, each train movement in violation of this Order, shall subject the respondent committing such violation to a civil penalty of up to $20,000. 45 U.S.C. 432, 438, as amended.

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432(b), and section 554 of Title 5 of the United States Code.

Issued in Washington, DC, on July 28, 1988.

Susan M. Coughlin,

Acting Administrator.

[FR Doc. 89-18203 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-06-M

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, (203C), 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.

DATE: Comments on the information collection should be directed to the OMB Desk Officer on or before September 1, 1989.

Dated: July 25, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

New Collection

1. Veterans Benefits Administration.
2. Vocational Rehabilitation Satisfaction Survey.
3. VA Form 28–0561.
4. This form will be used to survey service-disabled veterans who have exited from the Vocational Rehabilitation and Counseling (VR&C) program. The survey forms will be tabulated and analyzed to identify areas of the VR&C program that need improvement.
5. On occasion.
6. Individuals or households.
7. 2,500 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 89–17945 Filed 8–1–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 1, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89–18103 Filed 7–31–89; 10:23 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 22, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application for contract designation submitted by the New York Mercantile Exchange to trade Residual Fuel Oil futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89–18104 Filed 7–31–89; 10:23 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, August 22, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89–18105 Filed 7–31–89; 10:23 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Wednesday, August 30, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Program Objectives, First Quarter, FY 1990.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89–18106 Filed 7–31–89; 10:23 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:30 p.m., Wednesday, August 30, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89–18107 Filed 7–31–89; 10:23 a.m.]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:45 p.m., Wednesday, August 30, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89–18108 Filed 7–31–89; 10:23 a.m.]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 3:00 p.m., Wednesday, August 30, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89–18109 Filed 7–31–89; 10:23 a.m.]
BILLING CODE 6351-01-M

FEDERAL MARITIME COMMISSION:

TIME AND DATE: 2:00 p.m.—August 7, 1989.

PLACE: Hearing Room One, 1100 L. Street, NW., Washington, DC 20573–0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion Open to the public:

1. Docket No. 88–16—Service Contracts—Petition for Reconsideration.

Portion Closed to the public:

1. Docket No. 89–05—In the Matter of Agreement No. 102–008454—The Guam Rate Agreement—Review of the Order of Dismissal and Consideration of Motion to Modify Order of Investigation.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.

[FR Doc. 89–18132 Filed 7–31–89; 12:07 pm]
BILLING CODE 6730-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, August 8, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last two items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Safety Study: Crashworthiness of Small Poststandard School Buses.
2. Highway Accident Report: Greyhound Lines, Inc., Intercity Bus Loss of Control and Overturn, Nashville, Tennessee, November 19, 1988.
3. Recommendation to FAA: Restricting Part 135 Commuter Air Carriers from VFR Operations in Less-Than-Basic VFR Weather Minimums. (Calendared by Member Nall.)
4. Opinion and Order: Administrator v. Janka and Newman, Dockets SE–8144 and

SE–8159; disposition of the Administrator's appeal. (Calendared by Member Nall.)

5. Opinion and Order: Administrator v. Codwin, Docket SE–8397; disposition of respondent's appeal. (Calendared by Member Burnett.)

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382–6525.

Dated: July 27, 1989.

Bea Hardesty,

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Part II

Federal Emergency Management Agency

44 CFR Part 352

Commercial Nuclear Power Plants; Emergency Preparedness Planning; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 352

[Docket No. 352F]

RIN No. 3067-AB39

Commercial Nuclear Power Plants; Emergency Preparedness Planning

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rulemaking adopts in final form Part 352 in Title 44 CFR Emergency Management and Assistance, Chapter 1, Federal Emergency Management Agency (FEMA), Subchapter E Preparedness. This Part concerns licensee certification and FEMA determinations, and provision of Federal assistance for offsite radiological emergency planning and preparedness for commercial nuclear power plants under Executive Order 12657. This Part responds to a requirement in Section 6(a) of the Order that FEMA issue directives and procedures to implement the Order. This Part is intended to ensure that plans and procedures are in place to respond to radiological emergencies at commercial nuclear power plants under construction or in operation.

EFFECTIVE DATE: This final rule is September 1, 1989, and will supersede the currently effective interim rule, on that date.

FOR FURTHER INFORMATION CONTACT: Craig S. Wingo, Chief, Technological Hazards Division, State and Local Programs and Support Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3026.

SUPPLEMENTARY INFORMATION:

Background:

Part 352 consists of introductory material (Scope and Definitions) and two Subparts, A and B. This Part was published as an interim rule (effective March 30, 1989) on February 28, 1989, in 54 FR 8512.

Subpart A: Certifications and Determinations

This Subpart establishes policies and procedures for submission by a commercial nuclear power plant licensee of a certification for Federal assistance under Executive Order 12657. It contains policies and procedures for FEMA's determinations, with respect to a certification. It establishes a framework for providing Federal assistance to licensees. It also provides procedures for review and evaluation of the adequacy of licensee offsite radiological emergency planning and preparedness.

Subpart B: Federal Participation

This Subpart establishes policies and procedures for providing Federal assistance for offsite radiological emergency planning and preparedness in a situation when such assistance under E.O. 12657 has been requested. It describes the process for providing Federal facilities and resources to a nuclear power plant licensee after an affirmative determination on the licensee certification under Subpart A. It describes response functions which Federal agencies might provide and the process for allocating responsibilities among Federal agencies through the Federal Radiological Preparedness Coordinating Committee (FRPCC) and Regional Assistance Committees (RACs).

An integrated approach to the development of offsite radiological emergency planning, preparedness, and response involving licensees and State and local governments, voluntary organizations, and the Federal Government is the approach most likely to provide the best protection to the public. To carry out the foregoing, FEMA is engaged in a cooperative effort with licensees and State and local governments and other Federal agencies in the development of State and local plans and preparedness to cope with radiological emergencies at commercial nuclear power facilities. These activities are described in 44 CFR Part 350, "Review and Approval of State and Local Radiological Emergency Plans and Preparedness," and Part 351, "Radiological Emergency Planning and Preparedness," which sets out Federal agency roles and assigns tasks for assisting State and local governments.

In the event of an actual radiological emergency, the Federal Radiological Emergency Response Plan (FRERP) provides for the overall Federal support to State and local governments for all types of peacetime radiological incidents including those occurring at nuclear power plants. The FRERP was published in the **Federal Register** on November 8, 1985, (50 FR Part 46542).

Executive Order 12657 was issued to ensure that adequate offsite radiological emergency planning and pareparedness is in place at commercial nuclear power plants to satisfy the emergency planning requirements of the Nuclear Regulatory Commission (NRC) for the issuance and retention of operating licenses. The Order applies to those situations where State and local governments, either individually or together, decline or fail to prepare commercial nuclear power plant offsite radiological emergency preparedness plans that are sufficient to satisfy the NRC licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans.

This regulation supports the amendments made to NRC's rule, 10 CFR 50.47(c)(1) and 10 CFR Part 50, Appendix E, Section IV.F., effective December 13, 1987, (52 FR 42078) for those situations where State and local governments decline or fail to participate in radiological emergency planning and preparedness.

In connection with nuclear power plant licensing, FEMA has previously entered into a Memorandum of Understanding (MOU) on planning and preparedness (50 FR 15485, April 18, 1985) with the NRC, under which FEMA will furnish assessments, findings, and determinations as to whether offsite emergency plans and preparedness are adequate and continue to be capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification, and equipment adequacy). These assessments, findings, and determinations will be used by the NRC in connection with its own licensing and regulatory responsibilities. FEMA will support these assessments, findings, and determinations in the NRC licensing process and related administrative and court proceedings (See 10 CFR Part 50).

The Executive Order makes provision for FEMA, to the extent permitted by law, to obtain full reimbursement either jointly or severally for services performed by FEMA or other Federal agencies pursuant to E.O. 12657 from any affected licensee and from any affected nonparticipating or inadequately participating State and local government. The policy and procedures for the reimbursement process will be covered in separate regulations published in the **Federal Register.**

Discussion of Comments on Interim Rule

As no proposed rule was published, FEMA requested that comments on the interim rule be submitted by May 1, 1989, with an indication that these comments would be reviewed and, as appropriate, amendments made.

Twenty-six written communications were received and have been placed in the Docket. Of these, 6 were from utility companies; 5 were from interest groups (e.g., citizen groups, environmental groups, and utility associations); 10 were from State governments, 2 were from

local governments, 2 from Federal agencies, and 1 from a member of Congress. Eight supported the rule, 12 opposed issuance of the rule, and 6 commented on specific matters, some unfavorably, without indicating one way or the other an overall position on issuance of the rule.

A number of the comments were general in nature. These considered the basic validity or authority for promulgation of the regulation or at least a part thereof, and certain of the premises underlying the regulation such as the realism assumption and related issues, Federalism and "conflict of interest." There were also a number of comments directed to specific sections of the regulation. These specific comments will be related to the applicable section, discussed, and the Agency's response to the comments noted with supporting rationales.

As a general principle underlying FEMA's response to the comments on this regulation, it must be understood that FEMA is an independent establishment within the Executive Branch of the Government and, as such, is subject to the direction, control, and policy decisions of the President. FEMA's functions under this regulation derive from authority (Federal Civil Defense Act of 1950, as amended, and Disaster Relief and Emergency Assistance Act) which is vested in the President and delegated by him to the Director of FEMA.

A. General Comments

1. Role of FEMA in the Planning Process

Several commenters, some opposing and some supporting the interim rule, expressed concerns that the rule might be applied in ways that would disrupt the status quo, i.e., under Part 350 and NRC regulations, States are able to compensate for nonparticipation of local governments and utilities are able to submit offsite plans for FEMA review. Supporters of the interim rule were concerned that the rule might be applied in a way that would hinder a licensee's own effort to develop an adequate offsite emergency plan, such as at the Shoreham Nuclear Power Plant which was recently licensed by NRC under existing NRC and FEMA procedures. Critics suggested that FEMA might find existing State or local participation in offsite planning "inadequate" under the new rule without sufficient basis, thus subverting and replacing the existing 350 process. There was general concern on the part of commenters that the new rule which covers inadequacy might affect every nuclear power plant and foster the assumption that FEMA would take over all offsite planning, preparedness, and response functions.

Both existing FEMA and NRC regulations and the new rule apply to situations where State or local governments "decline or fail" to participate in preparing offsite emergency plans. In some cases, the States have compensated for the lack of participation by local governments and these plans have been reviewed by FEMA under 44 CFR Part 350 and found to be adequate. In two cases, those of Shoreham and Seabrook Nuclear Power Plants, the utilities have compensated for the lack of participation of State and local governments by preparing their own offsite plans, with some technical assistance from FEMA, and submitting them through the NRC to FEMA for review. Both plans have been reviewed by FEMA under 44 CFR Part 350 and the NRC–FEMA MOU on planning and preparedness and were found to be adequate. Thus, the new rule will have no adverse effect upon these findings of adequacy. Section 352.2(c) explicitly provides that the regulation in this part does not affect the validity of emergency preparedness developed by licensees independent of or prior to Executive Order 12657.

It is important to emphasize that FEMA continues to urge State and local governments to cooperate with NRC licensees in the development and implementation of offsite emergency plans. Similarly, the NRC continues to require its licensees to seek the cooperation of State and local governments to develop and implement these offsite plans. Both agencies have stated in many forums that they view State and local participation in the development and implementation of offsite emergency planning as the preferred approach.

Under the new rule, NRC licensees have another option when State or local governments decline or fail to participate in emergency planning. The new rule provides for FEMA technical assistance in the development of utility prepared offsite plans and for the utility plan to be supplemented with provisions for Federal facilities and resources under certain exceptional circumstances.

Under the new rule, the threshold for provision of Federal technical assistance in the development of offsite plans is a FEMA determination (under § 352.5(f)) after consultation with State and responsible local officials, that a "decline or fail" situation exists. Given FEMA's policy and belief that State and local participation in offsite planning is the preferred approach, this is a significant threshold. This threshold for the provision of Federal facilities and resources is a FEMA determination (under § 252.6(b)) that the licensee has made maximum feasible use of its own resources and it assumes that the State and local authorities would contribute their full resources under realism assumptions discussed in Section 4 hereafter. If the offsite plans are still deficient, the plans can be augmented with Federal technical assistance, facilities, and resources.

Finally, FEMA views the development of a utility offsite plan, under either existing regulations or the new rule, as a last resort that NRC licensees can use in their attempt to demonstrate under NRC's regulations that there is reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

2. Command and Control and Federalism Issues

A number of commenters, primarily those opposed to issuance of the rule itself, commented on these matters. These commenters also opposed issuance of Executive Order 12657 and challenged it for much the same reasons they challenged the rule. At least one commenter who supported the rule replied to these critics of the rule.

The issues raised are primarily Federalism and command and control. The former encompasses States rights and the Tenth Amendment to the U.S. Constitution. It also involves Sec. 5(c) and (d), of the Executive Order and § 352.27 of the rule which states that FEMA shall provide for initial Federal response activities including command and control of the off site response as may be needed. The challenge to statutory authority is basically of this function. The authority for most of the functions under the rule was not challenged.

The Federalism/States rights issue is, in effect, an argument over whether State and local governments rather than the Federal Government have the right to determine that a particular site for a nuclear power plant is unsafe, that workable emergency plans are impossible, and that the Federal Government should defer to State and local governments on this point. It is argued that the rule is in violation of Executive Order 10612 on Federalism—that in applying that Executive Order site selection is a purely local matter and the Federal Government should defer to States and localities.

These comments ignore the consideration that in the area of nuclear power plant radiological health and

safety matters, the Atomic Energy Act has preempted the field and that site selection is a Federal matter. In connection with the issuance of the interim rule FEMA prepared a Federalism assessment which certified that there was nothing in the regulation inconsistent with the principles, criteria and requirements stated in Executive Order 10612 and the regulation did not affect the States' ability to discharge traditional State governmental functions or other aspects of State sovereignty.

With respect to command and control, commenters shared a concern expressed in one comment that virtually the entire Federal Government apparatus is empowered to respond to a nuclear emergency at the behest of FEMA assuming "command and control" authorities without the State and local officials and even apparently over their objections. A commenter challenged the statutory authority for this function.

These comments focus on only a very limited segment of Federal function under the Order and rule, do not give proper cognizance to the realism assumption, and fail to recognize the built in protections in the rule itself.

For most functions which would be performed under the rule such as planning, notification and warning, communications and dissemination of information, there is adequate statutory authority in Sections 201 and 502 of the Federal Civil Defense Act.

On the basis of Section 2(b)(4) of Executive Orders 12657 and 10 CFR 50.47(c)(1)(iii) (part of the NRC Emergency Planning rule), FEMA's rule assumes that States and local government will be involved in a response to an actual radiological emergency to the maximum extent possible using their best efforts.

The Executive Order directs and the rule provides that FEMA will consult with State and local governments continually, especially when determining whether "a decline or fail" situation exists, (§ 352.4(d)) and mobilizing a response to an actual emergency (See § 352.27). Section 2(b)(2) of the Executive Order states explicitly that "(FEMA) shall take care not to supplant State and local resources. FEMA shall substitute its own resources for those of State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation." Section 5(b) of the Executive Order directs FEMA to coordinate (and turn over) the response function when State and local governments do exercise their authority.

The rule contemplates that FEMA or other Federal agencies acting at FEMA's request would assist the orderly activation of State and local government response functions. As an example, FEMA might be called on to marshal resources, such as reception centers, which cannot readily be made available without preplanning.

3. Standards and Criteria for FEMA Findings

A number of commenters pointed to the lack of standards and criteria for determinations on such matters as "decline or fail," "participate adequately," and the like.

The standards and criteria for a review and evaluation of a licensee plan and for an analysis of whether there is a decline or fail situation or whether a State or local government is participating adequately in the preparation, demonstration, testing, exercise or using such plans are those used in 10 CFR 50.47 Appendix E, and Part 70 and NUREG–0654/FEMA–REP–1 Rev. 1 (November 1980) and Suppl. 1 (September 1988). A brief version of these is set out at 44 CFR 350.5. This regulation states in § 352.7 (Review and evaluation) that FEMA will use Part 350 (44 CFR 352.7) in making findings. Requirements applicable to State and local government plans are applicable to licensee plans.

4. Realism Assumptions

Several comments challenged the appropriateness and factual validity of the realism assumptions, namely, that in the event of an actual radiological emergency, State and local officials will exercise their best efforts to protect the public, cooperate with the utility, and follow the utility offsite plan.

Section 2(b)(4) of Executive Order 12657 provides that in carrying out its responsibilities under that Order, FEMA shall assume that in the event of an actual emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public, and would act generally in conformity with the licensee's radiological emergency preparedness plan. These realism assumptions have been adopted by the NRC in 10 CFR 50.47 (c)(1)(ii). Their validity has been approved in a court decision (*Massachusetts* v. *United States of America, Nuclear Regulatory Commission*, 856 F. 2d 378, CA 1, 1988).

The FEMA regulation is based on the realism assumptions addressed in § 352.25(c), and with respect to making determinations or commitment of resources under § 352.6, the assumptions are explicitly adopted as § 352.6(c)(2).

5. Conflict of Interest

A number of commenters claimed that since the regulation provides that FEMA would both develop plans and review and evaluate them, this would be a "conflict of interest." FEMA is of the view that the term is neither accurate nor helpful in discussing the matter but, for lack of a better term, it will be used in discussion of this subject.

The FEMA role set out in the regulation is based squarely on the Executive Order. FEMA's role as evaluator derives from Section 4 of the Order. Its planning function derives from Section 3. In order to implement the Executive Order pursuant to Section 6, FEMA must assume both roles. As discussed elsewhere in this document, FEMA is an executive agency implementing functions vested in the President and delegated by him to the Director, FEMA. FEMA can mitigate any perceived conflicts by internal delegations within FEMA so that FEMA officials who develop the plans will not evaluate their own work.

Also, it should be noted that the plans developed pursuant to this Part are not FEMA's plans. FEMA assists licensees and State and local governments under the Executive Order only in those limited situations where a "decline or fail" situation necessitates remedial action. FEMA also provides planning assistance to State and local governments under the Part 350 process (44 CFR Part 350). This process is considered correctly to be a cooperative effort and not a conflict of interest. The process under Part 352 is no different. It should also be noted that under NRC rules, FEMA findings and determinations on the adequacy of plans are advisory in character and have the status of rebuttable presumptions. These findings and determinations are not binding on the NRC, which remains the sole judge as to the adequacy of planning and preparedness under NRC regulations.

This arrangement is not altered in any way by this rule. All FEMA findings on plans developed under this Part will receive the same careful scrutiny and be subject to the same independent NRC judgment as all other FEMA findings and determinations. Moreover, any FEMA findings and determinations, including those submitted to the NRC under this Part, can be challenged by any State or local government or members of the general public, as

parties to controversies before the NRC, as outlined in NRC Rules of Practice.

6. Due Process

Commenters claimed that the interim rule did not provide procedures for commenting or objecting to FEMA actions in the certification process. The final regulation has been modified to provide for State and local government comment on licensee certification (See § 352.5(d)) and to provide for an appeal to the Director, FEMA, of determinations by the Associate Director (See § 352.29).

7. Administrative Procedures Act

One commenter noted that § 352.7 provides that, in the event of an inconsistency between E.O. 12657 and 44 CFR Part 350, the Executive Order prevailed. A claim was made that FEMA was amending 44 CFR Part 350 without going through the Administrative Procedure Act process for informal rulemaking 5 U.S.C. 553. FEMA has no intent to modify Part 350. The standards and criteria set out in § 350.5 are unchanged. In the unlikely event of an inconsistency between an Executive Order and a regulation, the Executive Order would prevail as it is the action of a higher authority; i.e., the President, while the regulation is the action of the Director of FEMA. Other commenters expressed concerns on the application of the Administrative Procedure Act to issuance of licenses by NRC, which is not pertinent to this rulemaking. The effect of Part 352 in NRC proceedings is governed by NRC rules.

Another commenter objected to issuance of an interim rule without the formality of a "proposed" rule. Section 6 of Executive Order 12657 states that FEMA shall issue interim and final directives and procedures implementing the Order as expeditiously as is feasible, and in any event, shall issue interim directives and procedures not more than 90 days following the effective date of this Order and shall issue final directives and procedures not more than 180 days following the effective date of this Order which is November 18, 1988.

FEMA continues to rely on its belief that meeting the Executive Order deadline did justify the departure from issuance of a proposed rule. As this rule is basically a procedural rule, the Administrative Procedure Act does not require FEMA to have issued a proposed rule. FEMA's own procedures which call for a proposed rule (44 CFR 1.12) allow for an exemption in this case. Issuance of the interim rule, with request for comment, has afforded adequate opportunity to the public for comment.

8. Other Comments

One commenter recommended that an on-site specific environmental impact statement be developed as part of the certification process. In individual cases, FEMA is of the view that certification acceptance would not be a major Federal action significantly affecting the quality of the human environment and that use of the National Environmental Policy Act (NEPA) process is not required under the NEPA statutes and regulation.

A commenter on the fee reimbursement provision challenged the regulatory flexibility analysis statement that the rule did not place burdens on local governments. Regulatory flexibility may be an issue in fee regulations, but since that subject is not specifically addressed in this regulation, there is no need to amend the preamble to the interim rule.

The assistance described in this Part is not Federal financial assistance described in 44 CFR Part 4 and, thus, does not require use of the intergovernmental review procedure described therein.

B. Section-Specific Comments

Sections 352.1 and 352.2 Definition and Scope, Purpose and Applicability

Comment: A commenter suggested that Subpart A begin with the Section on "Licensee certification" and that the first two sections be introductory.

Discussion: This would make it clearer that the scope and definitions sections apply to both Subparts A and B.

Response: Adopted as § 352.4 herein. Also, the Table of Contents has been amended by adding new §§ 352.3 (Purpose and scope) and 352.29 (Appeal process).

Section 352.1 Definitions

Comment: 352.1(g) Local government. There were a number of suggestions for additions to this listing such as public school districts and villages.

Discussion: The intent of the definition is to be as inclusive as possible as reflected in the term, "other jurisdictions," which encompasses other entities such as school districts and villages. This term is deemed to include all local political entities which might have a planning and response function.

Response: No change.

Section 352.1(h) Decline or Fail

Comment: A number of comments were made with respect to the definition of decline or fail, some to expand and some to contract the scope of the definition. Thus, suggestions were made to delete the references to State and local inadequacies, while another commenter would have added an example of inadequacies such as "lack of demonstrated timely action by State or local governments" or similar evidence of failure to perform properly.

Discussion: The Executive Order applies whenever State or local governments, either individually or together, "decline or fail" to prepare emergency preparedness plans or to "participate adequately" in the preparation, demonstration, testing, exercise, or use of such plans. The term, "decline or fail," as used in this regulation, is intended to cover all these circumstances, FEMA is of the view that the existing definition, slightly modified, is a fair reflection of the intent of the Order, and that further additions or contractions would not be more accurate or complete.

Response: The words, "in a timely manner," are added after "correct those inadequacies" to more clearly express the need for promptness in State and local actions.

Section 352.1(q) Command and Control

Comment: A suggestion was made that the term, "protective action recommendations," was more accurate and familiar to response organizations than "protective action decisions."

Discussion: It is believed that in the context of this regulation the word, "decisions," more accurately reflects the intent of the Executive Order. Therefore, no change is required.

Response: No change.

Section 352.2(a) Scope, Purpose and Applicability

Comment: As discussed heretofore in the general discussion a number of the commenters asked about the purported lack of criteria for determinations as to "decline or fail" and "participate adequately."

Discussion: In most cases, "decline" is more or less self evident. The criteria used in evaluating a fail situation or determining the adequacy of participation in planning and preparedness are the same criteria used in reviewing State and local plans under Part 350. That is NRC's Emergency Planning Rule (10 CFR Part 50.47, Appendix E and Part 70) and the joint FEMA–NRC criteria for preparation and Evaluation of Radiological Emergency Response plans and preparedness in support of Nuclear Power Plants, NUREG-0654/FEMA-REP-1, Rev. 1. (November 1980) and Suppl. 1 (September 1988). See 44 CFR 350.5(a). Section 352.6 states this. This is believed to be an adequate definition of criteria.

Response: No change

Section 352.2(c) Applicability

Comment: Two commenters wished clarification of paragraph (c) to make it clearer that the regulation should not be construed or applied to hinder a licensee's own efforts to develop response plans to the extent necessary to achieve adequate emergency preparedness.

Discussion: FEMA agrees that nothing in the regulation should be construed to hinder the licensee's efforts developed under this Part or any other Part such as 350. Thus, FEMA should not, as suggested, develop generic plans which can be used by licensees.

Response: We believe the existing language adequately expresses the concept that the licensee's effort independent of this Part remains in full force and effect, is not superseded, and that if any further assistance under this Part is furnished, it is supplemental.

Section 352.4 Licensee Certification

Comment: A number of commenters suggested that the regulation should indicate how long the certification applied and that there should be provisions to address changing situations. Other comments of an editorial nature were made such as what evidence the licensee should submit to support a finding of decline or fail, e.g., press releases or litigation positions. Also, a suggestion was made to add the words, "or designee," after "chief executive officer" in paragraph a. Additionally, a suggestion was made for the licensee to send copies of the certification to other places such as the NRC Regional Offices.

Discussion: It would not be feasible to set out more specific periods of time for certification as each case varies. Obviously, there is authority to amend or modify the certifications or other determinations at any time. While press releases or litigation positions are an indication of positions of State or local governments for a document such as the certification, FEMA is of the view there should be formality. Therefore, the documentation should show that there has been a written request to State or local officials, with response or a lack of response in a reasonable time, for participation in planning, commitment of resources, or timely correction of inadequacies. The host FEMA Regional Office distributes copies of the certification, and takes the official actions with respect thereto. It should control this dissemination of documents. Therefore, there is no need for the licensee to send the certification anywhere but the host FEMA Regional Office. The suggestion to add the words, "or designee," after "chief executive officer" is not adopted, as it is believed that a request of this magnitude should be made only at the highest level by the chief executive officer.

Response: No change.

Section 352.5 FEMA Action on Licensee Certification

Comment: A number of comments were made on this Section, particularly with respect to the time frame for actions. Some thought the period for FEMA review should be shortened or that actions or inactions should be dispositive of a FEMA decision, such as automatic approval if no final decision is made in 30 days. Some desired that a timeframe be established for FEMA consultation with State and local officials.

Discussion: Suggestions to shorten the time for FEMA to act in 10 days, or to assume if FEMA does not make a final decision within 30 days the certification is automatically accepted, are rejected. However, when a utility meets the requirements of the NRC emergency planning rule (See 10 CFR 50.47 (c)(1) (i) and (ii), FEMA will determine this to be dispositive.

Response: A number of modifications have been made in this Section to allow for comment by State and local governments and a new § 352.29 on appeals from interested parties, applicable to this and other Sections has been added.

The FEMA Associate Director will make a decision within 45 days of receipt of certification by the Regional Director. Action on an appeal will be completed within no more than 60 days after the date of the decision. However, during an appeal FEMA will provide technical assistance to a licensee.

Section 352.6 FEMA Determination on the Commitment of Federal Facilities and Resources

Comment: A suggestion was made that the realism doctrine, which is set out as an assumption upon which all resource determinations are made, should be reiterated in a number of places in Section 5 and elsewhere.

Discussion: FEMA is of the view that this duplication is unnecessary. (See §§ 352.6(c)(2) and 352.25(c).)

Response: No change.

Section 352.6(d) Commitment of Resources

Comment: FEMA should advise State and local authorities of the facilities and resources provided the licensee.

Discussion: FEMA believes that State and local governments should be kept fully informed of Federal Assistance provided to licensees.

Response: The phrase, "the States and affected local governments," is added to the third sentence of paragraph d.

Section 352.23 Functions of a Regional Assistance Committee (RAC)

Comment: A commenter noted that this section extended Part 351 assistance to licensees, and suggested that the RAC be able to provide assistance prior to certification. This has been done in Shoreham and Seabrook cases already under Parts 350 and 351. The commenter thought that § 352.23 prevented RAC assistance prior to such certification.

Discussion: FEMA is of the view that this is an incorrect interpretation of § 352.23, and that assistance can be furnished prior to a certification. Paragraph (b) quite explicitly allows consultation on the needs for facilities and resources. The present practice of RAC cooperation in absence of State or local cooperation is permissible and encouraged. Such cooperation is furnished under Parts 350 and 351 independent of the Executive Order and Part 352, and will continue to be so furnished. A suggestion was made that milestones be established in the regulation for Federal agency responses in § 352.23(d). These are inappropriate in a regulation but should be established as part of good management technique.

Response: No change.

Section 352.24 Provision of Technical Assistance and Federal Facilities and Resources

Comment: It was noted that technical assistance is referred to in §§ 352.23 and 352.24. The difference between these uses of technical assistance residues with the intent of such technical assistance. Following a determination under Subpart A, technical assistance is intended to be part of plan development and completion. Prior to a determination under Subpart A, technical assistance is intended to be provided to help evaluate the need for Federal assistance and Federal facilities and resources.

Response: An additional statement has been added allowing provision of technical assistance during pendency of an appeal.

Section 352.28 Reimbursement

Comment: Utilities commented that State and local governments whose non-participation in emergency planning gave rise to this situation, should bear financial burden. Licensees should not pay for this. Licensees should not be the conduit for collecting fees from State

and local governments. Objections were made by State and localities to charging non-participating State and local governments for any costs, particularly costs of services or resources provided by FEMA or RACs. This was based on lack of legal authority and lack of a request for such assistance. Also, one commenter from a locality within the EPZ, but not receiving any services or tax benefits from a nuclear plant, objected to possible fees assessed against it.

Discussion: The issue of reimbursement is presently being considered in separate regulations on this subject, and will not be addressed in this regulation. FEMA has issued a proposed regulation based on 31 U.S.C. 9701 which is specific to FEMA, and not other agencies, which covers fees to be charged to utilities for FEMA services and resources under both Parts 350 and 352. 54 FR 27395, Section 352.28 restates the Executive Order and will not be revised.

Response: No change.

Section 352.29 Appeal Process

Comment: Commenters desire that there be a procedure for a State or local government or a licensee to appeal the decision made by the Associate Director concerning a certification request by a licensee or a request for resources.

Discussion: FEMA supports the rights of State and local governments or others to appeal FEMA decisions, a provision provided in Part 350.

Response: A new § 352.29 is added.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Director has certified that this rule will not have a significant economic impact upon a substantial number of small entities. The rule places obligations and burdens only on nuclear power plant licensees which are large electric utility companies. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the small business size standards (set forth in Small Business Administration regulations in 13 CFR 121.0). A copy of the certification and attendant materials is available for inspection and copy in the Rules Docket.

Environmental Assessment and Finding of No Significant Environmental Impact

The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation 44 CFR Part 10, "Environmental Considerations," that this rule is not a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared which is available for inspection and copying for a fee in the Rules Docket.

Regulatory Analysis

This rule is not a "Major Rule" as the term is used in Executive Order 12291 and implementing Office of Management and Budget (OMB) guidance. It will not have an annual effect on the economy of $100 milion or more, will not result in an increase in costs, and will not have a significant adverse impact on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Paper Work Reduction Act

This rule contains information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and the OMB implementing regulation, 5 CFR Part 1320. These requirements have been submitted to and been approved by OMB. The OMB Number is 3067–0201 for §§ 352.4 and 352.24.

Federalism Executive Order

A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee in the Rules Docket.

List of Subjects in 44 CFR Part 352:

Nuclear Power Plants and Reactors, Radiation Protection, Intergovernmental Relations, and Federal Assistance.

Accordingly, 44 CFR Part 352 is revised to read as follows:

PART 352—COMMERCIAL NUCLEAR POWER PLANTS: EMERGENCY PREPAREDNESS PLANNING

Sec.

Authority: Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.); Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; 31 U.S.C. 9701; Executive Order 12657; Executive Order 12148; Executive Order 12127 and Executive Order 12241.

§ 352.1 Definitions.

As used in this part, the following terms and concepts are defined:

(a) *Associate Director* means the Associate Director, State and Local Programs and Support, FEMA or designee.

(b) *Director* means the Director, FEMA or designee.

(c) *EPZ* means Emergency Planning Zone.

(d) *FEMA* means the Federal Emergency Management Agency.

(e) *NRC* means the Nuclear Regulatory Commission.

(f) *Regional Director* means the Regional Director of FEMA or designee.

(g) *Local government* means boroughs, cities, counties, municipalities, parishes, towns, townships or other local jurisdictions within the plume and ingestion exposure pathway EPZs that have specific roles in emergency planning and preparedness.

(h) *Decline or fail* means a situation where State or local governments do not participate in preparing offsite emergency plans or have significant planning or preparedness inadequacies and have not demonstrated the commitment or capabilities to correct those inadequacies in a timely manner so as to satisfy NRC licensing requirements.

(i) *Governor* means the Governor of a State or his/her designee.

(j) *Certification* means the written justification by a licensee of the need for Federal compensatory assistance. This certification is required to activate the Federal assistance under this part.

(k) *Responsible local official* means the highest elected official of an appropriate local government.

(l) *Technical assistance* means services provided by FEMA and other Federal agencies to facilitate offsite radiological emergency planning and preparedness such as: Provision of support for the preparation of offsite radiological emergency response plans

and procedures; FEMA coordination of services from other Federal agencies; provision and interpretation of Federal guidance; provision of Federal and contract personnel to offer advice and recommendations for specific aspects of preparedness such as alert and notification and emergency public information.

(m) *Federal facilities and resources* means personnel, property (land, buildings, vehicles, equipment), and operational capabilities controlled by the Federal government related to establishing and maintaining radiological emergency response preparedness.

(n) *Licensee* means the utility which has applied for or has received a license from the NRC to operate a commercial nuclear power plant.

(o) *Reimbursement* means the payment to FEMA/Federal agencies, jointly or severally, by a licensee and State and local governments for assistance and services provided in processing certifications and implementing Federal compensatory assistance under this Part 352.

(p) *Host FEMA Regional Office* means the FEMA Regional Office that has primary jurisdiction by virtue of the nuclear power plant being located within its geographic boundaries.

(q) *Command and control* means making and issuing protective action decisions and directing offsite emergency response resources, agencies, and activities.

§ 352.2 Scope, purpose and applicability.

(a) This part applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant offsite radiological emergency preparedness plans that are sufficient to satisfy NRC licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans. In order to request the assistance provided for in this part, an affected nuclear power plant applicant or licensee shall certify in writing to FEMA that the above situation exists.

(b) The purposes of this part are as follows: (1) To establish policies and procedures for the submission of a licensee certification for Federal assistance under Executive Order 12657; (2) set forth policies and procedures for FEMA's determination to accept, accept with modification, or reject the licensee certification; (3) establish a framework for providing Federal assistance to licensees; and (4) provide procedures for the review and evaluation of the adequacy of offsite radiological emergency planning and preparedness. Findings and determinations on offsite planning and preparedness made under this part are provided to the NRC for its use in the licensing process.

(c) This part applies only in instances where Executive Order 12657 is used by a licensee and its provisions do not affect the validity of the emergency preparedness developed by the licensee independent of or prior to Executive Order 12657.

Subpart A—Certifications and Determinations

§ 352.3 Purpose and scope.

This subpart establishes policies and procedures for submission by a commercial nuclear power plant licensee of a certification for Federal assistance under Executive Order 12657. It contains policies and procedures for FEMA's determinations, with respect to a certification. It establishes a framework for providing Federal assistance to licensees. It also provides procedures for review and evaluation of the adequacy of licensee offsite radiological emergency planning and preparedness.

§ 352.4 Licensee certification.

(a) A licensee which seeks Federal assistance under this part shall submit a certification to the host FEMA Region Director that a decline or fail situation exists. The certification shall be in the form of a letter from the chief executive officer of the licensee. The contents of this letter shall address the provisions set forth in paragraphs (b) and (c) of this section.

(b) The licensee certification shall delineate why such assistance is needed based on the criteria of decline or fail for the relevant State or local governments.

(c) The licensee certification shall document requests to and responses from the Governor(s) or responsible local official(s) with respect to the efforts taken by the licensee to secure their participation, cooperation, commitment of resources or timely correction of planning and preparedness failures.

(Approved by the Office of Management and Budget (OMB) under control number 3067-0201)

§ 352.5 FEMA action on licensee certification.

(a) Upon receiving a licensee certification, the host Regional Director shall immediately notify FEMA Headquarters of the licensee certification. Within 5 days the host Regional Director shall notify the Governor of an affected State and the chief executive officer of any local government that a certification has been received, and make a copy of the certification available to such persons. Within 10 days, the host Regional Director shall acknowledge in writing the receipt of the certification to the licensee.

(b) Within 15 days of receipt of the certification, the Regional Director shall publish a notice in the **Federal Register** that a certification from the licensee has been received, and that copies are available at the Regional Office for review and copying in accordance with 44 CFR 5.26.

(c) FEMA Headquarters shall notify the NRC of receipt of the certification and shall request advice from the NRC on whether a decline or fail situation exists.

(d) State and local governments may submit written statements to the host Regional Director outlining their position as to the facts stated in the letter of certification. Such statements shall be submitted to FEMA within 10 days of the date of notification provided to State and local government under § 352.5(a). Any such statements shall be a part of the record and will be considered in arriving at recommendations or determinations made under the provisions of this Part.

(e) The host FEMA Regional Office shall provide, after consulting with State and responsible local officials, a recommended determination on whether a decline or fail situation exists to the FEMA Associate Director within 30 days of receipt of the licensee certification.

(f) The FEMA Associate Director shall make a determination on whether a decline or fail situation exists within 45 days of receipt of the licensee certification and shall advise the licensee, NRC, and State and local officials.

(g) The times for actions set out above may be extended up to an aggregate of 30 days by the host Regional Director or Associate Director, as appropriate.

§ 352.6 FEMA determination on the commitment of Federal facilities and resources.

(a) A licensee request for Federal facilities and resources shall document the licensee's maximum feasible use of its resources and its efforts to secure the use of State and local government and volunteer resources.

(b) Upon a licensee request for Federal facilities and resources, FEMA headquarters shall notify NRC and request advice from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1). The host FEMA Regional Director shall make a recommendation to the FEMA Associate Director on whether the

provision of these facilities and resources is warranted. The FEMA Associate Director shall make a final determination as to whether Federal facilities and resources are needed.

(c) In making the determination under paragraph (b) of this section, FEMA:

(1) Shall work actively with the licensee, and before relying upon any Federal resources, shall make maximum feasible use of the licensee's own resources, which may include agreements with volunteer organizations and other government entities and agencies; and

(2) Shall assume that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public and would act generally in conformity with the licensee's radiological emergency preparedness plan.

(d) The FEMA Associate Director shall make a determination on the need for and commitment of Federal facilities and resources. The FEMA determination shall be made in consultation with affected Federal agencies and in accordance with 44 CFR 352.21. FEMA shall inform the licensee, the States and affected local governments in writing of the Federal support which will be provided. This information shall identify Federal agencies that are to provide Federal support, the extent and purpose of the support to be provided, the Federal facilities and resources to be committed and the limitations on their use. The provision of the identified Federal support shall be made under the policies and procedures of Subpart B of this Part.

§ 352.7 Review and evaluation.

FEMA shall conduct its activities and make findings under this Part in a manner consistent with 44 CFR Part 350 to the extent that those procedures are appropriate and not inconsistent with the intent and procedures required by E.O. 12657. This Order shall take precedence, and any inconsistencies shall be resolved under the procedures in the NRC/FEMA Memorandum of Understanding (MOU) on planning and preparedness. (50 FR 15485, April 18, 1985)

Subpart B—Federal Participation

§ 352.20 Purpose and scope.

This Subpart establishes policy and procedures for providing support for offsite radiological emergency planning and preparedness in a situation where Federal support under Excutive Order 12657 (E.O. 12657) has been requested. This subpart:

(a) Describes the process for providing Federal technical assistance to the licensee for developing its offsite emergency response plan after an affirmative determination on the licensee certification under Subpart A (44 CFR 352.5(f));

(b) Describes the process for providing Federal facilities and resources to the licensee after a determination under Subpart A (44 CFR 352.6(d)) that Federal resources are required;

(c) Describes the principal response functions which Federal agencies may be called upon to provide;

(d) Describes the process for allocating responsibilities among Federal agencies for planning site-specific emergency response functions; and

(e) Provides for the participation of Federal agencies, including the members of the FRPCC and the RACs.

§ 352.21 Participating Federal agencies.

(a) FEMA may call upon any Federal agency to participate in planning for the use of Federal facilities and resources in the licensee offsite emergency response plan.

(b) FEMA may call upon the following agencies, and others as needed, to provide Federal technical assistance and Federal facilities and resources:

(1) Department of Commerce;
(2) Department of Defense;
(3) Department of Energy;
(4) Department of Health and Human Services;
(5) Department of Housing and Urban Development;
(6) Department of the Interior;
(7) Department of Transportation;
(8) Environmental Protection Agency;
(9) Federal Communications Commission;
(10) General Services Administration;
(11) National Communications System;
(12) Nuclear Regulatory Commission;
(13) United States Department of Agriculture; and
(14) Department of Veterans Affairs.

(c) FEMA is the Federal agency primarily responsible for coordinating Federal assistance. FEMA may enter into Memorandums of Understanding (MOU) and other instruments with Federal agencies to provide technical assistance and to arrange for the commitment and utilization of Federal facilities and resources as necessary. FEMA also may use a MOU to delegate to another Federal agency, with the consent of that agency, any of the functions and duties assigned to FEMA. Following review and approval by OMB, FEMA will publish such documents in the Federal Register.

§ 352.22 Functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC).

Under 44 CFR Part 351, the role of the FRPCC is to assist FEMA in providing policy direction for the program of technical assistance to State and local governments in their radiological emergency planning and preparedness activities. Under this Subpart, the role of the FRPCC is to provide advice to FEMA regarding Federal assistance and Federal facilities and resources for implementing Subparts A and B of this Part. This assistance activity is extended to licensees. The FRPCC will assist FEMA in revising the Federal Radiological Emergency Response Plan (FRERP).

§ 352.23 Functions of a Regional Assistance Committee (RAC)

(a) Under 44 CFR Part 351, the role of a RAC is to assist State and local government officials to develop their radiological emergency plans, to review the plans, and to observe exercises to evaluate the plans. Under Subparts A and B of this Part, these technical assistance activities are extended to the licensee.

(b) Prior to a determination under Subpart A (44 CFR 352.6(d)) that Federal facilities and resources are needed, the designated RAC for the specific site will assist the licensee, as necessary, in evaluating the need for Federal facilities and resources, in addition to providing technical assistance under § 352.23(a).

(c) In accomplishing the foregoing, the RAC will use the standards and evaluation criteria in NUREG–0654/FEMA–REP–1, Rev. 1 and Supp. 1.[1] or approved alternative approaches, and RAC members shall render such technical assistance as appropriate to their agency mission and expertise.

(d) Following determination under Subpart A (44 CFR 352.6(d)) that Federal facilities and resources are needed, the RAC will assist FEMA in identifying agencies and specifying the Federal facilities and resources which the agencies are to provide.

§ 352.24 Provision of technical assistance and Federal facilities and resources

(a) Under a determination under Subpart A (44 CFR 352.5(f) and 352.4(e))

[1] Copy available from FEMA Distribution Center, P.O. Box 70274 Washington, DC 20024

that a decline or fail situation exists, FEMA and other Federal agencies will provide technical assistance to the licensee. Such assistance may be provided during the pendency of an appeal under § 352.29.

(b) The applicable criteria for the use of Federal facilities and resources are set forth in Subpart A (44 CFR 352.6(c)(1)(2)). Upon a determination under Subpart A (44 CFR 352.6(d)) that Federal resources or facilities will be required, FEMA will consult with the FRPCC, the RAC, the individual Federal agencies, and the licensee, to determine the extent of Federal facilities and resources that the government could provide, and the most effective way to do so. After such consultation, FEMA will specifically request Federal agencies to provide those Federal facilities and resources. The Federal agencies, in turn, will respond to confirm the availability of such facilities and resources and provide estimates of their costs.

(c) FEMA will inform the licensee in writing of the Federal support which will be provided. This information will identify Federal agencies which are to be included in the plan, the extent and purpose of technical assistance to be provided and the Federal facilities and resources to be committed, and the limitations of their use. The information will also describe the requirements for reimbursement to the Federal Government for this support.

(d) FEMA will coordinate the Federal effort in implementing the determinations made under Subpart A (44 CFR 352.5(f) and 352.6(d)) so that each Federal agency maintains the committed technical assistance, facilities, and resources after the licensee offsite emergency response plan is completed. FEMA and other Federal agencies will participate in training, exercises, and drills, in support of the licensee offsite emergency response plan.

(e) In carrying out paragraphs (a) through (c) of this section, FEMA will keep affected State and local governments informed of actions taken.

(Approval by the OMB under control number 3067-0201)

§ 352.25 Limitation on committing Federal facilities and resources for emergency preparedness.

(a) The commitment of Federal facilities and resources will be made through the authority of the affected Federal agencies.

(b) In implementing a determination under Subpart A (44 CFR 352.6(d)), that Federal facilities and resources are necessary for emergency preparedness, FEMA shall take care not to supplant State and local resources. Federal facilities and resources shall be substituted for those of the State and local governments in the licensee offsite emergency response plan only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after consultation with the Governor(s) and responsible local officials in the affected area(s) regarding State and local participation.

(c) All Federal planning activities described in this Subpart will be conducted under the assumption that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act, generally, in conformity with the licensee's offsite emergency response plan.

§ 352.26 Arrangements for Federal response in the licensee offsite emergency response plan.

Federal agencies may be called upon to assist the licensee in developing a licensee offsite emergency response plan in areas such as:

(a) Arrangements for use of Federal facilities and resources for response functions such as:

(1) Prompt notification of the emergency to the public;

(2) Assisting in any necessary evacuation;

(3) Providing reception centers or shelters and related facilities and services for evacuees;

(4) Providing emergency medical services at Federal hospitals; and

(5) Ensuring the creation and maintenance of channels of communication from commercial nuclear power plant licensees to State and local governments and to surrounding members of the public.

(b) Arrangements for transferring response functions to State and local governments during the response in an actual emergency; and

(c) Arrangements which may be necessary for FEMA coordination of the response of other Federal agencies.

§ 352.27 Federal role in the emergency response.

In addition to the Federal component of the licensee offsite emergency response plan described in Subpart B (§ 352.26), and after complying with E.O. 12657, Section 2(b)(2), which states that FEMA:

(2) Shall take care not to supplant State and local resources and that FEMA shall substitute its own resources for those of State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

FEMA shall provide for initial Federal response activities, including command and control of the offsite response, as may be needed. Any Federal response role, undertaken pursuant to this section, shall be transferred to State and local governments as soon as feasible after the onset of an actual emergency.

§ 352.28 Reimbursement.

In accordance with Executive Order 12657, Section 6(d), and to the extent permitted by law, FEMA will coordinate full reimbursement, either jointly or severally, to the agencies performing services or furnishing resources, from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

§ 352.29 Appeal process.

(a) Any interested party may appeal a determination made by the Associate Director, under §§ 352.5 and 352.6 of this part, by submitting to the Director, FEMA, a written notice of appeal, within 30 days after issuance. The appeal is to be addressed to the Director, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. The appeal letter shall state the specific reasons for the appeal and include documentation to support appellant arguments. The appeal is limited to matters of record under §§ 352.5 and 352.6.

(b) Within 30 days of receipt of this letter, the FEMA Director or designee will review the record and make a final determination on the matter.

(c) Copies of this determination shall be furnished to the Appellant, the State(s), affected local governments, and the NRC.

(d) For purposes of this section, the term "interested party" means only a licensee, a State or a local government, as defined in § 352.1(g).

Dated: July 24, 1989.

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

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federal register

Wednesday
August 2, 1989

Part III

The President

Proclamation 6003—Extending United States Copyright Protections to the Works of the Republic of Indonesia

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

Presidential Documents

Title 3—

The President

Proclamation 6003 of July 31, 1989

Extending United States Copyright Protections to the Works of the Republic of Indonesia

By the President of the United States of America

A Proclamation

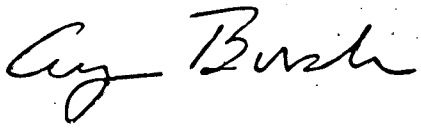
Section 104(b)(5) of title 17 of the United States Code provides that when the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States of America or to works first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under that title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which are first published in that nation.

Satisfactory assurances have been received that as of the entry into force date, August 1, 1989, of the Agreement between the Government of the Republic of Indonesia and the Government of the United States of America on Copyright Protection (hereinafter the "Copyright Agreement"), Indonesia will grant to works of United States nationals and domiciliaries and works first published in the United States protection in the Republic of Indonesia on the same basis as works of Indonesian nationals and domiciliaries and works first published in Indonesia, and that such protection will also extend to works of United States nationals and domiciliaries and works first published in the United States, which are in the Indonesian public domain on the day immediately prior to the effective date of the Copyright Agreement, if such works still enjoy copyright protection in the United States.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by the authority vested in me by section 104 of title 17 of the United States Code, do declare and proclaim that the conditions specified in section 104(b)(5) of title 17 of the United States Code have been satisfied in the Republic of Indonesia with respect to works of which one or more of the authors is, on the date of first publication, a national or domiciliary of the United States of America, or which are first published in the United States, and as of August 1, 1989, works of Indonesian nationals and domiciliaries and works first published in Indonesia are entitled to protection under title 17 of the United States Code.

I hereby request the Secretary of State to notify the Government of Indonesia that the date on which works of Indonesian nationals and domiciliaries and works first published in the Republic of Indonesia are entitled to protection under title 17 of the United States Code is August 1, 1989, the date on which the Copyright Agreement enters into force.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



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S.J. Res. 93 / Pub. L. 101-64

To designate October 1989 as "Polish American Heritage Month." (July 27, 1989; 103 Stat. 165; 1 page) Price: $1.00

S.J. Res. 129 / Pub. L. 101-65

To provide for the designation of September 15, 1989, as "National POW/MIA Recognition Day." (July 28, 1989; 103 Stat. 166; 1 page) Price: $1.00

S.J. Res. 142 / Pub. L. 101-66

Designation the week beginning July 23, 1989, as "Lyme Disease Awareness Week." (July 28, 1989; 103 Stat. 167; 1 page) Price: $1.00