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August 17, 1990

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Presidential Documents

Title 3—

The President

Proclamation 6168 of August 14, 1990

Home Health Aide Week, 1990

By the President of the United States of America

A Proclamation

Home health aides, employed by some 5,600 home care organizations throughout the United States, are key members of the teams of health care professionals and volunteers who provide needed services for ill and disabled Americans. Today, approximately half a million men and women serve as home health aides. These workers enable their clients to enjoy the comfort and security of their own homes while obtaining needed personal care and support services.

Home health aides help their clients to perform some of the essential tasks of daily living, such as bathing. They help to maintain a clean and safe home environment for their clients and provide various rehabilitative and support services. They also observe a client's progress and report significant changes in his or her condition to other home care team members. The widespread use of training and competency evaluations for home health aides—such as those prepared by the Foundation for Hospice and Home Care—ensures that these activities are carried out with a high degree of professionalism.

Home health aides have enabled many ill and disabled Americans to avoid or delay the need for admission to a nursing home or other institution. Giving ill and impaired individuals the opportunity to remain in their own homes, surrounded by the love and support of family and friends, home care helps to maintain both their emotional and physical well-being. Home care has also proved to be cost-effective. For example, New York State's Nursing Home Without Walls Program has demonstrated that clients who would otherwise be in a nursing facility can be cared for at home for about half the cost.

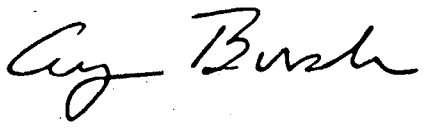
Although home health aides care for many ill or disabled persons who are younger than 65, most of their clients are elderly. With the aging of the American population, the need for home health aides is likely to increase dramatically. The Department of Health and Human Services reports that people age 65 or older currently represent 12 percent of the population; by the year 2030, they will represent 21 percent. Today, people over age 84 are among one of the fastest growing age groups in the country.

Home health aides—along with the staffs of the home health agencies, homemaker organizations, and hospices that employ them—deserve recognition and encouragement. They play an important role in maintaining the dignity and independence of millions of Americans, and, this week, we salute them for their dedication and hard work.

In grateful recognition of those who serve as home health aides, the Congress, by Senate Joint Resolution 343, has designated the week of August 13 through August 19, 1990, as "Home Health Aide Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of August 13 through August 19, 1990, as Home Health Aide Week. I call upon the people of the United States to observe this week with appropriate programs and activities.

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



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Presidential Documents

Proclamation 6169 of August 14, 1990

National Senior Citizens Day, 1990

By the President of the United States of America

A Proclamation

The character of the United States has been shaped, in large part, by the accomplishments of older Americans. From the days of Benjamin Franklin, who was 81 years old when he helped to frame our Constitution, to the present time, America's senior citizens have enriched us through their wisdom and their example. These individuals have labored and sacrificed to build better lives for themselves and for their families and, in so doing, have helped to keep our country free, strong, and prosperous. Now in their advanced years, they continue to share with us a wealth of talent and experience.

Today millions of older Americans are remaining in the work force well past the traditional "retirement age." Many are pursuing second careers, and many are engaged in voluntary service to their communities. Most important, perhaps, older Americans provide their families with an abundance of love, affection, and guidance—as well as a living link to the past.

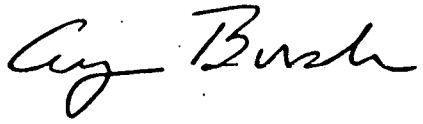
As parents and grandparents, and as beloved neighbors and friends, our Nation's senior citizens enrich our lives beyond measure, and each of them merits our appreciation and support. Because the true strength and character of any society may be measured by how it treats its senior members, we must always strive to ensure that older Americans are accorded not only the services they need, but also the opportunities and esteem they so richly deserve. We should make certain that our communities are places where senior citizens feel safe and welcome, and we should set an example for our children by treating our older relatives and neighbors with respect and consideration.

As we observe National Senior Citizens Day, we do well to express our admiration and gratitude for the older members of our communities. These distinguished Americans should know that their many gifts to us are recognized and cherished, not only on this occasion, but throughout the year.

The Congress, by House Joint Resolution 591, has designated the third Sunday of August 1990 as "National Senior Citizens Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Sunday, August 19, 1990, as National Senior Citizens Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities in honor of our Nation's senior citizens.

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



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Presidential Documents

Proclamation 6170 of August 14, 1990

Women's Equality Day, 1990

By the President of the United States of America

A Proclamation

On August 26, 1990, we will commemorate the 70th anniversary of the ratification of the 19th Amendment to our Constitution. This Amendment guaranteed for women the right to vote and, in so doing, opened the door to their full participation in our representative system of government.

The adoption of the 19th Amendment nearly three-quarters of a century ago was a great victory not only for women, but for all Americans. By recognizing previously disenfranchised members of our society and guaranteeing them an equal voice in the electoral process, the 19th Amendment affirmed the principles upon which the United States is founded. It underscored our Nation's commitment to the belief "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. . . ."

Years before the ratification of the 19th Amendment, the woman's suffrage movement took shape. Its members and supporters realized that, as long as women lacked a voice in the democratic process, the promise of liberty and self-government so eloquently expressed in our Nation's founding documents would remain unfulfilled. One of the movement's most prominent leaders, Susan B. Anthony, articulated the concerns of many when she asked: "How can the consent of the governed be given, if the right to vote be denied?"

After years of hard work by members of the woman's suffrage movement, the 19th Amendment was passed by the Congress in June of 1919. It was finally ratified by the Tennessee legislature on August 18, 1920, and proclaimed as part of our Constitution on August 26.

The ratification of the 19th Amendment marked an important legal milestone in our Nation's efforts to ensure liberty, justice, and equality of opportunity for all. Like the 13th, 14th, and 15th Amendments that preceded it and other great landmarks that have followed—landmarks such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965—the 19th Amendment offers a poignant reminder that every individual is an heir to the civil and political rights enshrined in our Declaration of Independence and Constitution.

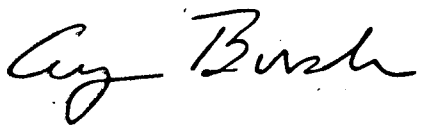
As we commemorate the 70th anniversary of the ratification of the 19th Amendment, we also recognize the many and varied accomplishments of women—accomplishments made possible by progress in eliminating discrimination. During the past 7 decades, millions of women have earned positions of leadership and responsibility in business, government, science, education, and the arts.

On this occasion, as we celebrate the continued social and economic advancement of women—and their unique role in keeping our families, communities, and Nation strong—let us also reflect upon the importance of having and using the right to vote. As Americans, we are both heirs to and guardians of the blessings of liberty and self-government. Exercising our right to vote is one of the most important ways we can help to advance the ideals expressed in our

Nation's founding documents and ensure justice and equal opportunity for all Americans.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 1990, as Women's Equality Day, a day to commemorate the 70th anniversary of the ratification of the 19th Amendment. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities.

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



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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1940 and 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) makes final its Community Facility loan and grant interim regulations to implement title V of the Disaster Assistance Act of 1989. A new grant program has been established to assist rural communities that have had a significant decline in quantity or quality in their drinking water supply or their existing water system needs emergency repairs. The grant program will assist the residents of rural communities in obtaining adequate quantities of drinking water that meet the requirements of the Safe Drinking Water Act. The intended effect of this action is to develop a new regulation for the emergency community assistance grants authorized by the law.

EFFECTIVE DATE: August 17, 1990.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Furthermore, there will be 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. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

This program is listed in the Catalog of Federal Domestic Assistance under number 10.440, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985.)

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

This action implements title V of Public Law 101–82 which requires that grants be provided to assist residents of rural areas and small communities in securing adequate quantities of safe drinking water. Grants made under this program will only be made to remedy an acute shortage of quality water or a significant decline in the quantity or quality of water that is available. Grant applicants must be a public or private nonprofit entity and, in the case of a grant request based on a decline in water supplies, the applicant must demonstrate to FmHA that the decline occurred within two years of the date the application was filed for a grant.

Discussion of Comments

FmHA published an interim final rule in the **Federal Register** on April 6, 1990 (55 FR 12811) and asked for written comments on or before June 5, 1990. No comments were received from the public relating to these regulations.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended by adopting the interim final rule published April 6, 1990 (55 FR 12811) as a final rule without change.

Dated: July 9, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90–19408 Filed 8–16–90; 8:45 am]
BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AD45

Freedom of Information Act, Privacy Act, Production or Disclosure in Response To Subpeona or Demands of Courts or Other Authorities; Office of the Inspector General

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect the establishment of the Office of the Inspector General. This amendment will permit the Office of the Inspector General to make independent disclosure determinations on (1) records originating in its office that are responsive to Freedom of Information Act requests, and (2) records located in its office that are responsive to Privacy Act requests. The final rule also requires personnel in the Office of Inspector General to obtain the Inspector General's approval, instead of the General Counsel's approval, before

responding to subpoenas or demands or courts or other authorities for the production or disclosure of NRC information.

EFFECTIVE DATE: August 17, 1990.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7211.

SUPPLEMENTARY INFORMATION: On April 17, 1989, in accordance with Public Law 100-504, the Nuclear Regulatory Commission established the Office of the Inspector General and abolished the Office of Inspector and Auditor. In the reorganization, the Assistant Inspector General for Audits and the Assistant Inspector General for Investigations were designated as the initial deciding officials for audit related records and investigation related records respectively when responding to Freedom of Information or Privacy Act requests. The Inspector General was designated as the official responsible for making final determinations on appeals from denials of records or denials of correction of records.

The NRC is amending portions of its regulations to reflect this action. The amended provisions specify that the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations will be the initial denying official when responding to Freedom of Information or Privacy Act requests, and that the Inspector General is authorized to respond to an appeal of a denial of a Freedom of Information or Privacy Act request or an appeal to amend or correct a record denied in response to a Privacy Act request. These amendments also require personnel in the Office of the Inspector General to obtain the Inspector General's approval, instead of the General Counsel's approval, before responding to a subpoena, order, or other demand for the production of records or disclosure of information, including testimony, that is issued by a court or other judicial or quasi-judicial authority.

Because these are amendments dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register** (August 17, 1990). Good cause exists to dispense with the usual 30-day delay in the effective date because these amendments are of a minor and administrative nature dealing with gency organization.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0043.

List of Subjects in 10 CFR Part 9

Freedom of Information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

2. In § 9.25, paragraph (c) is revised to read as follows:

§ 9.25 Initial disclosure determination.

* * * * *

(c) For agency records located in the office of a Commissioner or in the Office of the Secretary of the Commission, the Assistant Secretary of the Commission shall make the initial determination to deny agency records in whole or in part under § 9.17(a) instead of the Director, Division of Freedom of Information and Publications Services. For agency records located in the Office of the General Counsel, the General Counsel shall make the initial determination to deny agency records in whole or in part instead of the Director, Division of Freedom of Information and Publications Services. For agency records located in the Office of the Inspector General, the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations shall make the initial determination to deny agency records in whole or in part instead of the Director, Division of Freedom of Information and Publications Services. If the Assistant Secretary of the Commission, the General Counsel, the Assistant Inspector General for Audits, or the Assistant Inspector General for Investigations determines that the agency records sought are exempt from disclosure and that their disclosure is contrary to the public interest and will adversely affect the rights of any person, the Assistant Secretary of the Commission, the General Counsel, the Assistant Inspector General for Audits, or the Assistant Inspector General for Investigations shall furnish that determination to the Director, Division of Freedom of Information and Publications Services, who shall notify the requester of the determination in the manner provided in § 9.27

* * * * *

3. In § 9.27, paragraph (b)(5) is revised to read as follows:

§ 9.27 Form and content of responses.

* * * * *

(b) * * *

(5) A statement that the denial may be appealed within 30 days from the receipt of the denial to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, as appropriate.

* * * * *

4. In § 9.29, paragraph (a), the introductory text of paragraph (c)(1), paragraphs (c)(3) and (d) are revised as follows:

§ 9.29 Appeal from initial determination.

(a) A requester may appeal a notice of denial of a Freedom of Information Act request for agency records or a request for waiver or reduction of fees under this subpart within 30 days of the date of the NRC's denial. For agency records denied by an Office Director reporting to the Executive Director for Operations or for a denial of a request for a waiver or reduction of fees, the appeal must be in writing and addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For agency records denied by an Office Director reporting to the Commission, the Assistant Secretary of the Commission, or the Advisory Committee Management Officer, the appeal must be in writing and addressed to the Secretary of the Commission. For agency records denied by the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations, the appeal must be in writing and addressed to the Inspector General. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider

an appeal that is not marked as indicated in this paragraph as received until it is actually received by the Executive Director for Operations, Secretary of the Commission, or the Inspector General.

* * * * *

(c)(1) If the appeal of the denial of the request for agency records is upheld in whole or in part, the Executive Director for Operations, or a Deputy Director, or the Secretary of the Commission, or the Inspector General shall notify the requester of the denial specifying—

* * * * *

(3) The Executive Director for Operations, or a Deputy Executive Director, or the Secretary of the Commission, or the Inspector General shall inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(d) The Executive Director for Operations, or a Deputy Executive Director, or the Secretary of the Commission, or the Inspector General shall furnish copies of all appeals and written determinations on appeals to the Director, Division of Freedom of Information and Publications Services.

5. In § 9.65, the introductory text of paragraph (a), paragraphs (a)(2), (b), and (c) are to be revised to read as follows:

§ 9.65 Access determinations; appeals.

(a) *Initial determinations.* For agency records located in the Office of the Inspector General, the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations shall determine whether access to the record is available under the Privacy Act. For all other agency records, the Director, Office of Administration, or the Director's designee, with the advice of the system manager having control of the record to which access is requested, shall determine whether access to the record is available under the Privacy Act. The Director, Office of Administration, or the Director's designee, shall notify the requesting individual in person or in writing of the determination. Unless the request presents unusual difficulties or invovles extensive numbers of records, individuals shall be notified of determinations to grant or deny access within 30 working days after receipt of the request.

* * * * *

(2) Notices denying access must state the reasons for the denial, and advise the individual that the denial may be appealed to the Inspector General, for agency records located in the Office of Inspector General, or the Executive Director for Operations, for all other agency records, in accordance with the procedures set forth in this section.

(b) *Appeals from denials of access.* If an individual has been denied access to a record the individual may request a final review and determination of that individual's request by the Inspector General or the Executive Director for Operations as appropriate. A request for final review of an initial determination must be filed within 60 days of the receipt of the initial determination. For agency records denied by the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations, the appeal must be in writing and addressed to the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For agency records denied by the Director, Office of Administration, or the Director's designee, the appeal must be in writing addressed to the Executive Director for Operations. The appeal should clearly state on the envelope and in the letter "Privacy Act Appeal-Denial of Access." The NRC does not consider an appeal that is not marked as indicated in this paragraph as received until it is actually received by the Inspector General or Executive Director for Operations.

(c) *Final determinations.* (1) The Inspector General, or the Executive Director for Operations or the EDO's designee, shall make a final determination within 30 working days of the receipt of the request for final review, unless the time is extended for good cause shown such as the need to obtain additional information, the volume of records involved, or the complexity of the issue. The extension of time may not exceed 30 additional working days. The requester shall be advised in advance of any extension of time and of the reasons therefor.

(2) If the Inspector General, or the Executive Director for Operations or the EDO's designee, determines that access was properly denied because the information requested has been exempted from disclosure, the Inspector General, or the Executive Director for Operations or the EDO's designee shall undertake a review of the exemption to determine whether the information should continue to be exempt from disclosure. The Inspector General, or the Executive Director for Operations or the EDO's designee, shall notify the individual in writing of the final agency determination to grant or deny the request for access. Notices denying access must state the reasons therefor and must advise the individual of his/her right to judicial review pursuant to 5 U.S.C. 552a(g).

6. In § 9.66, the introductory text of paragraph (a)(1) and paragraphs (a)(2), (a)(3), (b), and (c) are revised to read as follows:

§ 9.66 Determinations authorizing or denying correction of records; appeals.

(a) *Initial determinations.* (1) For agency records located in the Office of the Inspector General, the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations shall determine whether to authorize or refuse correction or amendment of a record. For all other agency records, the Director, Office of Administration, or the Director's designee, with the advice of the system manager having control of the record, shall determine whether to authorize or refuse correction or amendment of a record. The Director, Office of Administration, or the Director's designee, shall notify the requesting individual. Unless the request presents unusual difficulties or involves extensive numbers of records, individuals must be notified of determinations to authorize or refuse correction or amendment of a record within 30 working days after receipt of the request. In making this determination, the NRC official shall be guided by the following standards:

* * * * *

(2) For agency records located in the Office of Inspector General, if correction or amendment of a record is authorized, the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations shall correct or amend the record. For all other agency records, the Director, Office of Administration, or the Director's designee, shall correct or amend the record. The Director, Office of Administration, or the Director's designee shall notify the requesting individual in writing that the correction or amendment has been made and provide the individual with a courtesy copy of the corrected record.

(3) If correction or amendment of a record is refused, the Director, Office of Administration or the Director's designee, shall notify the requesting individual in writing of the refusal and the reasons therefor, and shall advise the individual that the refusal may be appealed to the Inspector General or the Executive Director for Operations, as appropriate, in accordance with the procedures set forth in this section.

(b) *Appeals from initial adverse determinations.* If an individual's request to amend or correct a record has been denied, in whole or in part, the individual may request a final review and determination of that individual's request by the Inspector General or the Executive Director for Operations, as appropriate. A request for final review of an initial determination must be filed within 60 days of the receipt of the initial determination. For agency records located in the Office of the Inspector General, the appeal must be in writing and addressed to the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For agency records located in all other offices, the appeal must be in writing addressed to the Executive Director for Operations. The appeal should clearly state on the envelope and in the letter "Privacy Act Correction Appeal." The NRC does not consider an appeal that is not marked as indicated in this paragraph as received until it is actually received by the Inspector General or Executive Director for Operations. Requests for final review must set forth the specific item of information sought to be corrected or amended and should include, where appropriate, documents supporting the correction or amendment.

(c) *Final determinations.* (1) The Inspector General, for agency records located in the Office of the Inspector General, or the Executive Director for Operations or the EDO's designee, for all other ageny records, shall make a final agency determination within 30 working days of receipt of the request for final review, unless the time is extended for good cause shown such as the need to obtain additional information, the volume of records involved, or the complexity of the issue. The extension of time may not exceed 30 additional working days. The requester shall be advised in advance of any extension of time and of the reasons therefor.

(2) For agency records located in the Office of the Inspector General, if the Inspector General makes a final determination that an amendment or correction of the record is warranted on the facts, the Inspector General or the IG's designee, shall correct or amend the record pursuant to the procedures in § 9.66(a)(2). For all other agency records, if the Executive Director for Operations, or the EDO's designee, makes a final determination that an amendment or correction of the record is warranted on the facts, the EDO or the EDO's designee, shall notify the Director, Office of Administration, to correct or amend the record to the procedures in § 9.66(a)(2).

(3) If the Inspector General, or the Executive Director for Operations or the EDO's designee, makes a final determination that an amendment or correction of the record is not warranted on the facts, the individual shall be notified in writing of the refusal to authorize correction or amendment of the record in whole or in part, and of the reasons therefor, and the individual shall be advised of his/her right to provide a "Statement of Disagreement" for the record and of his/her right to judicial review pursuant to 5 U.S.C. 552a(g).

7. Section 9.67 is revised to read as follows:

§ 9.67 Statements of disagreement.

(a) Written "Statements of Disagreement" may be furnished by the individual within 30 working days of the date of receipt of the final adverse determination of the Inspector General or the Executive Director for Operations. "Statements of Disagreement" must be addressed, as appropriate, to the Inspector General or the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should be clearly marked on the statement and on the envelope "Privacy Act Statement of Disagreement".

(b) The Inspector General or the Executive Director for Operations, or their designees, as appropriate, are responsible for ensuring that: (1) The "Statement of Disagreement" is included in the system or systems of records in which the disputed item of information is maintained; and (2) the original record is marked to indicate the information disputed, the existence of a "Statement of Disagreement" and the location of the "Statement of Disagreement" within the system of records.

8. Section 9.68 is revised to read as follows:

§ 9.68 NRC statement of explanation.

The Inspector General, or the Executive Director for Operations or the EDO's designee, may if deemed appropriate, prepare a concise statement of the reasons why the requested amendments or corrections were not made. Any NRC "Statement of Explanation" must be included in the system of records in the same manner as the "Statement of Disagreement". Courtesy copies of the NRC statement and of the notation of the dispute as marked on the original record must be furnished to the individual who requested correction or amendment of the record.

9. Section 9.201 is revised to read as follows:

§ 9.201 Production or disclosure prohibited unless approved by appropriate NRC Official.

No employee of the NRC shall, in response to a demand of a court or other judicial or quasi-judicial authority, produce any material contained in the files of the NRC or disclose, through testimony or other means, any information relating to material contained in the files of the NRC, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or official status without prior approval of the appropriate NRC official. When the demand is for material contained in the files of the Office of the Inspector General or for information acquired by an employee of that Office, the Inspector General is the appropriate NRC official. In all other cases, the General Counsel is the appropriate NRC official.

10. In § 9.202, paragraphs (a) and (c) are revised to read as follows:

§ 9.202 Procedure in the event of a demand for production or disclosure.

(a) Prior to or simultaneous with a demand upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, the party seeking production or disclosure shall serve the General Counsel of the NRC with an affidavit or statement as described in paragraphs (b)(1) and (2) of this section. Except for employees in the Office of Inspector General, whenever a demand is made upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, that employee shall immediately notify the General Counsel. If the demand is made upon a regional NRC employee, that employee shall immediately notify the Regional Counsel who, in turn, shall immediately request instructions from the General Counsel. If the demand is made upon an employee in the Office of Inspector General, that employee shall immediately notify the Inspector General. The Inspector General shall immediately provide a copy of the demand to the General Counsel, and as deemed necessary, consult with the General Counsel.

* * * * *

(c) The Inspector General or the General Counsel will notify the employee and such other persons, as circumstances may warrant, of the decision on the matter.

11. Section 9.203 is revised to read as follows:

§ 9.203 Procedure where response to demand is required prior to receiving instructions.

If a response to the demand is required before the instructions from the Inspector General or the General Counsel are received, a U.S. attorney or NRC attorney designated for the purpose shall appear with the employee of the NRC upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate NRC official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions. In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a U.S. or NRC attorney on the employee's behalf, the employee shall respectfully request the demanding authority for sufficient time to obtain advice of counsel.

Dated at Rockville, Maryland, this 7th day of August 1990.

For the Nuclear Regulatory Commission,

James M. Taylor,

Executive Director for Operations.

[FR Doc. 90-19401 Filed 8-16-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-150-AD; Amdt. 39-6707]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires inspection of the outboard flap support attach bolts of both the inboard and outboard flap tracks, and replacement, if necessary. This amendment clarifies the requirement for inspection of the support attach bolts of both inboard and outboard flap tracks. This amendment is prompted by a recent discovery of an error in the referenced Boeing service bulletin which may have caused some operators to omit the required inspection of the outboard track on certain airplanes. This condition, if not corrected, could result in the loss of the flap and, subsequently, severe reduction in the controllability of the airplane.

EFFECTIVE DATE: September 4, 1990.

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

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 227-2775. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On June 11, 1974, the FAA issued AD 74-19-05, Amendment 39-1958 (39 FR 22273, June 21, 1974), to require inspection of the outboard flap support attach bolts of both the inboard and outboard flap tracks and replacement, if necessary. That action was prompted by reports of failures of the support attach bolts. This condition, if not corrected, could result in the loss of the flap and, subsequently, severely reduce controllability of the airplane.

Recently, the FAA determined that AD 74-19-05 as originally issued may have been misinterpreted by some operators in that it requires inspection in accordance with Boeing Service Bulletin 737-57A1079, Revision 1, dated July 27, 1973. That service bulletin contained an error in that it stipulated procedures for a torque inspection of only the inboard track forward support fitting attach bolts on airplanes identified as "Group 2" airplanes; procedures for inspection of the outboard track forward support fitting attach bolts on those airplanes were inadvertently omitted. Failure to conduct torque inspections of the outboard track forward support fitting attach bolts could lead to failure of the flap track fitting attachment, loss of the flap, and subsequently, severe reduction in the controllability of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-57A1079, Revision 4, dated May 10, 1990, which describes procedures for inspection and replacement of both the outboard flap inboard and outboard forward flap track support attach bolts. This revision to the service bulletin corrects the previous error.

Because the possibility of misinterpretation by the operators exists, and since the stress corrosion failure of the outboard track forward support fitting attach bolts on Group 2 airplanes is unpredictable, the FAA has determined that immediate action is warranted to correct the unsafe condition presented by failure to conduct the necessary inspections.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 74-19-05 to clarify the requirement for inspection of the outboard flap inboard and outboard forward flap track support attach bolts, and replacement, if necessary, in accordance with the service bulletin previously described.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the 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 superseding Amendment 39-1958, AD 74-19-05 (39 FR 22273, June 21, 1974), with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, listed in Boeing Alert Service Bulletin 737-57A1079, Revision 4, dated May 10, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of the outboard flap, accomplish the following:

A. Within the next 250 hours time-in-service after the effective date of this AD, unless already accomplished within the last 750 hours time-in-service, and thereafter at intervals not to exceed 1,000 hours time-in-service from the last inspection, accomplish a torque check of the 5/16-inch bolts that attach the forward support fitting of the inboard and outboard flap tracks of the outboard flap, in accordance with Boeing Alert Service Bulletin 737-57A1079, Revision 4, dated May 10, 1990.

B. Bolts which either fail or do not sustain the torque check must be replaced prior to further flight, in accordance with Boeing Service Bulletin 737-57A1079, Revision 4, dated May 10, 1990.

1. If the replacement bolt is a 5/16-inch bolt, accomplish the torque check required by paragraph A. of this AD prior to the accumulation of 5,000 hours time-in-service, and thereafter at intervals not to exceed 1,000 hours time-in-service from the last inspection.

2. If the replacement bolt is a 3/8-inch stainless steel bolt, no further torque checks, in accordance with this AD, are necessary.

D. Replacement of 5/16-inch diameter bolts with 3/8-inch diameter stainless steel bolts, in accordance with Boeing Alert Service Bulletin 737-57A1079, Revision 4, dated May 10, 1990, or earlier revisions, constitutes terminating action for the 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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

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 information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-1958, AD 74-19-05.

This amendment becomes effective September 4, 1990.

Issued in Renton, Washington, on August 7, 1990.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-19387 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-105-AD; Amendment 39-6706]

Airworthiness Directives; Boeing Models 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects an inspection method specified in Airworthiness Directive (AD) 90-06-18, Amendment 39-6541. The AD is applicable to certain Boeing Model 747 series airplanes, and requires inspection of the wing landing gear aft trunnion for cracks and corrosion. There are no other changes to the AD.

DATES: This correction is effective August 17, 1990.

The effective date for the requirements of this amendment remains April 23, 1990, as specified in Amendment 39-6541.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., 5th floor, Renton, Washington, or the Seattle Aircraft Certification Office, 1601 Lind Avenue SW., 2nd floor, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 227-1923. Mailing address: FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On March 7, 1990, the FAA issued Airworthiness Directive 90-06-18, Amendment 39-6541 (55 FR 10047, March 19, 1990), applicable to certain Boeing Model 747 series airplanes, which requires inspection of the landing gear trunnion for cracks and corrosion. This action corrects the method of inspection cited in paragraph A.4. to specify the use of a high frequency eddy current technique rather than an ultrasonic technique, and clarifies the inspection location.

The preamble to the final rule inadvertently stated that Boeing Service Bulletin 747-32-2190, Revision 4, dated October 26, 1989, describes procedures for an ultrasonic inspection of certain areas of the wing landing gear beam outboard fitting assembly. That service bulletin actually describes procedures for a high frequency eddy current inspection.

Paragraph A.4. of the final rule inadvertently stated that ultrasonic inspections performed in accordance with Boeing Service Bulletin 747-32-2190, Revision 4, may be used as an alternative inspection method if only corrosion is found as a result of the initial required inspection. The correct alternative inspection method cited should have been the high frequency eddy current technique; therefore, paragraph A.4. has been changed to correctly specify this type of inspection.

Additionally, paragraph A.4. of the final rule describes the area to be inspected as "the end fitting." This action clarifies the inspection area as "the wing landing gear trunnion."

Since this action only corrects an alternative inspection technique identified in the final rule and clarifies an area requiring inspection, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary and the amendment may be made effective upon publication in the Federal Register.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Correction

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 correcting paragraph A.4. of AD 90–06–18, Amendment 39–6541 (55 FR 10047, March 19, 1990) to read as follows:

Boeing: Applies to Model 747 series airplanes, Groups 1, 2, and 3 as listed in Boeing Service Bulletin 747–32–2190, Revision 4, dated October 26, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent landing gear collapse during landing due to corrosion and fatigue cracks, accomplish the following:

A. Inspect as follows:

1. Within the next 120 days after the effective date of this AD, perform a visual inspection, or a visual plus eddy current inspection, of the wing landing gear at the trunnion, for cracks and corrosion, in accordance with Boeing Service Bulletin 747–32–2190, Revision 4, dated October 26, 1989.

2. If no cracks or corrosion are found, repeat the inspection described in paragraph A.1. of this AD at intervals not to exceed 6 months if the visual inspection option was selected for the previous inspection, or at intervals not to exceed 18 months if visual and eddy current inspection option was selected for the previous inspection.

3. Except as provided by paragraph A.4. of this AD if cracks or corrosion are found, prior to further flight, remove and rework or replace cracked/corroded parts in accordance with Boeing Service Bulletin 747–32–2190, Revision 4, dated October 26, 1989.

4. If only corrosion is found, as an alternative to paragraph A.3. of this AD accomplish the terminating action described in Boeing Service Bulletin 747–32–2190, Revision 4, dated October 26, 1989, within 12 months after detection of corrosion, but no later than 36 months after the effective date of this AD; and high frequency eddy current inspect the wing landing gear trunnion at intervals not to exceed 6 months, until the terminating action is accomplished.

B. Modification in accordance with Boeing Service Bulletin 747–32–2190, Revision 4, dated October 26, 1989, constitutes terminating action for the reinspection requirements of paragraph A. of this AD.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., 5th floor, Renton, Washington, or the Seattle Aircraft Certification Office, 1601 Lind Avenue SW., 2nd floor, Renton, Washington.

This correction is effective August 17, 1990.

The effective date for the requirements of this amendment remains April 23, 1990, as specified in Amendment 39–6541, AD 90–06–18.

Issued in Seattle, Washington, on August 7, 1990.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–19388 Filed 8–16–90; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 240

Guides for Advertising Allowances and Other Merchandising Payments and Services

AGENCY: Federal Trade Commission.

ACTION: Final rule; publication of changes in guides.

SUMMARY: The Federal Trade Commission previously published in the **Federal Register**, 53 FR 43233 (October 26, 1988), staff recommendations for proposed changes to the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services ("Guides").

The Guides originally were issued to help businesses comply with sections 2(d) and 2(e) of the Robinson-Patman Act ("R–P" or the "Act"). However, the Guides have become outdated in certain respects since their last revision in 1972. The changes published in this document bring the Guides into conformity with current legal developments and also eliminate nonessential requirements.

EFFECTIVE DATE: August 3, 1990.

FOR FURTHER INFORMATION CONTACT: Federal Trade Commission, Washington, DC, A. Roy Lavik (202) 326–3334.

SUPPLEMENTARY INFORMATION: *Reasons for Changes in Guides.* As their name suggests, the Guides are not binding regulations, but are advisory interpretations providing assistance to businesses seeking to comply with sections 2(d) and 2(e) of the R–P.[1] These sections prohibit a seller from paying allowances or furnishing services to promote the resale of its products unless the allowances or services are offered to all competing customers on proportionally equal terms. Sections 2(d) and 2(e) relate to the resale of a firm's products, as opposed to section 2(a) of R–P which relates to the original or first sale.

R–P is concerned with a seller's discriminatory price that has an adverse impact on competition with the seller's competitors or competition with a favored customer. The principal provision of the Act is section 2(a), which bans direct or indirect discrimination in price when a specified competitive injury might result. Certain defenses are allowed, notably that the difference in price is justified by cost differences of the sales or that the lower price is given to meet an offer of a competitor of the seller.

Sections 2(d) and 2(e) are intended as complements to section 2(a). Their purpose is to prohibit disguised price discriminations in the form of promotional payments or services. Sections 2(d) and 2(e) attempt to prevent evasions of section 2(a).

Section 2(d) and 2(e) are virtually *per se* sections. In contrast to section 2(a), they do not require proof of likely adverse competitive effects nor do they permit a cost justification defense. They do, however, permit a meeting competition defense. The Commission has observed that these *per se* characteristics impose an obligation on both the FTC and the courts "to ensure that the jurisdictional prerequisites of these sections are reasonably, and not

[1] Section 2(d) reads: [I]t shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

Section 2(e) reads: [I]t shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

expansively, construed." *Herbert R. Gibson, Sr.*, 95 F.T.C. 553, 726 (1980); *affirmed*, 682 F.2d 554 (5th Cir. 1982); *cert. denied*, 460 U.S. 1068 (1983).

The Commission issued the Guides in 1969 at the invitation of the Supreme Court in *F.T.C. v. Fred Meyer, Inc.*, 390 U.S. 341 (1968), and last amended them in 1972. The Guides address the main issues of sections 2(d) and 2(e)—the measurement of proportionally equal treatment, the concept of availability of offers to competing customers, the notification of offers required to be given to customers—and also issues such as the interstate commerce requirements of sections 2(d) and 2(e).

Developments in R–P jurisprudence since the last amendment of the Guides have rendered segments of the Guides obsolete. For example, in its 1980 *Gibson* decision, the Commission stressed the necessity of a close connection between a promotional allowance or service and a resale in holding that promotional assistance for a trade show did not violate section 2(d). This holding overruled *Alterman Foods, Inc.*, 82 F.T.C. 298 (1973), *aff'd*, 497 F.2d 993 (5th Cir. 1974), a decision issued shortly after the last modification of the Guides. This changing Commission approach, reaffirmed in *General Motors*, 103 F.T.C. 641 (1984), and consistent with several recent appellate decisions, suggested that certain of the resale provisions of the Guides may no longer reflect current law.

Another decision suggesting a need to reexamine the Guides is *Falls City Industries, Inc. v. Vanco Beverage, Inc.*, 460 U.S. 428 (1983). In *Falls City*, the Supreme Court applied the meeting competition defense to offers made on an area-wide basis. *See also International Tel. & Tel.*, 104 F.T.C. 280, 435 (1984). By contrast, section 16 of the 1972 Guides implies that the defense is restricted to offers made to particular customers.

The revisions reflect two significant developments in the law. First, the Commission and the courts have emphasized that sections 2(d) and 2(e) are limited to allowances and services intended principally to promote resale. Second, in recognition of the national policy favoring competition, Supreme Court, appellate court, and Commission decisions have rejected interpretations of R–P that conflicted with the procompetitive goals of the other antitrust laws.

The Commission emphasized the limits of sections 2(d) and 2(e) in *Herbert R. Gibson, Sr.*:

> Two features differentiate sections 2(d) and 2(e) from the provisions of section 2(a). The first is that the seller must either provide "services or facilities," or make payments in consideration of "services or facilities furnished by or through (the) customer." It has been held that the services or payments issued must be promotional in nature, such as for advertising. The second is that the payments made or services rendered must be in connection with the "processing, handling, sale, or offering for sale" of a product by the customer, *i.e.*, it must bear a nexus to the resale or preparation for resale by the retailer. If these conditions can be met, the plaintiff may take advantage of sections 2(d) and 2(e), which carry an easier standard of proof than does section 2(a).

95 F.T.C. at 725 (citation omitted).

See also, e.g., Bouldis v. U.S. Suzuki Motor Corp., 711 F.2d 1319 (6th Cir. 1983); *L & L Oil Co. v. Murphy Oil Corp.*, 674 F.2d 1113 (5th Cir. 1982); *Rutledge v. Electric Hose & Rubber Co.*, 511 F.2d 668 (9th Cir. 1975); *Skinner v. U.S. Steel Corp.*, 233 F.2d 762, 765–66 (5th Cir. 1956).

Second, for more than 35 years the Supreme Court has stressed the importance of construing R–P consistently with the other antitrust laws. Indeed, the Court has stated that "as a general rule the Robinson-Patman Act should be construed so as to insure its coherence with 'the broader antitrust policies that have been laid down by Congress.' " *United States v. United States Gypsum Co.*, 438 U.S. 422, 458–59 (1978), *quoting Automatic Canteen Co. v. F.T.C.*, 346 U.S. 61, 74 (1953); *accord Great Atlantic & Pacific Tea Co. v. F.T.C.*, 440 U.S. 69 (1979). In *A&P*, the Court considered whether R–P imposed a duty on the buyer to inform a prospective seller that its bid was lower than a rival's offer. The Court refused to impose such a duty in part because it would conflict with the Sherman Act's goal of greater price competition. The Court observed: "Imposition of section 2(f) liability on the buyer in this case would lead to * * * price uniformity and rigidity." 440 U.S. at 80.

These legal developments have influenced the changes in the Guides. The legislative history of the Act and the case law pertinent to each issue also have been considered. The revisions, therefore, represent an effort to make the Guides more consistent with the other antitrust laws, the legislative history of the Act, and the case law interpreting it.

The following discussion summarizes the public comments on the individual Guide sections and other issues raised by the Federal Register notice and states the actions on the sections and issues. The Guides are considered first in numerical order.

Section 240.1—Purpose of the Guides

Only four of the comments discuss § 240.1, with all favoring the discussion of the purpose of the Guides. The Section of Antitrust Law of the American Bar Association ("Antitrust Section") notes approvingly that placing the purpose section in the body of the Guides will ensure its placement in the Code of Federal Regulations ("CFR"). Presently the introduction to the Guides discussing their purpose does not appear in CFR.

Both the Pillsbury Company and the National Food Processors Association ("Food Processors") suggest the same addition to § 240.1. They feel that the section should state that the Guides are just that—guides. This suggestion appears appropriate. The following language is added after the last sentence of proposed § 240.1: "The Guides are what their name implies—guidelines for compliance with the law. They do not have the force of law."

Section 240.2—Applicability of the Law

Three comments discuss this section defining the scope of sections 2(d) and 2(e). The Antitrust Section agrees with the proposed changes in this provision, and particularly approves of the emphasis on the applicability of sections 2(d) and 2(e) only to allowances and services that facilitate the resale of a product, as distinguished from allowances or services that facilitate the original sale from the seller to the first buyer. The Antitrust Section further believes that the reference in the provision to the possible use of section 5 to cover buyers or third parties is helpful. The National Food Brokers Association ("Food Brokers") also refers favorably to this inclusion.

Conversely, the National Candy Wholesalers Association, Inc. ("National Candy") and Food Brokers disagree with the proposed section's emphasis on the resale requirement. Both complain that neither section 2(d) nor 2(e) refers to resales. National Candy acknowledges that several lower court decisions support the resale requirement. However, it requests that the Guides not acquiesce in these decisions until the Supreme Court rules on the point.

Both National Candy and Food Brokers appear to believe that if the resale requirement eliminates certain allowances or services from sections 2(d) and (e)'s purview, R–P will not apply at all to these allowances or services. This position ignores the possible applicability of section 2(a).

The cases support the requirement that only allowances or services facilitating resale are subject to section 2(d) or 2(e). The Commission itself stressed in *Herbert R. Gibson, Sr.*, 95 F.T.C. 553 (1980), *aff'd* 682 F.2d 554 (5th Cir. 1982), *cert. denied*, 460 U.S. 1068 (1983), and *General Motors*, 103 F.T.C. 641 (1984), that sections 2(d) and 2(e) apply only to allowances or services facilitating resale. Court decisions have followed the Commission view [2] and National Candy and Food Brokers cite no cases to the contrary.

Section 240.3—Definition of Seller

The Antitrust Section made the only comment on this section noting that it contains little significant change from the existing section and that the proposed section seemed reasonable. The proposed section is adopted (with the proposed Guides' "business" changed to the statute's "persons").

Section 240.4—Definition of Customer

Three comments address this section, two generally approving of the proposal with small additions. The third comment does not disagree with the section but feels it insufficiently broad in its definition of customer.

The National-American Wholesale Grocers' Association ("Wholesale Grocers") supports the recommended reordering of the Guide bringing it into juxtaposition with the section defining competing customer. There are 9 intervening sections between the "Customer" and "Competing Customer" sections in the existing Guides. Wholesale Grocers suggests, though, that Example 2 to the revised § 240.4 be expanded to define wholesalers as "customers" when an allowance is granted to direct buying retailers. This suggestion seems contrary to the Supreme Court's holding in *F.T.C.* v. *Fred Meyer, Inc.*, 390 U.S. 341 (1968). Fred Meyer was a direct buying retailer who received discriminatory allowances not made available to competing retailers who purchased through wholesalers. The Supreme Court held that it was the retailers competing with Fred Meyer who merited proportionally equal allowances, not the wholesalers selling to those retailers as the Commission had argued. For the reason, the Wholesale Grocers' recommendation is not adopted.

The Antitrust Section also generally approves of the proposed section but offers two additions to Example 3, which illustrates wholesaler oriented promotions. The first addition recognizes that wholesalers and retailer-owned cooperatives are on the same level of trade. If a wholesaler and a retailer-owned cooperative do compete, then sellers should include the retailer-owned cooperative in wholesaler promotions. The Antitrust Section cites as authority for this inclusion *Alterman Food, Inc.* v. *F.T.C.*, 497 F.2d 993 (5th Cir. 1974), where the court found a grocery wholesaler to be in competition with a retailer-owned buyer co-operative. Authorities have had rather different reactions to this holding. One remarked that the court "surprisingly" reached its conclusion,[3] while another called the "conclusion * * * hardly ground-breaking." [4]

The Antitrust Section's second suggestion for Example 3 is explicitly to exclude direct buying retailers from this example, which illustrates a wholesaler promotion. A better reason may be that the wholesalers and retailers ordinarily are not competing customers. Example 3, as revised, would then include a last sentence: "The wholesalers and *retailer-owned cooperative headquarters and headquarters of other bona fide buying groups* are customers. Retailers are not customers for purposes of this promotion." The italic language represents the additions to the proposed Example 3.

Food Brokers seeks to expand the definition of customer to include retailers who purchase from other retailers where the seller "knows or has reason to know" the first retailer is selling his product to other retailers. The proposed customer definition, identical to that in the 1972 Guides, covers retailer to retailer sales only where the seller "has been put on notice" that the second retailer is selling its product.

Food Brokers' suggestion about the definition of a customer flows from its concern with "diverting." Food Brokers defines diverting as the purchase of goods in one area to resell them in another area. Food Brokers does not argue that a seller is not providing proportionally equal treatment to all competing customers in the area from which diversion occurs. Rather, it asserts that if diverting occurs, the seller must also provide proportionally equal treatment to all customers in the area to which the goods are diverted.

Food Brokers does not acknowledge the daunting difficulties the seller might encounter in tracing the diverted goods and how this relates to its section 2(d) or 2(e) allowances or services to customers in the area from which goods are diverted. An administrative morass could ensue.

Moreover, if diversion of goods is a R-P problem, it does not seem to be one specifically involving sections 2 (d) and (e). The complaint seems to be that the retailer in the second area endangers competition in that area. There may, perhaps, be a section 2(a) primary line problem with the second area retailer underpricing the local price. If this exists, it still does not involve the Guides covering sections 2(d) and 2(e).

Food Brokers cites no case law supporting its expanded definition nor has any other commenter supported its position. Additionally, the adopting of Food Brokers' position could severely inhibit the traditional use of localized promotions. In the absence of such factors, the present definition of customer is retained.

Section 240.5—Definition of Competing Customer

Six comments discuss the definition of competing customer. Both the Antitrust Section and the Pillsbury Company approve generally of the provision but suggest the same alternative to the last sentence of Example 1. That sentence now reads: "The trade area should not be drawn arbitrarily so as to exclude competing retailers." The alternative would read: "The trade area should be drawn to include retailers who compete to any significant degree." Both comments note that the alternative states in a positive fashion the seller's legal requirement. The suggested qualification—"to any significant degree"—could inject a new legal issue, though, and is therefore rejected.

The National Grocers Association ("NGA"), Food Marketing Institute ("FMI"), and Food Brokers all suggest that § 240.5 be revised to state explicitly that sellers may not justify disparate treatment based on class of trade. For example, a seller might offer promotional payments for its shampoo only to drugstores even though grocery stores in the area also sell its shampoo. The proposed provision probably forbids such segmentation of the market, but a new Example 3 makes this explicit:

Example 3: B manufactures and sells a brand of laundry detergent for home use. In one metropolitan area, B's detergent is sold by a grocery store and a discount department store. If these stores compete with each other, any allowance, service or facility that B makes available to the grocery store should

[2] *See, e.g., Bouldis* v. *U.S. Suzuki Motor Corp.*, 711 F. 2d 1319 (6th Cir. 1983); *L & L Oil Co.* v. *Murphy Oil Corp.*, 674 F.2d 1113 (5th Cir. 1982); *Rutledge* v. *Electric Hose & Rubber Co.*, 511 F.2d 668 (9th Cir. 1975).

[3] H. Shniderman, *Price Discrimination in Perspective* 74 (1977).

[4] III E. Kintner & J. Bauer, *Federal Antitrust Law*, 572 (1983).

also be made available on proportionally equal terms to the discount department store.

Food Brokers also wishes another addition to § 240.5 covering the diversion of a product from one geographic area to another. The suggestion is not adopted for the reasons given in the discussion of § 240.4.

Finally, National Candy argues for an abandonment of a definition of competing customers based on functional levels of distribution. It concedes that the *Fred Meyer* decision may foreclose such abandonment, but asks that the Commission propose an amendment to Congress to remove this impediment.

The *Fred Meyer* decision supports a functional level approach to the determination of competing customers. The Supreme Court has also recently taken a functional level approach in *Texaco, Inc.* v. *Hasbrouck* (June 14, 1990). *See also Boise Cascade Corp.*, 107 F.T.C. at 199. The proposed § 240.5 is retained, in this regard.

Section 240.6—Interstate Commerce

All three commenters on § 240.6 make the same two suggestions. They agree with the proposed section's statement that generally the test for interstate commerce is the same under sections 2(d) and 2(e) as it is under section 2(a). This differs from the existing Guide, which sets out a different test for sections 2(d) and 2(e). The commenters go on to recommend, though, that the proposed Guide should at least note the decision in *Shreveport Macaroni Manufacturing Co.* v. *FTC*, 321 F.2d 404 (5th Cir. 1963), *cert. denied*, 375 U.S. 971 (1984) apparently applying a different test for interstate commerce for sections 2(d) and 2(e). The *Shreveport* decision may not require at least one of the two discriminatory sales to cross a state line for section 2(d) or 2(d) to apply. Section 2(a) does require one such sale for its jurisdiction.

The courts are in disagreement. The Ninth Circuit, in *Zoslaw* v. *MCA Distr. Corp.*, 693 F.2d 870, 881–82 (9th Cir. 1982), noted the *Shreveport* decision but decided to disagree with it, holding that the same test applied to sections 2(d) and 2(e) as applied to section 2(a). Indeed, there is a Fifth Circuit decision that reaches a different result than *Shreveport*; *L&E Oil Co., Inc.* v. *Murphy Oil Corp.*, 674 F.2d 1113 (5th Cir. 1982). In view of this judicial confusion, the proposed Guide is not adopted. Instead, the existing Guide is retained, with a parenthetical sentence added calling attention to the possible difference between the standards under section 2(a) and under sections 2(d) and 2(e). The proposed Guide's use of the qualifying words "in general" may have been misleading.

The second suggestion is to insert "sales" for "shipments" in the third sentence of the Guide. The three commenters feel that use of "shipments" might mislead people into believing that sections 2(d) and 2(e) applied to non-sales transactions. The suggestion has merit and has been implemented.

Section 240.7—Services or Facilities

Sixteen commenters submitted views on § 240.7. This section identifies the types of services or facilities covered by sections 2(d) and 2(e). All of these comments discuss whether special packaging and the acceptance of returns for credit should be eliminated from the examples of representative services or allowances covered by sections 2(d) and 2(e). Staff had proposed deletion of these two examples because of its belief that they did not possess the close connection to resale of the other cited examples in the section (*e.g.*, demonstrators, display materials).

Ten comments argue for retention of both or one of the examples while six favor deletion of one or both examples. Several of those arguing for retention believe that deletion would mean that R–P would not cover these practices. This does not follow. Even if special packaging and returns for credit do not come within section 2(d) or 2(e) because of their insufficient resale nexus, section 2(a) may well apply to their discriminatory provision. The issue is into which R–P section they appropriately fit, not whether they fit at all.

At least two of the comments favoring retention take the position that the resale nexus should not be used at all. Such flexibility would presumably permit special packaging and returns for credit to be analyzed under section 2(a), 2(d), or 2(e). For the reasons discussed earlier, the resale requirement remains. Section 240.7's emphasis on resale is legally correct as a litmus test for covering services and facilities under sections 2(d) and 2(e).

Certain of the comments raising questions about deletion of the special packaging example are more persuasive. These commenters state that in their experience, primarily in the grocery business, special packaging is often used to facilitate resales of a product. Customers often request special packaging on the basis of appeal to their customers. The facilitation of the resale of the packaged product through special packaging is consistent with the reach of sections 2(d) and 2(e). The six commenters supporting deletion of both examples from § 240.7 provide little or no contrary experience on this point. They approvingly note the proposed Guide's emphasis on resale and merely state that special packaging falls outside of the resale nexus.

The issue is a close one; particularly when keeping in mind that the listed examples are intended to be representative and not exhaustive. The list should not include ambiguous examples. Even given this framework, though, special packaging should continue to be included. The experience of those in the market place is important. Revised proposed Guide 240.7 includes special packaging.

Returns for credit are not sufficiently connected to resale to justify their inclusion as a representative example. A return privilege benefits buyers and, in that sense, facilities resale, but so too do price cuts. The benefit argument sweeps too widely. It is hard to see how the ability to return a product clearly enhances the resale of that product. Two commenters in support of deletion of this example went further and urged that § 240.7 explicitly state that returns for credit are not covered by sections 2(d) and 2(e). Reference to returns for credit as a representative example for sections 2(d) and 2(e) is omitted.

Finally, NGA and Food Processors both make the same wording suggestion to the second sentence of § 240.7. They feel uncomfortable with the phrase "intended primarily" in the sentence. The words "used primarily" are substituted. The sentence would then read: "One requirement, however, is that the services or facilities be used primarily to promote the resale of the seller's product by the customer."

Section 240.8—Need for a Plan

Few comments were received on the deletion of existing Guide 6, which sets out the requirements for a plan for complying with sections 2(d) and 2(e). There is no legal requirement for a formal plan, written or unwritten. However, the point was made that the Guide did no harm and was actually useful in counseling. Accordingly, it is retained, shortened considerably to avoid restating the other, substantive Guides, and revised to reflect how the new Guides are worded.

Section 240.9—Proportionally Equal Terms

The Section on proportionally equal terms (§ 240.8 of the Proposed Guides) generated more comments than any other section. This is understandable since proportional equality is the crux of

sections 2(d) and 2(e). These sections require a seller providing allowances or services to facilitate a product's resale to make such allowances or services available on proportionally equal terms to competing customers. This leaves the question, though, of how to measure proportional equality. Before summarizing the comments, the Commission briefly discusses various measures of proportional equality

The 1988 **Federal Register** Notice described proportional equality in terms of three different standards. One such standard was "customer's cost", in which the seller offers an allowance that is an equal proportion of each customer's cost of providing a promotional service. An example of proportional equality under this standard would be a seller paying 50 percent of its customers' costs of advertising in newspapers, and, similarly, 50 percent of its customers' costs of advertising in some alternative way even if the customers' costs differ, up to a maximum uniform percentage of each customer's purchases. Proportional equality based on this standard is permitted under the existing Guides and the proposed Guides.

A second standard was based on "seller's cost," defined as an equal amount per unit purchased by each competing customer. An example of proportional equality under this standard would be a promotional payment of 15 cents per unit of product purchased for advertising in newspapers, and if newspapers are not functionally available to certain customers, by offering them 15 cents per unit of product purchased for advertising in some alternative way, such as handbills.

A third standard was based on the value to the seller of promotions in different media or by different groups of customers, called the "seller's value standard", or simply the "value standard". This standard would allow the seller to fulfill proportional equality across media or groups of customers by equalizing the amount of effective promotional service received per dollar of promotional expenditure by the seller, such as a promotional payment that offers each customer 15 cents per unit of product purchased for advertising in newspapers, and if newspapers are not practically useable by certain customers, offering them, for example, 10 cents per unit of product purchased for advertising in some alternative way, such as handbills. The difference in per unit payments could be justified by substantial evidence that an allowance of 15 cents per unit of product for handbills reaches fewer potential customers (and therefore has less value) than an expenditure of 15 cents per unit in newspapers, and by evidence that the cost per unit of effective promotional services would be equalized if 10 cents per unit is provided for handbills.

Guide 7 (§ 240.7) of the existing Guides deals with proportional equality. There is an opening paragraph discussing proportionally equal terms, followed by examples. A sentence from the paragraph states:

> No single way to proportionalize is prescribed by law. Any method that threats competing customers on proportionally equal terms may be used. Generally, this can best be done by basing the payments made or the services furnished on the dollar value or on the quantity of goods purchased during a specified period. Other methods which are fair to all competing customers are also acceptable.

The paragraph provides no more specific definition of proportional equality. However, all of the examples illustrate the so-called seller's and customer's cost standards and make no mention for proportionalizing across media or customer groups in recognition of their varying effectiveness.

Proposed Guide 8 (§ 240.8), now Guide 9 (§ 240.9), dealing with proportional equality, was in many respects similar to existing Guide 7 (§ 240.7). Proposed Guide 8 (§ 240.8) had an entirely new paragraph on proportional equality:

> When a seller offers more than one type of service, or payments for more than one type of service, all the services or payments should be offered on proportionally equal terms. The seller may do this by offering all the payments or services at the same rate per unit or amount purchased. Thus, a seller might offer promotional allowances of up to 12 cents a case purchased for expenditures on either newspapers or handbills. Mathematical precision is not required for sellers to satisfy the standard of proportional equality. Nevertheless, sellers should have a reasonable basis for the method of proportionality they use. The seller should be prepared to show that it has not engaged in discrimination if it offers different services or allowances for promotions in different media or to different customers. If different types or groups of customers are offered different services or facilities (or different combinations or levels of services or facilities), a difference in participation rates across customers types or groups does not in itself imply that services or allowances are offered on proportionally unequal terms. A seller may not vary the rate at which—or limit the customers to whom—a particular service, or payments for a service, is offered, in order to reflect differences in the productivity of individual customers.

The paragraph implied that the value standard may be used to proportionalize across media and customer groups, providing that the seller has evidence to support its use. In this regard, mathematical precision would not be required. On the other hand, the last sentence forbade proportional equality based on the productivity or value of individual customers.

Comments were requested on a definition of proportional equality cast "in terms of the amount of effective promotional services received per dollar of promotional expenditures by the seller." The definition was a statement of the value standard that, if adopted, would make the value standard the exclusive measure of proportional equality. Adoption of this definition, thus, would be inconsistent with proposed Guide 8 (§ 240.8), since it would not permit use of other methods to achieve proportional equality Secondly, the definition would allow the seller to proportionalize across individual customers, and this was excluded by proposed Guide 8 (§ 240.8).

Comments Received

The issue of proportional equality generated 210 comments, far more than any other topic. Virtually all of these comments focus on the standard or standards that should be deemed acceptable in achieving proportional equality. A few comments (six of the 210) discuss whether mathematical precision should be required by the Guides. The existing Guides are silent on this issue, and this seems to have been taken by the few who commented on this point to mean that the existing Guides require mathematical precision

Of the six comments, three support the change, two oppose it, and one is unclear. The law firm of Bingham, Dana & Gould believes that small deviations from mathematical precision should not be challenged; the ABA Antitrust Section and Consolidated Bottling also support the proposed change (but they do not elaborate on their reasons).

The American Newspaper Publishers Association and the International Newspaper Advertising and Marketing Executives (in a joint comment) urge that mathematical precision in meeting proportional equality be retained. They assert that elimination of this requirement would undermine enforcement of the R-P Act. Ernest Barnes (former Chief ALJ at the FTC) believes that the absence of mathematical precision would be contrary to the purposes of the Act. The Pillsbury Company agrees in general with the proposed changes regarding proportional equality, but concludes that mathematical precision is required to maintain the workability of the R-P Act

But mathematical precision has never been required by the law or the Guides.

On the broader issues, the standards of proportional equality that are presently permitted by the law may be unclear. Many commenters express the view that uniform per unit allowances are acceptable under the existing Guides, while some suggest that they are not and that the proposed Guides should explicitly recognize that a uniform per unit allowance is acceptable.[5]

The overwhelming majority of comments strongly oppose the adoption of a seller's value standard for proportional equality. Generally, these comments express the view that the current cost-based standard works well and need not be changed. While some feel that the adoption of the seller's value standard might promote the efficient allocation of promotional resources, many consider it contrary to the Act's purpose of fairness and think it would result in unjustified favorable treatment for large buyers. The comments consider the existing Guides generally clear, objective, enforceable, and useful in encouraging advertising and promotion. Conversely, the proposed value standard is considered to be highly subjective, difficult to enforce, unworkable (there are too many variables for sellers to take into account to obtain a reliable value estimate), and likely to provide sellers and large customers far greater opportunities to control media selection decisions in local markets than they now have.

Ninety-nine of the 210 comments on this issue were received from Alabama businesses, 93 of which are located in Huntsville. These essentially identical, one page comments urge rejection of a seller's value standard, arguing that its adoption would promote unequal treatment of competing customers, frustrating the intent of the R-P Act. These comments go on to discuss the perceived shortcomings of a standard which permits the value to the seller of different advertising media to be reflected in allowances offered (a topic further addressed below).

Another 70 comments opposing the adoption of a seller's value standard were received from newspapers and their trade associations. A letter written by the International Newspaper Advertising and Marketing Executives (INAME), urging its members to write the Commission opposing the value standard, appears to be the prototype for many of them. The letter opposes any standard based on "perceived" value to sellers. Its position is that the current Guides are clear, objective, and enforceable. According to INAME, their clarity encourages advertising and promotion. It is asserted that the proposed value standard would be highly subjective, difficult to enforce, and gives sellers and large customers far greater opportunities to control media selection decisions than they have now.

Other comments from the newspaper industry express these and additional reasons for opposing the value standard.[6] Many of these comments argue that the present standards work well, that the value standard would be too subjective, or would be unenforceable, may result in discrimination in favor of large customers, would give sellers or large customers too much control over media selection, and would be unfair.

Two newspaper comments, perhaps referring to an example taken from former Chairman Oliver's concurring statement,[7] are concerned that the FTC may perceive direct mailing to be twice as effective as newspaper advertising.

In addition to the Alabama and newspaper industry comments just discussed, 41 comments address the value standard. Thirty-two of these comments are critical of it, often for reasons similar to those contained in the Alabama and newspaper comments: that the current Guides work well, and that a value standard would be too subjective, unworkable and unenforceable, may result in discrimination in favor of large customers, give sellers or large customers too much control over media selection, be inconsistent with the statute and case law, and be unfair.

A few representative comments are given to illustrate their flavor:

1. CMA Marketing Services feels that using value as the basis for proportionality is the "worst" thing that could be done, and that, under it, since no substantiation is possible, large customers would be able to do whatever they please.

2. Wholesale Grocers opposes the value standard and argues that cost should continue to be the guiding rule. It suggests that concern for value to the seller is misplaced since the Act is supposed to protect customers, especially from larger rivals. Wholesale Grocers fears that a subjective value standard would make discrimination difficult to prove and undermine the protection afforded by the Act. It concludes that the existing standards should continue as the only accepted standards of proportionality.

3. The Catalog Showroom Merchandisers considers the value standard to be highly subjective and likely to invite abuse.

4. Judge Barnes believes the value standard is incapable of evaluation and would create great difficulty in disproving a seller's claimed value justification for discriminatory acts.

Nine of the 210 comments offer (in some cases, limited) support for the value standard. Even the supportive comments perceive difficulties in implementation. For example, the Antitrust Section, although convinced that a value standard is consistent with case law, has a number of concerns about the implementation of such a standard. The Antitrust Section is disturbed by the lack of clarity as to the justification the seller must have to refute a charge of discrimination arising from use of the value standard. The Antitrust Section fears that the nature of the study that may be required would be so complex as to prevent even rough description in the Guides. Sellers would have to use the value standard at their own risk. However, the Antitrust Section suggests that the "uniformity of payment rate" could be accepted as support that the seller has met the value standard.

Some supporters of the value standard are convinced of its efficiency benefits. Although some who favor the standard are concerned about difficulties of implementation, others believe that there is a workable solution [8] (such as by allowing a uniform allowance per unit purchased), that the value standard is consistent with case law, and that it

[5] For example, the ABA Antitrust Section suggests that an example be added which recognizes that a uniform per unit allowance is permissible. The Pillsbury Company suggests that the Guides state that the "common practice of providing per case allowances for promotional services" is acceptable. The New York City Bar Association opposes the adoption of the value standard but argues that uniform per unit allowances should be retained. We note that uniform per unit allowances and the value standard could be consistent under certain circumstances while the per unit allowance and the customer cost standard might not. The Grocery Manufacturers of America would like an example added to make it clear that not all (graduated) volume incentives are in violation of proportional equality.

[6] The St. Petersburg Times adds that the value standard would harm competition by enabling sellers to rely (for unstated reasons) on "passive" advertising, such as displays, instead of media usage, which is assumed to be more useful to consumers.

[7] For purposes of exposition, Example 5 of the concurring statement assumed that persons receiving handbills were twice as likely to purchase the advertised product as those individuals reached by newspapers.

[8] However, the Advertising Checking Bureau feels that defining proportional equality in terms of valu would be unworkable unless the Guides offer objective standards for implementation.

would make R-P more consistent with broader antitrust policies.

As mentioned above, 99 identical comments were received from businesses in Alabama. They not only oppose adoption of the value standard, they also argue against permitting manufacturers to "place a 'value' on a medium used by retailers." It is believed that if sellers are permitted to place differing values on media used by customers, sellers would favor large customers or dictate media selection. The comments consider this latter result undesirable since local customers are believed to be in a better position to make knowledgeable media choices within their markets.

Similarly, the letter written by the International Newspaper Advertising and Marketing Executive, described above, opposes adoption of the value standard partly out of concern that such a standard would give sellers and large customers far greater opportunity to control media selection decisions.

Using Value as Standard for Customers as Well as Media

Most comments that address the value standard advise against its adoption. The comments detail a number of concerns with the implementation of a value standard that would permit sellers to vary allowances across indivisual customers. Varying allowances across customers is considered by some to be too subjective. Even if objective criteria could be developed, many feel that using a value standard would be unworkable since many different factors, which vary over in different locales and over time, are likely to influence the success of a promotion. Some comments suggest that to control for this would require costly studies and potentially expensive litigation. Some also argue that permitting a value standard may result in an increase in administrative costs for small customers and sellers, may require increased monitoring by the Commission, and may undermine the primary goal of equity for customers. Even some of the small group supporting the value standard are cautious in their support.

Legal Discussion

The Guide states that "no single way to proportionalize is prescribed by law." The examples in the Guide are examples; they do not illustrate the only means by which to achieve proportional equality. In *Lever Brothers Co.*, 50 F.T.C. 494, 512 (1953), the Commission said that "the law (does not) require a seller to pay at the same rate, per unit of product sold, for types of services which are of unequal cost or value." The Commission's "willingness to give a relatively broad scope to the standard of proportional equality" was endorsed in *dicta* in *F.T.C.* v. *Simplicity Pattern Co.*, 360 U.S. 55, 61 n. 6 (1959), and in *Colonial Stores* v. *F.T.C.*, 450 F.2d 733, 743, n.23 (5th Cir. 1971). In addition, the law permits reference to the customer's cost of providing services or to a fixed amount per unit purchased to measure proportional equality. *See* F. Rowe, *Price Discrimination Under the Robinson-Patman Act* 406 (1962).

The proposed definition of proportional equality in former Chairman Oliver's concurrence is not adopted. The concurrence would define proportional equality in "terms of the amount of effective promotional services received per dollar of promotional expenditures by the seller." There is substantial opposition to its use. The defintion is inconsistent with allowances based on the customer's cost for promotion, which the law recognizes as a basis for proportional equality. The defintion of proportional equality proposed by Chairman Oliver would mandate exclusive use of the value standard. That position is legally unsupportable.

The law may also permit use of the value standard, at least so far as recognizing the varying value of different media for the seller's promotional efforts. However, the vast majority of the comments addressing this issue are concerned that the value standard creates indeterminacy and, thus, the potential for abuse by sellers. These comments have merit. unless carefully monitored, sellers may use elastic, expansive measurements of value which could help disguise persistent, systematic discrimination, making it more difficult to detect discrimination. These concerns about the operation of a value standard counsel against including it in the Guides, which are intended to help businesses comply with the law.

Section 240.10—Availability to all Competing Customers

The existing Guides require sellers to implement procedures to notify competing customers of promotional programs, to make spot-checks at least every 90 days to ensure the effectiveness of their notifications, and to alter notification procedures if they are deficient. The proposed Guides combine provisions from the existing Guides relating to functional availability and communication of offers into revised Guide 9 (§ 240.9). This Guide specifies that when a seller offers alternatives to meet the availability requirement, at least one such offer should be usable in a practical sense by all competing customers. In addition, the proposed Guide 9, (§ 240.9), now Guide 10 (§ 240.10), eliminates the 90 day spot-check requirement and stipulates that providing information on shipping containers or product packages can constitute sufficient notification.

Twenty-one comments concerning availability were received. Although a few address more than one of the issues surrounding availability, most do not. The Antitrust Section, in contrast, generally supports all of the proposed availability revisions.[9]

Eleven comments address the issue of whether all promotional alternatives need be made available to all competing customers. The Antitrust Section, the New York City Bar Association, Procter and Gamble, Consolidated Bottling and the law firm of Pillsbury, Madison & Sutro agree that not all promotional alternatives need be made available to all customers, so long as at least one proportionally equal alternative is functionally available to all competing customers. Most offered little or no explanation for their views. However, Pillsbury, Madison & Sutro explained that since retailers have operations that are extremely varied, specific promotional programs may not be suitable for all. Therefore, as long as proportional equality is maintained, it argues that there should be no requirement that each alternative be offered to every competing customer.

Two additional comments, which apparently agree with the view that not all offerings need be made available to all competing customers, are more narrowly focused. The GMA and the Food Processors would like an example added indicating that a seller does not have to provide personnel to all customers if it makes personnel available to some (in contrast to Example 6 of existing Guide 7 (§ 240.7) if the seller offers some proportionally equal merchandising alternative, such as advertising allowances or point of purchase materials, to competing customers. In other words, the alternative may offer services or allowances other than personnel. The Commission has accepted this suggestion as reflected in Example 5 of Guide 8 (§ 240.8).

[9] However, the Antitrust Section while supporting the proposed revisions, would add that in-store demonstrators should trigger the provision to competing customers of "promotional materials offering an equivalent benefit to such [customers]." The Antitrust Section also proposes that Example 2 of subsection (b) be eliminated on the ground of redundancy with material in Guide 4 (§ 240.4).

Some commenters, however, urge that all alternatives should be available to all competing customers. The Wholesale Grocers and Judge Barnes contend that each competing customer should be free to choose from among all offered alternatives that which best suits its needs. The argument supporting this view seems to be that the proposed availability revisions do not comply with R–P since sellers would be able to offer preferred programs to large customers and deny them to others who instead are offered alternatives that are not proportionally equal. The American Newspaper Publishers Association and the International Newspaper Advertising Marketing Executives express a similar view.[10]

Eight comments address the proposals to change notification and spot-check requirements. The New York Bar and the Antitrust Section support eliminating the spot-check requirements and streamlining the notification requirements previously thought necessary to ensure that promotions are made available to all competing customers.

The remaining six comments oppose the proposed availability revisions. Drugcenter and Behrens (two wholesalers distributing primarily to independent pharmacies), NARD (representing independent retail pharmacies), and the Food Brokers, believe that the 90 day spot-check requirement is necessary to promote availability of promotional programs and should be retained.[11] Behrens takes this position despite its acknowledgment that the requirement is quite costly. Candy Wholesalers believes that easing of notification requirements is inappropriate. Instead, it argues that more lead time should be given regarding promotional programs, that wholesalers should be notified even if their competing retail customers are informed directly, and that statements on packaging should not be considered adequate or timely notice of promotional programs.[12]

The National Newspaper Association argues for retention of footnote 3 to current Guide 9 (§ 240.9). footnote 3 implies that sellers should pay the same percentage of the customer's cost, whatever the medium used. That is, the footnote seems to require the use of customer cost as the only measure of proportional equality. The footnote also implies that only weekly or nondaily newspapers may be offered as alternatives to promotional programs using daily newspapers. The law does not support a customer cost standard as the *exclusive* measure of proportional equality. Moreover, footnote 3's implication that alternatives to daily newspapers must be restricted to nondaily newspapers is not persuasive. A seller must provide a buyer with a practically available alternative that is proportionally equal when the buyer can not use the basic promotional program. The implication in footnote 3 seems legally unsupportable. But the example does describe a common situation. Accordingly, it has been retained, but edited to delete the improper implications. It is no longer a footnote, but is an additional example to Guide 10 (§ 240.10).

Sellers should be permitted to offer promotional programs as they see fit, providing that at least one functionally available, proportionally equal alternative is made available to each competing customer. The proposed Guide did not change the obligation to give notification of promotions. To make this clearer, the requirement that a seller notify all competing customers of promotional offers, which was not included in the Proposed Guides, is retained from the existing Guides. The spot-check provisions in the existing Guides are eliminated.

Section 240.11—Wholesaler or Third Party Performance of Seller's Obligation

The only commenter on this section (§ 240.10 of the Proposed Guides) approves of it. The Antitrust Section states that it does not contain the "unnecessary regulatory language and examples that are basically redundant and off the point" of the current Guides' comparable section. The proposed section is retained as is.

Section 240.12—Checking Customer's Use of Payments

Some commenters noted the absence of existing Guide 11 (§ 240.11) from the proposed Guides with some expressing dismay at this deletion while the Antitrust Section favors it. Existing Guide 11 (§ 240.11) serves a legitimate function. The first paragraph of Guide 11 (§ 240.11) contemplates that a seller should discontinue allowances to a customer that is not spending the allowances for advertising or promotion. Because the Act requires proportionally equal treatment with respect to allowances and services, the Guide cautions a prudent seller to discontinue the payment where proportionally unequal treatment may be resulting.

On the other hand, verification, as required by existing Guide 11(b) (§ 240.11(b)), of non-proportionally equal payments is no defense to liability under section 2(d). And overpayments to all competing customers would not violate section 2(d) if they are proportionally equal overpayments. As NGA puts it: "Certainly overpayment would not be a violation of section 2(d) if all customers were overpaid on a proportionally equal basis."

Because existing Guide 11(a) (§ 240.11(a)) provides prudent advice to a seller wishing to avoid liability, it is retained as Guide 12 (§ 240.12).

Section 240.13—Customer's and Third Party Liability

Six comments discuss Proposed § 240.11, now § 240.13, which combines existing Guides 14 and 15 (§§ 240.14 and 240.15). Section 240.13 discusses the liability of customers and third parties for knowingly inducing a violation of section 2(d) or 2(e). ACB expresses concern that the language in the proposed section does not deal

[10] The positions contained in three other comments addressing the issue of availability of all promotions to each customer are not altogether clear. For example, one comment from a Pepsi bottler in Texas seems to focus more on his own competitive struggles than on the proposed availability revisions. The comment expresses the view that lump-sum allowances paid by the seller to retailers are typically not made available to all competing customers (the implication being that they should be available to all) but then goes on to urge that some lump-sum payments should be permitted even though they are not made available to all. The second such comment, from the Food Marketing Institute, is concerned that the proposed changes may be taken to mean that some classes of customers do not compete with others when in fact they do. It fears that this interpretation may deny access by competing customers to some promotional programs. The comment does not address directly whether all competing customers should be offered all promotional programs made available by the seller. The third comment, from the National Newspaper Association, opposes the deletion of footnote 3 to Guide 9 (§ 240.9). This footnote states that promotional programs specifying the use of major newspapers must include substitute newspapers that are functionally available to smaller customers.

[11] The comments of another drug wholesaler urge that the present verification requirements be retained to help ensure that all customers strive to adopt promotional programs and suggest to sellers how their programs might be improved.

[12] The proposed revisions dealing with purchases of shelf space, pricing requirements imposed by the seller as a condition to secure co-op advertising allowances, and special packaging and return privileges are treated elsewhere. Some of the comments we have received treat these provisions as aspects of the availability requirement. For example, NGA urges that special packaging and return privileges should continue to be made available to all competing customers on proportionally equal terms and that the purchase of shelf space, while not inherently suspect, should also be made available to all competing customers on proportionally equal terms. Similarly, the Burlington Coat Factory expresses the view that permitting sellers to exclude retailers from promotional programs for advertising prices other than those suggested by sellers violates the requirement that allowances be made available to competing customers on proportionally equal terms.

sufficiently with unauthorized deductions by buyers. The New York Bar also notes the deletion of the specific reference to unauthorized deductions.

These concerns are unwarranted. The proposed Guide states that a buyer may be liable for knowingly receiving a discriminatory allowance or service obtained, *inter alia*, "indirectly through deductions from purchase invoices or other similar means." Unauthorized deductions are, thus, forbidden if they result in proportionally unequal treatment of competing buyers. Certainly a deviation by a buyer from the seller's announced promotional plan should put the former on notice that it may be receiving preferential treatment. Unauthorized deductions that do not cause preferential treatment presumably are not a matter of concern for the Guides. Instead, they reflect a contract dispute between private parties. Proposed § 240.11 adequately covers the legitimate concerns of sections 2(d) and 2(e). The Antitrust Section concurs with this view.

The National Newspaper Association ("NNA") has a different concern with proposed § 240.11. NNA has no problem with the substance of the section but, rather, worries that the inclusion of the double billing subsection as part of § 240.11 lessens its impact.[13] The existing Guides deal with double billing under a distinct Guide provision.

Staff proposed combining Guides 14 and 15 (§§ 240.14 and 240.15) into one section because they both deal with third party liability reachable under section 5. As noted *supra*, NNA does not argue that this combination results in a substantive change. The combination makes sense as a matter or presentation, and results in no change in the continuing obligations as to double billing practices.

Finally, FMI expresses concern that Examples 1 and 3 to § 240.11(a) place an unrealistic burden on a buyer to ensure that it is not receiving unequal allowances or services. Both Examples 1 and 3 require a buyer to take appropriate action only where it "knows or should know" that an allowance or service it receives is not being made available on proportionally equal terms to its competitors. The term "should know" is familiar in Robinson-Patman jurisprudence and is preferable to restricting buyer liability to actual knowledge situations. Examples 1 and 3 are retained.

[13] Double billing is a practice where an advertising medium provides an advertiser with a higher bill than actually charged for purposes of co-op reimbursement.

FMI also believes that Example 2 under § 240.11(a) should be deleted. This seems appropriate. As revised, example 2 (Example 3 in the existing Guides) says nothing that is not already stated in the Guide and in Example 1.

Section 240.14—Meeting Competition

Five comments discuss the proposed meeting competition section, four of which unreservedly approve of the changes. The law firm of Pillsbury, Madison & Sutro referred to it as "a model of clarity and brevity."

The fifth commenter is Judge Barnes who sounded a cautionary note, arguing "that care must be exercised to determine * * * the area in which competition being met exists." He suggests no specific language embodying this admonition. The proposed section accurately reflects the law after *Falls City Industries, Inc.* v. *Vanco Beverage, Inc.*, 460 U.S. 428 (1983), and *Great Atlantic & Pacific Tea Co.* v. *F.T.C.*, 440 U.S. 69 (1979), and proposed § 240.12 is adopted.

Section 240.15—Cost Justification

Only the Antitrust Section discusses proposed § 240.13, now § 240.15. There was no change in the existing Guide provision. Section 240.15 merely notes that cost justification is not a defense to a section 2(d) or 2(e) charge, as mandated by *F.T.C.* v. *Simplicity Pattern Co.*, 360 U.S. 55 (1959). No one disagreed with the statement of the holding and the existing section is retained.

Usefulness of Guides

Public comment was requested on four general questions in the **Federal Register** notice. The first question is "Do the existing Guides serve any useful purpose?" The unanimous answer is yes. The Antitrust Section's comment gives the essence of the comments, though, perhaps, not in as such colorful language as some. It reads:

> There is generally a strong belief among Section lawyers who are advising business clients on routine promotional practices that the Guides do serve a useful purpose. It is often more convenient in routine counseling to cite the FTC Guides with actual examples to illustrate the legal requirements and principles to business clients than to refer to reported judicial decisions. Moreover, the Guides are also useful to lawyers who do not deal with Robinson-Patman Act issues on a routine basis. The Guides describe in general terms what a client must do to comply with the promotional requirements of the Act in a single, readily available source. Indeed, even business persons read the Guides for this purpose.

Based on such comments, the Guides serve a valuable function, particularly if updated.

Withdrawal of the Current Guides

Twenty-one commenters responded to the question whether the current Guides should simply be withdrawn. Twenty comments answer no while only the Candy Wholesalers would recommend withdrawal of the Guides. The gist of the former group may be grasped by quoting two responses. The Cooperative Marketing Services, Inc. says: "The public interest would suffer immense damage if the Commission simply withdrew the current Guides. The inequities caused by such action would definitely reduce competition and bypass the procompetitive goals of antitrust laws in commerce." The National Newspaper Association spoke in a similar vein:

> It is, however, our experience that many retailers who take advantage of cooperative advertising programs, especially for the first time, are often unaware of the legal rights and responsibilities created by the Act. For this reason, we support not only continuation of the Guides, but wider dissemination of them.
>
> Under no circumstances should the Commission withdraw the Guides. Where the underlying law has changed, the Commission obviously has a duty to amend the Guides.

Similar quotes could be obtained from the other 18 comments arguing against withdrawal of the Guides.

Candy Wholesalers apparently dissented only "if the alternative were to revise them as recommended by the Commission staff, and especially if the revision were to include the recommendations of the Chairman." Candy Wholesalers agrees that the existing Guides serve a useful purpose. Given this, Candy Wholesalers does not unreservedly endorse withdrawal of the Guides.

Changes in the Guides

Thirty-two commenters responded to the question whether any changes should be made to the Guides. Eighteen are against any changes while fourteen favor changes. The Catalog Showroom Merchandisers ("CSM"), for example object to removal of Example 8 from Existing Guide 7 (§ 240.7). This example states that sellers should not condition co-op allowances on the customer's use of a suggested price in an advertisement. Because of its strong objection to this proposed change, CSM feels it preferable to leave the Guides as they are rather than implement the proposed changes.

A more succinct statement of the same view comes from the Chronicle-Telegram. It concludes with the aphorism "If it ain't broke—don't fix it." This particular expression reappeared in many other newspaper comments. Again, though, there is no acknowledgement of or disagreement with the fact that several provisions are "broke."

Those favoring changes in the Guides refer to changes in the case law since the Guides' last revision in 1972. They believe these changes require the Guides be revised. As the National Newpaper Association put it, "Where the underlying law has changed, the Commission obviously has a duty to amend the Guides." Of course, this view does not mean that these commenters support all proposed changes to the Guides. The National Newspaper Association, for example, strongly argues that a separate Guide provision should continue to discuss the issue of double billing. Rather, the commenters believe that change does not require an all or nothing approach.

Some changes, at least, should be made to the Guides. Those opposing any changes appear to have let their opposition to particular provisions overwhelm whatever support they might have for changes in other provisions.

Changes in Addition to the Staff Proposals.

Several comments propose changes to the Guides that are not included in the staff proposals. Most of these proposals are considered in the discussion of the individual sections of the Guides. Three comments do not easily fit into one of these individual discussions, and are discussed below.

CMA Marketing Services requests that the Guides provide for a prior-approval procedure for co-op advertising programs. CMA recognizes this could require additional money and suggests that the Commission charge for its prior-approval.

There appears to be no need for such a system. Thousands of co-op programs are offered each year, apparently without giving rise to a substantial number of claims of discriminatory allowances and services. Moreover, the intent of the Guides is to avoid the need for prior clearances. The Guides should give sufficient guidance so that those using co-op programs can read them and conform their programs to the law.

The law firm of Bingham, Dana & Gould suggests that the Commission issue an enforcement policy as part of the Guides, stating that the Commission will only challenge those activities under section 2(d) and 2(e) that have serious, adverse effects on competition. The firm argues that this will both provide business a clearer understanding of when the Commission may act and assist the Courts in private litigation.

This, too, appears to be unnecessary. The Guides' purpose is to assist business to comply with the requirements of sections 2(d) and 2(e). Statements about the Commission's law enforcement policies and priorities will not necessarily serve that purpose.

Crimmins Co-Op Marketing suggests that the Guides incorporate standard geographical areas, such as the SMSA, in Guide 5 defining competing customers. It apparently believes this would reduce the possibilities for gerrymandering geographic areas by sellers. The problem is that the relevant geographic area depends on the particular product being promoted. An attempt to standardize areas in the Guides would likely founder on the variety of the promoted products. The Commission rejects this proposal.

Preclusion of Proposed Changes by Case Law

Two comments discuss whether use of the "value" standard to measure proportional equality is precluded by case law. Burlington Coat argues that case law forbids use of the value standard. The New York Bar makes the same point.

Burlington Coat's discussion of cases forbidding the use of value standard is very limited. The New York Bar fleshes out its position on this point. It mainly relies on language in *Colonial Stores, Inc.* v. *F.T.C.*, 450 F. 2d 733 (5th Cir. 1971) to the effect that R–P is intended to prevent allowances based upon "the size and mercantile prowess of the individual payee." The New York Bar concludes by conceding that the law may permit a value standard. It does argue, though that the current staff discussion of value may not reflect value as considered in the cases.

Consistency of Proposed Changes with Legislative History

The Commission asked for comment on whether proposed changes in the standard for measuring proportional equality are consistent with the legislative history of R–P. Four comments responded to this request with only one indicating legislative history favors the changes.

The three comments that argue that legislative history bars adoption of the proposed changes take a common approach. The newspaper Publishers Association and the Newspaper Advertising and Marketing Executives state that Congress passed R–P to ensure the survival of small businesses and that use of the value standard would endanger this goal.

The Food Processors make a similar argument. There comment has no citation to legislative history, and contains the statement that the value standard has never been in the Guides. This is wrong. The value standard was included in the Guides prior to 1972 and apparently eliminated without opportunity for public comment.[14]

The New York Bar also states that the value standard may handicap smaller buyers and, thus, be antithetical to R–P's purpose. They cite *Colonial Stores* as support for this view. That case, however, arguably involves the nonprovision of alternative offers to competing buyers. The value standard is not applicable to that situation. Rather, the value standard is a measure of offers that are made to ascertain if they are proportionally equal. As noted *supra*, the New York Bar concludes its discussion on this point by conceding that *Simplicity Pattern* and *Lever Bros* permit the use of a value standard.

The law firm of Pillsbury, Madison & Sutro believes lesiglative history supports a value standard. It cites no legislative history as such but relies on *Lever Bros* and Rowe's treatise on R–P.[15] Both support the value standard as being consistent with the legislative history.

After considering these comments on the legislative history, the Commission believes that Proposed Guide 8 is consistent with the history.

Effects of Proposed Changes

The four commenters on the effects of the proposed changes in measuring proportional equality all believe they would be harmful. The Catalog Showroom Merchandisers believes that there would be an annual increase of $10 billion in above-competitive prices. It asserts that much of the increase would go to foreign sellers. The basis for this view is not explained.

The Crimmins Co-Op Marketing firm believes larger customers will gain from use of the value standard. The larger customers would allegedly place artificially high values on their promotional efforts and the value standard would make it more difficult for the seller to resist such claims. The Journal-Sentinel, Inc. also feels that use of the value standard would help large

[14] Applebaum, *Promotional Allowances and the Fred Meyer Guides*, 42 Antitrust L.J. 355, 303 (1973).

[15] *See F. Rowe, Price Discrimination Under the Robinson-Patman Act* 411 (1962).

retailers. The publisher of the Milwaukee Journal and Milwaukee Sentinel believes that small business co-op advertisers are already experiencing difficulties. It alleges that the value standard would exacerbate their existing disadvantages.

The fourth comment is from a constituent of Congressman Elton Gallegly. He echoes the concerns of the Journal-Sentinel Inc., arguing that many small and medium-sized businesses might have to close.

Effect of Proposed Changes on Consumer Welfare

Two comments discuss the effects of the proposed changes in the measurement of proportional equality on consumer welfare, both concluding the effects would be harmful. They argue that the changes would benefit larger customers and result in higher retail prices. These comments are largely conclusory assertions.

Suggested Prices in Co-Op Advertising

Eighteen comments discuss the deletion of Example 8 from existing Guide 7 (§ 240.7). This example indicates that a seller's conditioning of co-op funds on a buyer's use of the seller's suggested price in co-op advertising constitutes a *per se* violation of the antitrust laws. Five comments express approval of the deletion while 13 register disapproval.

Judge Barnes agrees with the rule of reason approach suggested by the deletion but suggests that the Guides inform buyers that they could be reimbursed for an ad using no price. He further argues that a denial of promotional allowance to buyers not using the suggested price could be vertical price fixing, a *per se* offense, and the Guides should note this. This latter suggestion seems inconsistent with Judge Barnes' earlier acquiescence with a rule of reason approach to this issue.

The Wholesale Grocers also supports the deletion on the basis that it represents a rule of reason approach. It notes that this approach comports with the Commission's current enforcement policy and the relevant case law. Consolidated Bottling places its approval on this latter ground plus policy reasons of enhancement of interbrand competition. On the other hand, the ACB notes its approval without giving its reasons.

The New York City Bar expresses a different reason for its approval of the deletion of Example 8. It argues that the example's primary focus is adherence to resale prices, and that this falls outside the Guides' scope. The New York City Bar specifically states that the deletion should not be based on the staff's analysis in the **Federal Register**. It apparently believes that this analysis is more appropriate for a Sherman Act inquiry than one involving R–P

As noted earlier, thirteen comments oppose the deletion of Example 8. NGA acknowledges that the Commission had previously withdrawn a policy statement taking a similar position to that taken in Example 8.[16] NGA appears to argue that this previous action was not taken in a R–P context and is not controlling. The deleted example, however, is not keyed to differential treatment of customers which is the focus of R–P and does not partake of R–P concerns.

Catalog Showroom Merchandisers does not note the previous Commission action but, rather, seeks to reargue the issue. The Service Merchandise Company, Inc. takes a similar position. Both believe the inevitable result of the deletion will be increased resale price maintenance ("RPM"). An anonymous contributor and the Mass Retail Association echo these sentiments.

The comments of the Burlington Coat Factory Warehouse Corporation ("Burlington Coat"), the K-mart Corporation, the law firm of Freedman, Levy, Kroll & Simmonds, Durr-Fillauer Medical, Inc., and the National Association of Chain Drug Stores, Inc., reiterate the theme. All believe that deletion will result in increased RPM.

The Small Business Legislative Council departs from this line of argument and reverts to that proposed by the NGA. The Council acknowledges that the rescission of the policy statement effectively ended Commission *per se* treatment of the conditioning of co-op funds on the use of suggested prices. It argues, though, that section 2(d) is a *per se* statute and that it requires continued *per se* treatment. The National Shoe Retailers Association also acknowledges the previous Commission action, and, with resignation, considers the question settled.

Congressman Slattery also filed a comment on the deletion of Example 8. He fears the result may be the cutting-off of allowances to discounters.

Example 8 should be eliminated to conform the Guides to the case law and the Commission's present position. Otherwise, it is misleading to the public to leave Example 8 in the Guides.[17] The argument that section 2(d)'s status as a "semi" *per se* provision compels continuation of Example 8 does not persuade. Example 8 does not involve differential treatment of the sort proscribed by section 2(d). Example 8 forbids the conditioning of payment for co-op ads on the featuring of suggested prices completely and such conditioning is not saved by its nondiscriminatory application to all customers. The New York City Bar is correct that Example 8 does not relate to R–P. Since the Guides are intended to explain sections 2(d) and 2(e) of R–P only, this constitutes an additional reason for deleting Example 8.

Deletion of Example 8 does not mean the covered conduct is *per se* legal. It only means that a rule of reason approach is appropriate.

Using Evidence of Competitive Conditions in Assessing Whether the Proportional Equality Requirement is Satisfied

Nine comments address whether evidence on the extent of competition among sellers (and among customers in inducement cases under section 5) could be used to help assess whether promotional services or allowances are offered on proportionally equal terms. The proposed Guides do not propose that evidence on competitiveness be so used. However, the Alternate Guides proposed by former Chairman Oliver advocate the use of such evidence.

Of the nine comments received, two favor the use of competitive evidence, while seven oppose it. General Motors argues that discrimination in promotional services or allowances cannot persist in the absence of market power either of customers or sellers. The law firm of Bingham, Dana & Gould, without directly addressing this issue, remarks that greater concern for competitive circumstances should be reflected in the Guides.

The Antitrust Section,[18] the NGA, Procter & Gamble, and the Small Business Legislative Council argue that it is legally unjustified to use competitive market conditions in evaluating compliance with sections 2(d) and 2(e). The NGA, Catalog Showroom Merchandisers, the Service Merchandise

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[16] 6 CCH Trade Reg. Rep. ¶ 39,057 (1988).

[17] The most prominent cases supporting the Commission's position are *Jack Walters & Sons Corp.* v. *Morton Bldg., Inc.*, 737 F.2d 698 (7th Cir. 1984), *cert. denied*, 469 U.S. 1018 (1984); *Lewis Service Center, Inc.* v. *Mack Trucks, Inc.*, 714 F.2d 842 (8th Cir. 1983), *cert. denied*, 467 U.S. 1226 (1984); *AAA Liquors, Inc.* v. *Joseph E. Seagram & Sons*, 705 F.2d 1203 (10th Cir. 1982), *cert. denied*, 461 U.S. 927 (1983); *In re Nissan Antitrust Litig.*, 577 F.2d 910 (5th Cir. 1978), *cert. denied*, 439 U.S. 1072 (1979).

[18] The Antitrust Section also advised that the Commission could examine adverse competitive effects in deciding whether to bring cases. This is a different point than that addressed in the text.

Company, and National Candy comment that since competitive conditions are difficult to assess, the contemplated change would increase burdens on the Commission and private plaintiffs, and thereby reduce compliance and impede enforcement. The Catalog Showroom Merchandisers believes that the use of evidence relating to the extent of competition could result in unequal treatment of customers, and the Service Merchandise Company is concerned that adoption of such a change could result in reduced competition.

The use of evidence on competitive conditions was proposed as a means to help determine whether promotional services or allowances were offered by the seller on proportionally equal terms. Commission staff believed that evidence on competitive conditions could reduce enforcement costs by making it easier to discern which proportional programs would likely be proportionally equal. Only instances in which non-proportional offerings are plausible—given the state of competition—would have to be examined. However, the revisions seems to have generated confusion, with some commenters thinking that the use of evidence on competitive conditions was proposed to import a competitive injury defense for non-proportionally equal programs (rather than as evidence to help determine whether particular promotional programs are proportionally equal). Commission staff did not contemplate a test of competitive injury that provided a defense against charges that the seller failed to treat competing customers on proportionally equal terms.

The proposal to use competitive market conditions to assess the likelihood of proportionally equal treatment received very limited support, and is not adopted.

The Use of Section 5 as a Per Se Supplement

Twelve comments discuss former Chairman Oliver's position in his concurring statement that section 5 should not be used as a *per se* supplement to sections 2(d) and 2(e).[19] Former Chairman Oliver acknowledged that Courts have upheld the extension of the *per se* standard of seller liability to buyers. He argued, however, that the Commission was not required to do so and should not do so.

Nine comments speak against Chairman Oliver's position while three support it. One comment by General Motors from the former group is particularly interesting in being a conditional "no". General Motors argues strongly for the examination of relevant markets to determine if they are competitive. If found competitive, General Motors states that any persistent differences in promotional allowances cannot result from systematic discrimination. Assuming this approach were adopted, General Motors supports the nonextension of *per se* application. However, it believes that if *per se* application continues against sellers under sections 2(d) and 2(e), buyers should merit the same treatment. Otherwise, General Motors feels that an inducing buyer would escape liability while an imposed upon seller falls afoul of R–P. It states that this is an unnecessarily harsh result.

The other "no" comments are not as ambiguous in their negative reaction. They solidly oppose the deletion of the *per se* standard. The comments adopt two general arguments for their position. Several argue the symmetry position; that is, if sellers are held to a *per se* standard, so should buyers. Others rely on a deterrence argument. *Per se* liability makes buyers more cautious in seeking discriminatory allowances or services. Conversely, a rule of reason standard would supposedly permit buyers to obtain many illegal preferences.

Finally, the Antitrust Section objects to the proposal on the basis that it could be misleading. It notes that the case law for almost 30 years has supported use of the *per se* standard for customers. This along with its position that the Guides should reflect the law leads to the Antitrust Section's position. The Antitrust Section does note that the American Bar Association has recommended that sections 2(d) and 2(e) be amended to permit consideration of competitive effects. If Congress were to adopt this recommendation, the Antitrust Section then believes limiting of the *per se* standard should be adopted.

Two of the three comments supporting a rule of reason approach to inducing buyers rely on what is perceived as its pro-competitive effects. The law firm of Pillsbury, Madison and Sutro states that this approach helps reconcile R–P with the general goal of the antitrust laws to protect competition not competitors. The FMI argues that a *per se* test decreases incentives to bargaining, thereby lessening vigorous price competition.

The third apparently supportive comment by Dunn-Fillauer Medical, Inc. is difficult to categorize. The author seems to approve of buyers who aggressively seek funds "above and beyond" what might otherwise be granted. On the other hand, the comment also seemingly believes that what is "above and beyond" often rests on additional costs to the customer for extra effort. It is not clear that this would not be a proportionally equal allowance under the customer cost standard.

There may be some validity to the view that the *per se* standard has a potentially negative influence on hard bargaining by customers. However, the Guides' prime purpose should be to inform users what they should do to conform to the law. Though the Guides could indicate in this instance that the case law supports a *per se* application, but the Commission prefers a rule of reason approach, this might well be confusing to users. In any case, the Commission believes that the Guides should reflect the case law and the case law applies a *per se* standard as the Commission noted in *Foremost-McKesson, Inc.*, 109 F.T.C. 127 (1987).

Purchase of Shelf Space

Eleven comments discuss the deletion of the sentence from footnote 2 to existing Guide 9 (§ 240.9) noting the purchase of shelf space as a potential section 5 violation. Eight comments unequivocally object to the deletion while one unreservedly approves and two do so conditionally.

The disapproving comments generally believe that the purchase of shelf space is bad in and of itself. They do not key their disapproval to the discriminatory purchase of shelf space. Rather, their objections focus on the retailer's ability to demand and obtain such payments. Most of these comments do not discuss whether purchases of shelf space could be related to the resale of a product so as to come within section 2(d). Apparently most of these payments are for admittance to a store as opposed to a preferential position within the store that would enhance resale. Section 2(d) applies more readily to the latter situation.

NGA agrees with the deletion because the current footnote implies that purchases of shelf space are suspect, a position NGA feels is not legally supportable. NGA does argue, however, that purchases of shelf space which are not proportionally equal violate section 2(d). It does not address the resale issue.

Food Processors, in contrast, thinks discriminatory purchases of shelf space

[19] Sections 2(d) and 2(e) apply only to sellers and there is no other provision of the R–P Act reaching buyers who induce violations of section 2(d) or 2(e). For that reason, recourse must be had to section 5 of the FTC Act.

fall under section 2(a) rather than section 2(d). It apparently feels there is an insufficient resale nexus for section 2(d) to apply. Both NGA and Food Processors focus on the discriminatory aspect. Neither support the deleted sentence's implication that nondiscriminatory purchases of shelf space raise serious legal problems.

Finally, Consolidated Bottling states that retailers generally allocate shelf space in proportion to market activity regardless of payments for shelf space. It argues that consumers benefit from this market allocation.

The sentence that was proposed to be deleted raises suspicions about shelf space purchases that may be uncalled for. The sentence in the existing Guides is not confined to discriminatory purchases but implies, incorrectly, that all shelf space allowances are suspect. There is also a question whether discriminatory shelf space purchases violate section 2(d), or instead might be violations of section 2(a). Payments for shelf space concern the original sale from seller to customer, and do not differ in substance from a price cut, the paradigm application of section 2(a).

Because of the intense interest in the subject, a piece of this footnote is retained, edited to be limited to discriminatory purchases of shelf space, and moved to example 5 of Guide 9 (§ 240.9).

Request for Additional Proceedings

Six comments request additional proceedings. NGA argues that the proposed changes deal with factual issues and require a full factual record. Crimmins Co-Op Marketing feels that the Commission should appoint an Advisory Committee of Cooperative Advertising composed of marketing executives. The National Shoe Retailers Association and the Haggar Apparel Company request that public hearings be held on the several proposed changes. They believe such hearings would be an important vehicle for the public to provide additional comments and, perhaps more importantly, to engage the Commission and its staff in a dialogue.

Finally, the International Mass Retail Association, Inc. and the National Association of Chain Drug Stores, Inc. base their request for public hearings on the issue of the use of suggested prices in co-operative advertisements. Both feel that the deletion of Example 8 from Guide 7 (§ 240.7) is so momentous as to require factual investigation and public hearings.

The Commission has provided an opportunity for written comment and some 250 commenters have availed themselves of it. The written comments were valuable in gauging public reaction to the proposed changes.

The request for factual investigation appears to exhibit some confusion over the purpose of the Guides. That purpose is to explicate the legal requirements of sections 2(d) and 2(e) of R–P. The Guides provide generalized requirements in contrast to the type of specific inquiry used to establish a violation. A factual pursuit would be particularly inappropriate in determining whether the requirement of suggested prices in co-op adds constitutes a *per se* violation. This is peculiarly a legal issue and, moreover, one that the Commission has already decided.

In summary, a hearing involving factual inquiries would not be useful. Additionally, the public has had ample opportunity to comment on the general issues regarding the proposed changes to the Guides. Moreover, only six of 250 commenters requested a public hearing. An additional opportunity for public comment is not justified.

Conclusion

This concludes the consideration of the public comments. The revised Guides more accurately reflect the law of sections 2(d) and 2(e) than the unchanged 1972 Guides. This greater accuracy should increase the use and confidence of use by those of the public having to deal with these sections.

List of Subjects in 16 CFR part 240

Advertising, Trade practices, Robinson-Patman Act, Promotional Allowances and Services.

By Direction of the Commission.

Donald S. Clark,

Secretary.

16 CFR chapter I, subchapter B is amended by revising part 240 to read as follows:

PART 240—GUIDES FOR ADVERTISING ALLOWANCES AND OTHER MERCHANDISING PAYMENTS AND SERVICES

Sec.

240.1 Purpose of the Guides.
240.2 Applicability of the law.
240.3 Definition of seller.
240.4 Definition of customer.
240.5 Definition of competing customers.
240.6 Interstate commerce.
240.7 Services or facilities.
240.8 Need for a plan.
240.9 Proportionally equal terms.
240.10 Availability to all competing customers.
240.11 Wholesaler or third party performance of seller's obligations.
240.12 Checking cusomter's use of payments.
240.13 Customer's and third party liability.
240.14 Meeting competition.
240.15 Cost justification.

Authority: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46; 49 Stat. 1526; 15 U.S.C. 13, as amended.

§ 240.1 Purpose of the Guides.

The purpose of these Guides is to provide assistance to businesses seeking to comply with sections 2 (d) and (e) of the Robinson-Patman Act (the "Act"). The guides are based on the language of the statute, the legislative history, administrative and court decisions, and the purposes of the Act. Although the Guides are consistent with the case law, the Commission has sought to provide guidance in some areas where no definitive guidance is provided by the case law. The Guides are what their name implies—guidelines for compliance with the law. They do not have the force of law.

§ 240.2 Applicability of the law.

(a) The substantive provisions of section 2 (d) and (e) apply only under certain circumstances. Section 2(d) applies only to:

(1) A seller of products

(2) Engaged in interstate commerce

(3) That either directly or through an intermediary

(4) Pays a customer for promotional services or facilities provided by the customer

(5) In connection with the resale (not the initial sale between the seller and the customer) of the seller's products

(6) Where the customer is in competition with one or more of the seller's other customers also engaged in the resale of the seller's products of like grade and quality.

(b) Section 2(e) applies only to:

(1) A seller of products

(2) Engaged in interstate commerce

(3) That either directly or through an intermediary

(4) Furnishes promotional services or facilities to a customer

(5) In connection with the resale (not the initial sale between the seller and the customer) of the seller's products

(6) Where the customer is in competition with one or more of the seller's other customers also engaged in the resale of the seller's products of like grade and quality.

(c) Additionally, section 5 of the FTC Act may apply to buyers of products for resale or to third parties. See § 240.13 of these Guides.

§ 240.3 Definition of seller.

Seller includes any person (manufacturer, wholesaler, distributor, etc.) who sells products for resale, with or without further processing. For example, selling candy to a retailer is a sale for resale without processing. Selling corn syrup to a candy manufacturer is a sale for resale with processing.

§ 240.4 Definition of customer.

A *customer* is any person who buys for resale directly from the seller, or the seller's agent or broker. In addition, a "customer" is any buyer of the seller's product for resale who purchases from or through a wholesaler or other intermediate reseller. The word "customer" which is used in section 2(d) of the Act includes "purchaser" which is used in section 2(e).

Note: There may be some exceptions to this general definition of "customer." For example, the purchaser of distress merchandise would not be considered a "customer" simply on the basis of such purchase. Similarly, a retailer or purchasing solely from other retailers, or making sporadic purchases from the seller or one that does not regularly sell the seller's product, or that is a type of retail outlet not usually selling such products (e.g., a hardware store stocking a few isolated food items) will not be considered a "customer" of the seller unless the seller has been put on notice that such retailer is selling its product.

Example 1: A manufacturer sells to some retailers directly and to others through wholesalers. Retailer A purchases the manufacturer's product from a wholesaler and resells some of it to Retailer B. Retailer A is a customer of the manufacturer. Retailer B is not a customer unless the fact that it purchases the manufacturer's product is known to the manufacturer.

Example 2: A manufacturer sells directly to some independent retailers, to the headquarters of chains and of retailer-owned cooperatives, and to wholesalers. The manufacturer offers promotional services or allowances for promotional activity to be performed at the retail level. With respect to such services and allowances, the direct-buying independent retailers, the headquarters of the chains and retailer-owned cooperatives, and the wholesaler's independent retailer customers are customers of the manufacturer. Individual retail outlets of the chains and the members of the retailer-owned cooperatives are not customers of the manufacturer.

Example 3: A seller offers to pay wholesalers to advertise the seller's product in the wholesalers' order books or in the wholesalers' price lists directed to retailers purchasing from the wholesalers. The wholesalers and retailer-owned cooperative headquarters and headquarters of other bona-fide buying groups are customers. Retailers are not customers for purposes of this promotion.

§ 240.5 Definition of competing customers.

Competing customers are all businesses that compete in the resale of the seller's products of like grade and quality at the same functional level of distribution regardless of whether they purchase directly from the seller or through some intermediary.

Example 1: Manufacturer A, located in Wisconsin and distributing shoes nationally, sells shoes to three competing retailers that sell only in the Roanoke, Virginia area. Manufacturer A has no other customers selling in Roanoke or its vicinity. If Manufacturer A offers its promotion to one Roanoke customer, it should include all three, but it can limit the promotion to them. The trade area should be drawn to include retailers who compete.

Example 2: A national seller has direct-buying retailing customers reselling exclusively within the Baltimore area, and other customers within the area purchasing through wholesalers. The seller may lawfully engage in a promotional campaign confined to the Baltimore area, provided that it affords all of its retailing customers within the area the opportunity to participate, including those that purchase through wholesalers.

Example 3: B manufactures and sells a brand of laundry detergent for home use. In one metropolitan area, B's detergent is sold by a grocery store and a discount department store. If these stores compete with each other, any allowance, service or facility that B makes available to the grocery store should also be made available on proportionally equal terms to the discount department store.

§ 240.6 Interstate commerce.

The term "interstate commerce" has not been precisely defined in the statute. In general, if there is any part of a business which is not wholly within one state (for example, sales or deliveries of products, their subsequent distribution or purchase, or delivery of supplies or raw materials), the business may be subject to sections 2(d) and 2(e) of the Act. (The commerce standard for sections 2 (d) and (e) is at least as inclusive as the commerce standard for section 2(a).) Sales or promotional offers within the District of Columbia and most United States possessions are also covered by the Act.

§ 240.7 Services or facilities.

The terms "services" and "facilities" have not been exactly defined by the statute or in decisions. One requirement, however, is that the services or facilities be used primarily to promote the resale of the seller's product by the customer. Services or facilities that relate primarily to the original sale are covered by section 2(a). The following list provides some examples—the list is not exhaustive—of promotional services and facilities covered by sections 2 (d) and (e):

Cooperative advertising;
Handbills;
Demonstrators and demonstrations;
Catalogues;
Cabinets;
Displays;
Prizes or merchandise for conducting promotional contests;
Special packaging, or package sizes.

§ 240.8 Need for a plan.

A seller who makes payments or furnishes services that come under the Act should do so according to a plan. If there are many competing customers to be considered or if the plan is complex, the seller would be well advised to put the plan in writing. What the plan should include is describe in more detail in the remainder of these Guides. Briefly, the plan should make payments or services functionally available to all competing customers on proportionally equal terms. (See § 240.9 of this part.) Alternative terms and conditions should be made available to customers who cannot, in a practical sense, take advantage of some of the plan's offerings. The seller should inform competing customers of the plans available to them, in time for them to decide whether to participate. (See § 240.10 of this part.)

§ 240.9 Proportionally equal terms.

(a) Promotional services and allowances should be made available to all competing customers on proportionally equal terms. No single way to do this is prescribed by law. Any method that treats competing customers on proportionally equal terms may be used. Generally, this can be done most easily by basing the payments made or the services furnished on the dollar volume or on the quantity of the product purchased during a specified period. However, other methods that result in proportionally equal allowances and services being offered to all competing customers are acceptable.

(b) When a seller offers more than one type of service, or payments for more than one type of service, all the services or payments should be offered on proportionally equal lterms. The seller may do this by offering all the payments or services at the same rate per unit or amount purchased. Thus, a seller might offer promotional allowances of up to 12 cents a case purchased for expenditures on either newspaper advertising or handbills.

Example 1: A seller may offer to pay a specified part (e.g., 50 percent) of the cost of local advertising up to an amount equal to a specified percentage (e.g., 5 percent) of the dollar volume of purchases during a specified period of time.

Example 2: A seller may place in reserve for each customer a specified amount of money for each unit purchased, and use it to reimburse these customers for the cost of advertising the seller's product.

Example 3: A seller should not provide an allowance or service on a basis that has rates graduated with the amount of goods purchased, as, for instance, 1 percent of the first $1,000 purchased per month, 2 percent of the second $1,000 per month, and 3 percent of all over that.

Example 4: A seller should not identify or feature one or a few customers in its own advertising without making the same service available on proportionally equal terms to customers competing with the identified customer or customers.

Example 5: A seller who makes employees available or arranges with a third party to furnish personnel for purposes of performing work for a customer should make the same offer available on proportionally equal terms to all other competing customers or offer useable and suitable services or allowances on proportionally equal terms to competing customers for whom such services are not useable and suitable.[1]

Example 6: A seller should not offer to pay a straight line rate for advertising if such payment results in a discrimination between competing customers; e.g., the offer of $1.00 per line for advertising in a newspaper that charges competing customers different amounts for the same advertising space. The straight line rate is an acceptable method for allocating advertising funds if the seller offers small retailers that pay more than the lowest newspaper rate an alternative that enables them to obtain the same percentage of their advertising cost as large retailers. If the $1.00 per line allowance is based on 50 percent of the newspaper's lowest contract rate of $2.00 per line, the seller should offer to pay 50 percent of the newspaper advertising cost of smaller retailers that establish, by invoice or otherwise, that they paid more than that contract rate.

Example 7: A seller offers each customer promotional allowances at the rate of one dollar for each unit of its product purchased during a defined promotional period. If Buyer A purchases 100 units, Buyer B 50 units, and Buyer C 25 units, the seller maintains proportional equality by allowing $100 to Buyer A, $50 to Buyer B, and $25 to Buyer C, to be used for the Buyers' expenditures on promotion.

§ 240.10 Availability to all competing customers.

(a) Functional availability: (1) The seller should take reasonable steps to ensure that services and facilities are useable in a practical sense by all competing customers. This may require offering alternative terms and conditions under which customers can participate. When a seller provides alternatives in order to meet the availability requirement, it should take reasonable steps to ensure that the alternatives are proportionally equal, and the seller should inform competing customers of the various alternative plans.

(2) The seller should insure that promotional plans or alternatives offered to retailers do not bar any competing retailers from participation, whether they purchase directly from the seller or through a wholesaler or other intermediary.

(3) When a seller offers to competing customers alternative services or allowances that are proportionally equal and at least one such offer is useable in a practical sense by all competing customers, and refrains from taking steps to prevent customers from participating, it has satisfied its obligation to make services and allowances "functionally available" to all customers. Therefore, the failure of any customer to participate in the program does not place the seller in violation of the Act.

Example 1: A manufacturer offers a plan for cooperative advertising on radio, TV, or in newspapers of general circulation. Because the purchases of some of the manufacturer's customers are too small this offer is not useable in a practical sense by them. The manufacturer should offer them alternative(s) on proportionally equal terms that are useable in a practical sense by them.

Example 2: A seller furnishes demonstrators to large department store customers. The seller should provide alternatives useable in a practical sense on proportionally equal terms to those competing customers who cannot use demonstrators. The alternatives may be services useable in a practical sense that are furnished by the seller, or payments by the seller to customers for their advertising or promotion of the seller's product.

Example 3: A seller offers to pay 75 percent of the cost of advertising in daily newspapers, which are the regular advertising media of the seller's large or chain store customers, but a lesser amount, such as only 50 percent of the cost, or even nothing at all, for advertising in semi-weekly, weekly, or other newspapers or media that may be used by small retail customers. Such a plan discriminates against particular customers or classes of customers. To avoid that discrimination, the seller in offering to pay allowances for newspaper advertising should offer to pay the same percent of the cost of newspaper advertising for all competing customers in a newspaper of the customer's choice, or at least in those newspapers that meet the requirements for second class mail privileges. While a small customer may be offered, as an alternative to advertising in daily newspapers, allowances for other media and services such as envelope stuffers, handbills, window banners, and the like, the small customer should have the choice to use its promotional allowance for advertising similar to that available to the larger customers, if it can practicably do so.

Example 4: A seller offers short term displays of varying sizes, including some which are useable by each of its competing customers in a practical business sense. The seller requires uniform, reasonable certification of performance by each customer. Because they are reluctant to process the required paper work, some customers do not participate. This fact does not place the seller in violation of the functional availability requirement and it is under no obligation to provide additional alternatives.

(b) Notice of available services and allowances: The seller has an obligation to take steps reasonably designed to provide notice to competing customers of the availability of promotional services and allowances. Such notification should include enough details of the offer in time to enable customers to make an informed judgment whether to participate. When some competing customers do not purchase directly from the seller, the seller must take steps reasonably designed to provide notice to such indirect customers. Acceptable notification may vary. The following is a non-exhaustive list of acceptable methods of notification:

(1) By providing direct notice to customers;

(2) When a promotion consists of providing retailers with display materials, by including the materials within the product shipping container;

(3) By including brochures describing the details of the offer in shipping containers;

(4) By providing information on shipping containers or product packages of the availability and essential features of an offer, identifying a specific source for further information;

(5) By placing at reasonable intervals in trade publications of general and widespread distribution announcements of the availability and essential features of promotional offers, identifying a specific source for further information; and

(6) If the competing customers belong to an identifiable group on a specific mailing list, by providing relevant information of promotional offers to customers on that list. For example, if a product is sold lawfully only under Government license (alcoholic beverages, etc.), the seller may inform only its customers holding licenses.

(c) A seller may contract with intermediaries or other third parties to provide notice. See § 240.11.

Example 1: A seller has a plan for the retail promotion of its product in Philadelphia. Some of its retailing customers purchase

[1] The discriminatory purchase of display or shelf space, whether directly or by means of so-called allowances, may violate the Act, and may be considered an unfair method of competition in violation of section 5 of the Federal Trade Commission Act.

directly and it offers the plan to them. Other Philadelphia retailers purchase the seller's product through wholesalers. The seller may use the wholesalers to reach the retailing customers that buy through them, either by having the wholesalers notify these retailers, or by using the wholesalers' customer lists for direct notification by the seller.

Example 2: A seller that sells on a direct basis to some retailers in an area, and to other retailers in the area through wholesalers, has a plan for the promotion of its product at the retail level. If the seller directly notifies competing direct purchasing retailers, and competing retailers purchasing through the wholesalers, the seller is not required to notify its wholesalers.

Example 3: A seller regularly promotes its product at the retail level and during the year has various special promotional offers. The seller's competing customers include large direct-purchasing retailers and smaller retailers that purchase through wholesalers. The promotions offered can best be used by the smaller retailers if the funds to which they are entitled are pooled and used by the wholesalers on their behalf (newspaper advertisements, for example). If retailers purchasing through a wholesaler designate that wholesaler as their agent for receiving notice of, collecting, and using promotional allowances for them, the seller may assume that notice of, and payment under, a promotional plan to such wholesaler constitutes notice and payment to the retailer. The seller must have a reasonable basis for concluding that the retailers have designated the wholesaler as their agent.

§ 240.11 Wholesaler or third party performance of seller's obligations.

A seller may contract with intermediaries, such as wholesalers, distributors, or other third parties, to perform all or part of the seller's obligations under sections 2(d) and (e). The use of intermediaries does not relieve a seller of its responsibility to comply with the law. Therefore, in contracting with an intermediary, a seller should ensure that its obligations under the law are in fact fulfilled.

§ 240.12 Checking customer's use of payments.

The seller should take reasonable precautions to see that the services the seller is paying for are furnished and that the seller is not overpaying for them. The customer should expend the allowance solely for the purpose for which it was given. If the seller knows or should know that what the seller is paying for or furnishing is not being properly used by some customers, the improper payments or services should be discontinued.

§ 240.13 Customer's and third party liability.

(a) Customer's liability: Sections 2 (d) and (e) apply to sellers and not to customers. However, the Commission may proceed under section 5 of the Federal Trade Commission Act against a customer who knows, or should know, that it is receiving a discriminatory price through services or allowances not made available on proportionally equal terms to its competitors engaged in the resale of a seller's product. Liability for knowingly receiving such a discrimination may result whether the discrimination takes place directly through payments or services, or indirectly through deductions from purchase invoices or other similar means.

Example 1: A customer should not induce or receive advertising allowances for special promotion of the seller's product in connection with the customer's anniversary sale or new store opening when the customer knows or should know that such allowances, or suitable alternatives, are not available on proportionally equal terms to all other customers competing with it in the distribution of the seller's product.

Example 2: Frequently the employees of sellers or third parties, such as brokers, perform in-store services for their grocery retailer customers, such as stocking of shelves, building of displays and checking or rotating inventory, etc. A customer operating a retail grocery business should not induce or receive such services when the customer knows or should know that such services (or usable and suitable alternative services) are not available on proportionally equal terms to all other customers competing with it in the distribution of the seller's product.

Example 3: Where a customer has entered into a contract, understanding, or arrangement for the purchase of advertising with a newspaper or other advertising medium that provides for a deferred rebate or other reduction in the price of the advertising, the customer should advise any seller from whom reimbursement for the advertising is claimed that the claimed rate of reimbursement is subject to a deferred rebate or other reduction in price. In the event that any rebate or adjustment in the price is received, the customer should refund to the seller the amount of any excess payment or allowance.

Example 4: A customer should not induce or receive an allowance in excess of that offered in the seller's advertising plan by billing the seller at "vendor rates" or for any other amount in excess of that authorized in the seller's promotional program.

(b) Third party liability: Third parties, such as advertising media, may violate section 5 of the Federal Trade Commission Act through double or fictitious rates or billing. An advertising medium, such as a newspaper, broadcast station, or printer of catalogues, that publishes a rate schedule containing fictitious rates (or rates that are not reasonably expected to be applicable to a representative number of advertisers), may violate section 5 if the customer uses such deceptive schedule or invoice for a claim for an advertising allowance, payment or credit greater than that to which it would be entitled under the seller's promotional offering. Similarly, an advertising medium that furnishes a customer with an invoice that does not reflect the customer's actual net advertising cost may violate section 5 if the customer uses the invoice to obtain larger payments than it is entitled to receive.

Example 1: A newspaper has a "national" rate and a lower "local" rate. A retailer places an advertisement with the newspaper at the local rate for a seller's product for which the retailer will seek reimbursement under the seller's cooperative advertising plan. The newspaper should not send the retailer two bills, one at the national rate and another at the local rate actually charged.

Example 2: A newspaper has several published rates. A large retailer has in the past earned the lowest rate available. The newspaper should not submit invoices to the retailer showing a high rate by agreement between them unless the invoice discloses that the retailer may receive a rebate and states the amount (or approximate amount) of the rebate, if known, and if not known, the amount of rebate the retailer could reasonably anticipate.

Example 3: A radio station has a flat rate for spot announcements, subject to volume discounts. A retailer buys enough spots to qualify for the discounts. The station should not submit an invoice to the retailer that does not show either the actual net cost or the discount rate.

Example 4: An advertising agent buys a large volume of newspaper advertising space at a low, unpublished negotiated rate. Retailers then buy the space from the agent at a rate lower than they could buy this space directly from the newspaper. The agent should not furnish the retailers invoices showing a rate higher than the retailers actually paid for the space.

§ 240.14 Meeting competition.

A seller charged with discrimination in violation of sections 2 (d) and (e) may defend its actions by showing that particular payments were made or services furnished in good faith to meet equally high payments or equivalent services offered or supplied by a competing seller. This defense is available with respect to payments or services offered on an area-wide basis, to those offered to new as well as old customers, and regardless of whether the discrimination has been caused by a decrease or an increase in the payments or services offered. A seller must reasonably believe that its offers are necessary to meet a competitor's offer.

§ 240.15 Cost justification.

It is no defense to a charge of unlawful discrimination in the payment

of an allowance or the furnishing of a service for a seller to show that such payment or service could be justified through savings in the cost of manufacture, sale or delivery.

[FR Doc. 90-19095 Filed 8-16-90; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AB40

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Payment of Benefits, Overpayments and Underpayments—Overpayment Defined

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These rules implement section 2612 of Public Law 98-369, the Deficit Reduction Act of 1984, which amended section 1631(b)(1) of the Social Security Act (the Act).

Section 1631(b)(1), as amended by section 2612 of Public Law 98-369, provides that for any month or months, the amount of an adjustment or recovery of a Supplemental Security Income (SSI) and/or federally administered State supplementary overpayment that the Secretary may require, is limited to the lesser of: (1) The amount of the overpaid individual's benefit for that month; or (2) an amount equal to 10 percent of the overpaid individual's total income (countable income plus SSI and State supplementary payments) for that month. Countable income is the income we use in determining SSI and State Supplementary payments for a month and is generally received by the individual in the second month prior to the month we count it. In addition, the individual is given the opportunity to negotiate a higher or lower rate of recovery or adjustment. This 10-percent limitation does not apply if fraud, willful misrepresentation, or concealment of material information has been committed in connection with the overpayment. Section 2612 was effective October 1, 1984.

EFFECTIVE DATE: These regulations are effective August 17, 1990.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1795.

SUPPLEMENTARY INFORMATION:

Section 1631(b)(1) of the Act specifies that when more than the correct amount of SSI benefits has been paid with respect to any individual, proper adjustment or recovery shall be made by appropriate adjustments in future payments to such individual or by recovery from such individual or his or her eligible spouse (or by recovery from the estate of either). Operating policy in effect prior to August 1, 1984, required that the rate of adjustment proposed in the initial overpayment notice always be 100 percent of the benefit payable. That policy further provided that an SSI recipient could request a rate of adjustment of less than 100 percent if the overpayment could be recouped in 36 months or less and if the resulting amount withheld was not less than $10 per month. Special documentation was required to approve a withholding which was less than $10 per month or to approve a recoupment which would require more than 36 months to complete.

Section 2612 of Public Law 98-369, enacted July 18, 1984, and effective October 1, 1984, amends section 1631(b)(1) of the Act by limiting the rate at which an overpayment may be recovered from an individual still receiving benefits (SSI for federally administered supplementary payments or both) to the lesser of: 10 percent of the recipient's total income (countable income plus SSI and State supplementary payments); or, the recipient's payment for the month. The Countable income that is used to figure the individual's total income will be the countable income used to compute the month's benefit amount under retrospective monthly accounting (i.e., generally 2 months prior to the payment month). The recipient is given the opportunity to request a higher or lower rate of adjustment or recovery. An evaluation of an individual's income and resources and other financial obligations will be undertaken when a request for a lower rate of recovery or adjustment is received and when warranted the request will be granted. The 10-percent limitation is applied only to recipients in current payment status, but does not apply where it is determined that the overpayment occurred because of fraud, willfull misrepresentation, or concealment of material information by the recipient.

A determination of concealment of material information will be made only when there has been an intentional, knowing, and purposeful delay or failure by the individual and/or his/her spouse to make a required report (see §§ 416.708 and 416.714). This is not merely an omission on the part of the recipient; it is an affirmative act to conceal.

Adjustment or recovery will be suspended if the recipient is residing in a medical facility in which Medicaid is paying a substantial portion of the recipient's cost of care. Because the Federal maximum monthly benefit rate for such recipient is only $30, we do not believe it would be cost effective to collect an overpayment of 10 percent of such a small amount (voluntary repayment by refund would still be available to individuals residing in such facilities).

Existing regulations at § 416.543 provide that any underpayment adjustment due an individual will be used to reduce any overpayment determined to exist for a different period unless recovery of such overpayment has been waived. The legislative history of section 2612 suggests that Congress was focusing on protecting a sufficient monthly benefit to meet current needs when it limited the amount that could be recovered from current recipients. H.R. Rep. 98-664, 98th Cong. 2d Sess. 9-10 (1984); H.R. Cong. Rep. 98-861, 98th Cong., 2d Sess. 1389 (1984). Since underpayment adjustments are made to make up for payment of less than the correct amount for past periods and are not paid on the basis of current need at the time the recipient receives them, we will continue to apply § 416.543.

The 10-percent limitation will not apply to repayment of conditional benefits pursuant to agreements to dispose of excess resources in accordance with regulations at § 416.1240. Under an agreement for conditional benefits, an individual with nonliquid resources in excess of the basic resource limitations may still be eligible for SSI payments if the total resources do not exceed limits prescribed in the regulations and if the individual agrees in writing to dispose of the resources within certain timeframes and to repay any overpayment with the proceeds of the disposition. This form of repayment is quite different from the more typically encountered overpayment recovery Congress sought to limit by adding section 1631(b)(1)(B) to the Act. In the more typical situations, Congress was concerned with maintaining a sufficient flow of ongoing benefits to indigent persons while affording them a reasonable method of repaying their overpayment. In the case of conditional benefits, the ongoing SSI payments to the individual are not

disturbed and repayment of any overpayment is made from the proceeds of the sale of the resources. Without this provision, the individual would have been determined to be ineligible for SSI payments. Furthermore, the fact that the individual must, before becoming eligible, agree to repay the overpayment resulting from the conditional benefits with the proceeds of the sale of the resources makes this form of recovery analogous to the situation in which an individual voluntarily agrees to repay an overpayment in excess of the 10-percent limitation, a situation explicitly authorized by the statute. (See section 1631(b)(1)(B) and discussion of the legislative history at H.R. Cong. Rep. 98–861, 98th Cong., 2d. Sess. 1389 (1984).)

These final rules do not apply the 10-percent limitation to the reduction of any future SSI benefits as a consequence of the misuse of funds set aside in accordance with section 1613(d)(1) to meet burial expenses. Section 1613(d)(3) requires the reduction of any future SSI benefits in an amount equal to the amount of the excluded burial funds, interest, or appreciated value of those funds that are used for another purpose. Since section 1613(d)(3) contains this specific reduction provision, which is distinct from the normal rules of overpayment recovery or adjustment under section 1631(b)(1) of the Act, we believe Congress intended that unauthorized use of burial funds be treated in accordance with the burial fund rules and not under the overpayment rules. Moreover, neither the language of section 1613(d) nor its legislative history characterizes the consequences of an unauthorized use of burial funds as an "overpayment," nor does it characterize the reduction of future SSI benefits mandated in section 1613(d) as a recovery or adjustment.

These final rules add in part 416, subpart E, a new § 416.571 to incorporate the statutory requirements of section 2612 of Public Law 98–369. They also make minor changes to existing §§ 416.558, 416.560, and 416.570 to bring those sections into conformity with the requirements of section 2612.

We published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** at 54 FR 12649 on March 28, 1989. We asked for public comments within a period of 60 days. The comment period closed May 30, 1989. Two letters were received; one from a private law firm and one from a legal services agency.

Comment: One commenter questioned the continued applicability of regulations at § 416.543 which permit the recovery of an overpayment by withholding from an underpayment. Although neither the NPRM nor this final rule have altered § 416.543, the commenter questions the rationale that permits the recovery of an overpayment by withholding from an underpayment.

Response: Congress intended that the limitation on recoupment rate apply only to ongoing payments, i.e., those payments which are used by the individual to meet his or her current needs. (H.R. Rep. 98–664, 98th Cong., 2d Sess. 9–10 (1984); H.R. Cong. Rep. 98–861; 98th Cong., 2d Sess. 1389 (1984).) Underpayments, on the other hand, are payments due for past periods. Therefore, recovery of an overpayment from past-due benefits is, as set forth in § 416.543, consistent with section 2612 of Public Law 98–369.

Comment: One commenter stated that § 416.558 of the NPRM fails to provide that the overpaid individual has the right to request an appeal on the grounds that he or she was not overpaid at all or that he or she was overpaid by a lesser amount.

Response: Regulations at § 416.1402(a) state that determinations about "eligibility for, or the amount of SSI benefits" are administrative actions which are initial determinations. Thus, a determination that more than the correct amount has been paid to an individual (i.e., an overpayment) is an initial determination.

Regulations at § 416.1404 state that a written notice of an initial determination shall be sent to the affected individual. These regulations further provide that the notice will include, among other information, "what rights (the individual has) to a reconsideration of the determination."

Every initial overpayment notice contains language informing the individual not only of his or her right to request a reconsideration, but also how to go about making such a request, in accordance with these regulations. Since the right to appeal is addressed elsewhere in regulations as noted above, we do not feel it needs to be repeated in these final regulations.

Comment: A commenter indicated that § 416.570 of these final regulations should make clear that no adjustment of benefits to recover an overpayment can be made while the individual is appealing the determination that, in fact, an overpayment exists.

Response: Regulations at § 416.1336(b) provide that where an appeal is timely filed, we continue payments at the previously established level until an initial appeal decision is rendered.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and the Secretary has determined that this is not a major rule. Therefore, a regulatory impact analysis is not required. These provisions are not expected to have a cost impact on the economy of $100 million or more in one year.

Paperwork Reduction Act

These final regulations impose no recordkeeping or reporting requirements requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: March 27, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: May 10, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

Subpart E of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

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

Authority: Secs. 1102, 1601, 1602, 1611(c), 1631 (a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383 (a), (b), (d), and (g).

2. In § 416.558, paragraph (a) is revised to read as follows:

§ 416.558 Notice relating to overpayments and underpayments.

(a) *Notice of overpayment and underpayment determination.* Whenever a determination concerning the amount paid and payable for any period is made and it is found that, with respect to any month in the period, more or less than the correct amount was paid, written notice of the correct and incorrect

amounts for each such month in the period will be sent to the individual against whom adjustment or recovery of the overpayment as defined in § 416.537(a) may be effected or to whom the underpayment as defined in § 416.536 would be payable, notwithstanding the fact that part or all of the underpayment must be withheld in accordance with § 416.543. When notifying an individual of a determination of overpayment, the Social Security Administration will, in the notice, also advise the individual that adjustment or recovery is required, as set forth in § 416.571, except under certain specified conditions, and of his or her right to request waiver of adjustment or recovery of the overpayment under the provisions of § 416.550.

* * * * *

3. Section 416.560 is revised to read as follows:

§ 416.560 Recovery—refund.

An overpayment may be refunded by the overpaid recipient or by anyone on his or her behalf. Refund should be made in every case where the overpaid individual is not currently eligible for SSI benefits. If the individual is currently eligible for SSI benefits and has not refunded the overpayment, adjustment as set forth in § 416.570 will be proposed.

4. Section 416.570 is revised to read as follows:

§ 416.570 Adjustment—general rule.

Where a recipient has been overpaid, the overpayment has not been refunded, and waiver of adjustment or recovery is not applicable, any payment due the overpaid recipient or his or her eligible spouse (or recovery from the estate of either or both when either or both die before adjustment is completed) is adjusted for recovery of the overpayment. Adjustment will generally be accomplished by withholding each month the amount set forth in § 416.571 from the benefit payable to the individual except that, when the overpayment results from the disposition of resources as provided by §§ 416.1240(b) and 416.1244, the overpayment will be recovered by withholding any payments due the overpaid recipient or his or her eligible spouse before any further payment is made. Absent a specific request from the person from whom recovery is sought, no overpayment made under title II or XIX of the Act shall be recovered by adjusting SSI benefits, and absent a specific request, no overpayment of SSI benefits shall be adjusted against benefits payable under title II of the Act. In no case shall an overpayment of SSI benefits be adjusted against title XIX benefits.

5. A new § 416.571 is added to read as follows:

§ 416.571 10-percent limitation of recoupment rate—overpayment.

Any adjustment or recovery of an overpayment for an individual in current payment status is limited in amount in any month to the lesser of (1) the amount of the individual's benefit payment for that month or (2) an amount equal to 10 percent of the individual's total income (countable income plus SSI and State supplementary payments) for that month. The countable income used is the countable income used in determining the SSI and State supplementary payments for that month under § 416.420. When the overpaid individual is notified of the proposed SSI and/or federally administered State supplementary overpayment adjustment or recovery, the individual will be given the opportunity to request that such adjustment or recovery be made at a higher or lower rate than that proposed. If a lower rate is requested, a rate of withholding that is appropriate to the financial condition of the overpaid individual will be set after an evaluation of all the pertinent facts. An appropriate rate is one that will not deprive the individual of income required for ordinary and necessary living expenses. This will include an evaluation of the individual's income, resources, and other financial obligations. The 10-percent limitation does not apply where it is determined that the overpayment occurred because of fraud, willful misrepresentation, or concealment of material information committed by the individual or his or her spouse. Concealment of material information means an intentional, knowing, and purposeful delay in making or failure to make a report that will affect payment amount and/or eligibility. It does not include a mere omission on the part of the recipient; it is an affirmative act to conceal. The 10-percent limitation does not apply to the recovery of overpayments incurred under agreements to dispose of resources pursuant to § 416.1240. In addition, the 10-percent limitation does not apply to the reduction of any future SSI benefits as a consequence of the misuse of funds set aside in accordance with § 416.1231(b) to meet burial expenses. Adjustment or recovery will be suspended if the recipient is subject to a reduced benefit rate under § 416.414 because of residing in a medical facility in which Medicaid is paying a substantial portion of the recipient's cost of care.

[FR Doc. 90-19411 Filed 8-16-90; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702, 703, and 704

Claims; Subchapter A—Longshore and Harbor Workers' Compensation Act and Related Statutes

AGENCY: Employment Standards Administration, Labor.

ACTION: Correction of final rule.

SUMMARY: This notice corrects the citation of authority for parts 701, 702, 703, and 704 previously published in the **Federal Register** on July 12, 1990 (55 FR 28604).

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, (202) 523-7503.

SUPPLEMENTARY INFORMATION: In the final rule published on July 12, 1990 (55 FR 29604) we inadvertently included an incorrect citation of authority. Therefore, we are correcting the paragraph numbered 1 in the first column on page 28606 to read as follows:

PARTS 701, 702, 703—[CORRECTED]

1. The citation of authorities for parts 701, 702, 703, and 704 are corrected to read as follows:

Authority: 5 U.S.C. 301; Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 33 U.S.C. 939; 36 D.C. Code 501 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1331; 5 U.S.C. 6171 *et seq.*; Secretary's Order 1-89; Employment Standards Order No. 90-02.

Signed at Washington, DC, this 14th day of August 1990.

Lawrence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 90-19431 Filed 8-16-90; 8:45 am]
BILLING CODE 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification

AGENCY: Food and Drug Administration, HAS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of two new animal drug applications (NADA's) held by Boehringer Ingelheim Animal Health, Inc. One NADA provides for the use of an iron dextran injection and the other for the use of lactic acid injection. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA's 10-955 and 126-455 held by Boehringer Ingelheim Animal Health, Inc. NADA 10-955 provides for the use of FE-100 iron dextran injection in baby pigs for the prevention or treatment of iron deficiency anemia. NADA 126-455 provides for the use of Chem-Cast™ (lactic acid) injection to castrate bull calves up to 150 pounds.

This final rule is amending 21 CFR 522.1183(f) and removing and reserving 21 CFR 522.1228 to reflect withdrawal of the approvals.

List of Subject in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1183 [Amended]

2. Section 522.1183 *Iron hydrogenated dextran injection* is amended by removing paragraph (f).

§ 522.1228 [Removed and Reserved]

3. Section 522.1228 *Lactic acid* is removed and reserved.

Dated: August 13, 1990

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-19375 Filed 8-16-90; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 1220

[Docket No. 90N-0192]

Regulations Under the Tea Importation Act; TBA Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of tea standards for the year beginning May 1, 1990, and ending April 30, 1991. The tea standards are provided for under the Tea Importation Act. The Tea Importation Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

DATES: Effective May 1, 1990; comments by September 17, 1990.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: Because of the unique nature of the decisionmaking process for establishing annual standards for tea, the procedural protections that are part of this process, and the short period within which a standard must be set, FDA has never, since the enactment in 1897 of the Tea Importation Act (21 U.S.C. 41), used notice and comment rulemaking for tea standards.

Each final rule setting the standards is based on the recommendations of the Board of Tea Experts (the board), which is comprised of tea experts who are representatives of the tea trade. The board selects standards each year according to the provisions of the Tea Importation Act. The board bases its selection on tea samples submitted by members of the tea trade to the board. Relying primarily on organoleptic examination, the board selects one tea to represent the standard for each major type of tea imported into the United States. In choosing a standard, the board tries to select one at least equal in quality to that of the previous year. The Tea Importation Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

The annual meeting of the board is open to the public and is announced in advance in the **Federal Register**. At the annual meeting any interested person may present data, information, or views orally or in writing regarding new standards.

The annual tea standards are prepared and submitted to the Secretary of Health and Human Services by the board (21 CFR 1220.41).

Should a tea importer be dissatisfied with an FDA tea examiner's rejection of a shipment of tea, the importer can refer its complaint to the U.S. Board of Tea Appeals and then to the U.S. Court of Appeals. FDA is unaware that complaints or arguments have ever occurred concerning a designated standard, despite the many years since the enactment of the Tea Importation Act.

FDA concludes that notice and comment rulemaking to set tea standards is impracticable, contrary to the public interest, and unnecessary by virtue of the factors discussed above, i.e., the unique, longstanding procedures that apply to establishing a standard, the fact that standards are based principally on organoleptic examinations by tea experts, the public participation opportunities already provided, and the timeframes required for issuing annual standards. Hence, the agency is not following notice and comment rulemaking procedures in establishing the final tea standards for 1990.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The impact of this rule on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96-354) (5 U.S.C. 601). This rule announces the establishment of tea standards for the year beginning May 1, 1990, and ending April 30, 1991. Only teas that

meet or exceed the standards will be permitted entry into the United States. These standards protect industry and consumers from acceptance of unfit tea. FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

Interested persons may on or before September 17, 1990, submit to the Docket Management Branch (address above), written comments regarding this regulation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

List of Subjects in 21 CFR Part 1220

Administrative practice and procedure, Customs duties and inspection, Imports, Public health, Tea.

Therefore, under the authority delegated to the Secretary of Health and Human Services by the Tea Importation Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1220 is amended as follows:

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

1. The authority citation for 21 CFR part 1220 continues to read as follows:

Authority: 21 U.S.C. 41–50; 19 U.S.C. 1311.

2. Section 1220.40(a) is revised to read as follows:

§ 220.40 Tea standards.

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on April 2, 1990, are hereby fixed and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1990, and ending April 30, 1991:

(1) Black Tea (for all teas except those from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, the Union of Soviet Socialist Republics (Russia), Turkey, and Argentina).

(2) Black Tea (for Argentina teas).

(3) Black Tea (for teas from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, the Union of Soviet Socialist Republics (Russia), and Turkey).

(4) Green Tea (of all origins).

(5) Formosa Oolong.

(6) Canton Oolong (for all Canton types from the People's Republic of China (China) and Taiwan (Formosa)).

(7) Scented Black Tea.

(8) Spiced Tea.

(9) Black Tea Leaf with added Instant Tea. These standards apply to tea shipped from abroad on or after May 1, 1990.

* * * * *

Dated: July 19, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–19306 Filed 8–16–90; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8307]

RIN 1545–AK23

Corporate Alternative Minimum Tax Book Income Adjustment

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on computing the alternative minimum tax adjustment for the book income of corporations under section 56(f) of the Internal Revenue Code of 1986 (the Code). This document also contains final regulations relating to the installment payment of estimated tax by corporations, taking into account the alternative minimum tax and the environmental tax. Changes to the applicable law were made by the Tax Reform Act of 1986, the Superfund Amendments and Reauthorization Act of 1986, the Omnibus Budget Reconciliation Act of 1987, and the Technical and Miscellaneous Revenue Act of 1988. These regulations affect corporate taxpayers and provide them with guidance necessary to determine their alternative minimum tax liability and their estimated tax liability.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1986 and before January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bogos of the Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:CORP:T:R (EA–55–87), (202) 566–4104 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0123. The estimated average collection burden per respondent varies from 15 minutes to 30 minutes, depending on individual circumstances, with an estimated average of 20 minutes.

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

Comments concerning the accuracy of this burden estimate should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

On April 28, 1987, and April 28, 1988, the **Federal Register** published Notices of Proposed Rulemaking (52 FR 15305, and 53 FR 15200, respectively) by cross reference to temporary regulations published on the same days under section 56 of the Internal Revenue Code of 1986. A number of public comments were received concerning these regulations and a public hearing was held on September 1, 1987. After consideration of the written comments and those presented at the hearing, the proposed regulations are adopted as revised by this Treasury Decision.

Explanation of Provisions

Section 701 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2320), as amended by section 516 of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–514, 100 Stat. 2341) and section 1007 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3373), enacted a new adjustment for corporations in computing their alternative minimum tax. This adjustment is based on the

financial statement income of corporate taxpayers. These final regulations provide taxpayers with guidance necessary to determine the adjustment for book income in computing their alternative minimum tax liability.

Public Comment

I. Amendments to § 1.56–1T(b)

A. No Adjustments to Net Book Income Allowed Except Those Specified

Section 56(f)(2)(A) defines adjusted net book income as the net income or loss of the taxpayer as set forth on its applicable financial statement, adjusted as provided in section 56(f)(2). The statute enumerates specific adjustments for the following: taxes, related corporations, applicable financial statements covering different periods, cooperatives, dividends from possessions (section 936) corporations, Alaska Native Corporations, life insurance companies, stock-for-debt swaps of insolvent companies, and adjustments to prevent the omission or duplication of any item.

The only adjustment with respect to which the Secretary has a specific grant of regulatory authority is the last one—to prevent the omission or duplication of any item. The proposed regulations specify certain adjustments that are permitted to prevent the omission or duplication of items and prohibit any adjustments that are not so specified. Many commenters requested a broad omission and duplication rule designed to address any circumstance in which a taxpayer believes an omission or duplication of items of income or expense might occur. Because Congress considered and rejected a number of adjustments that would be permissible if a broad rule were adopted, the final regulations continue the approach adopted in the proposed regulations. Thus, § 1.56–1(b)(1) of the final regulations provides that, except as provided in the regulations or in published guidance, a taxpayer may not adjust net book income to prevent the omission or duplication of any item. The final regulations, however, expand the list of permitted adjustments.

B. Use of Current Earnings and Profits to Compute the Adjusted Net Book Income of a Consolidated Group

Section 1.56–1T(b)(5)(i) of the proposed regulations provides that, for taxpayers eligible to compute net book income using current earnings and profits, net book income is equal to the taxpayer's current earnings and profits for its taxable year. Generally, current earnings and profits is computed under the rules of section 312 and the regulations thereunder. Current earnings and profits is not reduced by distributions to shareholders. Section 1.56–1T(b)(5)(ii) of the proposed regulations defines the current earnings and profits of a consolidated group as the current earnings and profits of each member of the group, after making adjustments to exclude earnings and profits attributable to intercompany transactions as defined in § 1.1502–33(a). Section 1.56–1T(d)(4)(iii) of the proposed regulations provides that all the adjustments described in § 1.1502–33(a) apply except the adjustments to earnings and profits described in § 1.1502–33(c)(4)(ii)(*a*) to reflect increases or decreases in the stock basis of a subsidiary.

Commenters indicated that the adjustments in § 1.1502–33(c)(1) for intercompany dividends should also be disregarded in order to prevent earnings associated with intercompany dividends from being included twice in the adjusted net book income of a consolidated group that uses current earnings and profits to compute net book income. Section 1.56–1(d)(4)(iii) of the final regulations incorporates this change. In addition, the provision relating to adjustments attributable to intercompany transactions is moved to § 1.56–1(d)(4)(iii) of the final regulations because it is an adjustment to prevent omission or duplication.

II. Amendments to § 1.56–1T(c)

A. Substantial Non-Tax Use of Applicable Financial Statement

Section 1.56–1T(c)(4) of the proposed regulations provides that in certain circumstances a taxpayer must "reasonably anticipate" that users of the financial statement will rely on it for a substantial non-tax purpose. Several commenters requested that the final regulations adopt a presumption of substantial non-tax use. The legislative history, however, states that actual substantial non-tax use is required. S. Rep. No. 99–313, 99th Cong., 2d Sess., 531 (1986). The final regulations retain the requirement that the taxpayer reasonably anticipate that users of its financial statement will rely on it for a substantial non-tax purpose.

B. Consolidated Group's Election to Use Current Earnings and Profits to Determine Net Book Income

Section 1.56–1T(c)(5)(i) of the proposed regulations provides that the applicable financial statement of a consolidated group is the highest priority financial statement of the common parent of the group. A taxpayer may use current earnings and profits to compute its net book income if (1) it has no applicable financial statement or (2) it has only a category (iv) applicable financial statement and it properly elects to use current earnings and profits. Ordinarily, the common parent is the sole agent for each member of the group for making all but a few specified tax elections. Section 1.1502–77. The proposed regulations do not specifically address whether the common parent may make this election for the entire group if one or more members are ineligible to make the election (for example, as a result of having a category (i) applicable financial statement). In addition, the proposed regulations do not address whether an election by the common parent, assuming it is itself eligible to make the election, will bind all the members of the group, including those otherwise ineligible to make the election.

Section 1.56–1(c)(2)(iv) of the final regulations clarifies the rules regarding the election by the common parent of a consolidated group to use current earnings and profits to determine its net book income by (1) permitting the common parent to make the election on behalf of the group if the common parent itself is eligible to make the election, and (2) providing that the election binds all members of the group, including those otherwise not eligible to make the election. Determining the test for eligibility for the group at the level of the common parent is consonant with the rule of § 1.56–1T(c)(5)(i)(A) of the proposed regulations that the applicable financial statement of a consolidated group is the highest priority financial statement of the common parent. Requiring that the election bind all members of the group, including those otherwise not eligible to make the election, avoids the complexity that would result if some members of the group used an applicable financial statement and other members of the group used current earnings and profits.

Because some taxpayers may have treated an election by a common parent as covering only those members of the group that were themselves eligible to make the election, the final regulations grant relief under section 7805(b) for those taxpayers who properly applied a separate company approach. The regulations also allow (but do not require) taxpayers to make the correct election on an amended return.

C. Eligibility to Use Current Earnings and Profits to Determine Net Book Income

Section 1.56–1T(c)(2) of the proposed regulations allows a taxpayer to elect to

use its current earnings and profits to compute its net book income if it has only a category (iv) applicable financial statement. Under the proposed regulations, the election is revocable only with the consent of the District Director and the taxpayer must make the election in the first year in which it is "eligible" to do so.

Section 1.56–1(c)(2)(iii) of the final regulations provides that the first year a taxpayer is "eligible" to make the election is the first year the taxpayer (1) has a category (iv) applicable financial statement, (2) has an excess of adjusted net book income over pre-adjustment alternative minimum taxable income, and (3) has an excess of the tentative minimum tax over the regular tax or is liable for the environmental tax under section 59A of the Code.

Similar eligibility requirements are also provided in § 1.56–1 (b)(4)(iii) of the final regulations regarding the election to compute adjusted net book income based on the financial statement for an accounting year ending within the taxable year.

The final regulations allow a taxpayer who has not previously made either of these elections to make them on an amended return for the first taxable year in which it is eligible to make the election. The final regulations also allow a taxpayer who made either election before its first eligible year, determined under § 1.56–1 (c)(2)(iii) or § 1.56–1 (b)(4)(iii) of the final regulations, to revoke the election on an amended return. The final regulations specify the time within which taxpayers must make or revoke the election on an amended return.

III. Amendments to § 1.56–1T(d):

A. Adjustment for Foreign Income Taxes

Section 1.56–1T(d)(3)(i) of the proposed regulations requires that net book income be adjusted to disregard any income, war profits or excess profits taxes imposed by the United States, any of its possessions or any foreign country, that are directly or indirectly taken into account on the taxpayer's applicable financial statement. Section 1.56–1T(d)(3)(ii) of the proposed regulations does not require an adjustment for any foreign income taxes if the taxpayer chooses not to use the benefits of section 901 (relating to the foreign tax credit).

Many commenters indicated that the language in the proposed regulations is unclear. Section 1.56–1(d)(3)(ii) of the final regulations is clarified to provide that no adjustment is made for any foreign income taxes that cannot be credited against the taxpayer's United States income tax liability because of section 245(a)(8) (no deemed-paid credit for the U.S.-source portion of a dividend received from a 10-percent owned foreign corporation), section 901(j) (no foreign tax credit for income taxes paid or accrued to any country with which the United States has severed diplomatic relations), section 907(b) (limitations on the creditability of taxes on certain foreign oil-related income), or section 908 (reduction of foreign tax credit for participation in international boycotts). Foreign income taxes not creditable against the United States income tax liability because of the limitations of section 904 of the Code are not included in this list and therefore increase net book income pursuant to § 1.56–1(d)(3)(i) of the final regulations.

B. Certain Valuation Adjustments

Section 1.56–1T(d)(3)(i) of the proposed regulations provides that net book income must be adjusted to disregard any Federal or foreign income tax expense that is directly or indirectly taken into account on the taxpayer's applicable financial statement. Section 1.56–1T(d)(3)(iii) of the proposed regulations provides that income tax expense includes the effect of valuation adjustments such as the valuation adjustments related to purchase accounting described in Accounting Principles Board (APB) Opinion No. 16, paragraph 89. In the case of a business combination accounted for as a purchase, APB 16 requires that the book value of the assets acquired be adjusted for the tax effect associated with the difference between the appraised value and the tax basis of the assets acquired.

The proposed regulations also refer to Example (6) of § 1.56–1T(d)(3)(iv). In this example, an asset the book value of which has been reduced in accordance with APB 16 is sold for an amount that produces Federal income tax expense and, under the example, this expense is taken into account as an adjustment in computing adjusted net book income. Many commenters stated that the valuation adjustment under APB 16 should be disregarded in determining adjusted net book income.

Section 1.56–1(d)(3)(iii) of the final regulations contains a clarification of the treatment of valuation adjustments that conforms this provision with Example (6) of § 1.56–1(d)(3)(iv). The APB 16 adjustment to an asset's value on the acquisition of the asset for financial accounting purposes is not the same as a direct or indirect tax expense. Thus, the valuation adjustment on the acquisition of the asset is not treated as a tax expense that increases or decreases adjusted net book income under § 1.56–1(d)(3)(i) of the final regulations. Under § 1.56–1(d)(3)(i), however, income tax expense does include the full tax expense reflected on the applicable financial statement that is associated with any gain or loss on the sale or other disposition of an asset the basis of which was adjusted under paragraph 89 of APB 16.

C. Adjustment for Timing Differences

Numerous commenters stated that the proposed regulations inappropriately prohibit an adjustment for timing differences. A timing difference exists when an item of income or deduction is recognized in different periods for purposes of pre-adjustment alternative minimum taxable income and financial statement income. Timing differences arise because tax accounting and financial accounting principles treat certain items as accruing in different periods.

For example, tax accounting principles may require the immediate recognition of advance payments as income, while financial accounting principles may require the income to be recognized in a later period. In this case, pre-adjustment alternative minimum taxable income includes an item in an earlier taxable period and the taxpayer pays either regular tax or alternative minimum tax on the item in that period. If the item is recognized in a later period for financial accounting purposes (assuming no other adjustments or preferences), the taxpayer may have a book income adjustment attributable to the item, and may again pay tax on that item.

The final regulations provide no adjustment for timing differences. The specific grant of authority to the Secretary under section 56(f)(2)(J) to make adjustments to prevent the omission or duplication of any item was intended to prevent the omission of any item from adjusted net book income and the duplication of any item in adjusted net book income. Because income resulting from a timing difference is reported in adjusted net book income only once, there is no duplication of adjusted net book income to be adjusted under section 56(f)(2)(J).

Further, any imposition of alternative minimum tax resulting from timing differences is mitigated by the minimum tax credit of section 53 of the Code. Thus, a taxpayer that has paid alternative minimum tax because of a book income adjustment will have a minimum tax credit, with an indefinite carryforward, available to offset any future regular tax liability.

D. Adjustment for Items Previously Taxed as Subpart F Income

Section 1.56–1T(b)(2)(iv) of the proposed regulations includes the earnings of another corporation in the net book income of the taxpayer when (1) the two corporations are not members of a consolidated group, and (2) the taxpayer must include dividends or other amounts with respect to the earnings of the other corporation in its gross income. This rule applies to amounts included in gross income under section 951. For example, assume a taxpayer includes in its taxable income the subpart F income of another corporation in a year in which no actual distributions are made. Under the general rule of § 1.56–1T(b)(2)(iv) of the proposed regulations, the amount of the subpart F inclusion is included in adjusted net book income. If in the next year a distribution qualifying under section 959 as previously taxed income is made, the applicable financial statement of the taxpayer will report this dividend as income (assuming consolidated financial statements are not filed). Absent an appropriate adjustment, the same income will be included twice in the adjusted net book income of the taxpayer: First, as subpart F income under § 1.56–1T(b)(2)(iv) of the proposed regulations; and again, as an actual dividend reported on the applicable financial statement. The final regulations provide an adjustment to prevent this duplication to the extent section 959 applies.

E. Adjustment for Acquisitions Accounted for as Poolings of Interests

The proposed regulations do not provide an adjustment to net book income for acquisitions accounted for as a pooling of interests under Opinion 16 of the Accounting Principles Board. When a business combination is accounted for as a pooling of interests, the income of the acquired corporation is reflected on its final financial statement. In addition, the financial statement of the acquiring company will reflect both the pre- and post-acquisition income of the acquired company for the year of the combination. The final regulations provide an appropriate adjustment under § 1.56–1(d)(4)(vi) to prevent this duplication of income items in the net book income of two taxpayers.

F. Adjustment for Certain Deferred Foreign Taxes

Section 1.56–1T(d)(3)(i) of the proposed regulations requires net book income to be adjusted to disregard any Federal income taxes or any income, war profits, or excess profits taxes imposed by any foreign country or possession of the United States, that are directly or indirectly taken into account on the taxpayer's applicable financial statement. Taxes taken into account on the applicable financial statement include both current and deferred income tax. Section 1.56–1T(d)(3)(ii) of the proposed regulations provides that net book income is not adjusted for taxes imposed by a foreign country or possession of the United States if the taxpayer chooses to deduct rather than to take a foreign tax credit with respect to these taxes. The taxes that are not added back are limited to the amount of foreign taxes the taxpayer deducts in the current taxable year under section 164(a).

Some commenters were concerned about the treatment of deferred foreign taxes that are deducted on the applicable financial statement and are therefore added back in computing adjusted net book income. The commenters stated that there should be a corresponding adjustment reducing net book income if, in the year these taxes are actually paid, the taxpayer deducts the taxes, rather than taking them as a foreign tax credit. Thus, § 1.56–1(d)(4)(vii) of the final regulations allows a deduction from net book income for foreign taxes that the taxpayer deducts in the current year under section 164(a) to the extent that these taxes were added back to net book income in computing the book income adjustment for a prior year.

G. Adjustment for Taxpayers Subject to Section 512

Section 1007(a)(2) of the Technical and Miscellaneous Revenue Act of 1988 amended section 55(b)(2) of the Code to provide that if a taxpayer is subject to regular tax on an income base other than taxable income, then that taxpayer also must determine its alternative minimum tax on that income base. A taxpayer subject to section 512 determines its regular tax based on its unrelated business taxable income (UBTI), as defined in section 512(a) of the Code.

Section 1.56–1(d)(8) of the final regulations therefore provides that the adjusted net book income of an organization subject to tax under subchapter F of chapter 1 of the Code (sections 501 through 528) shall exclude all items of income other than those defined as UBTI in section 512(a) of the Code, and all items of deduction and expense other than those associated with income items included in UBTI.

IV. Other Issues

When the proposed regulations were published, the Internal Revenue Service invited public comments on the proposed regulations and any other issues arising under section 56(f). Although not all of the comments that were received are discussed in this preamble, all comments were considered in drafting these regulations. The Service appreciates the submission of those comments.

Special Analyses

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

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

Drafting Information

The principal author of these regulations is Nicholas G. Bogos of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulation, on matters of both substance and style.

List of Subjects

26 CFR 1.01—1.58–8

Credits, Income taxes, Tax liability, Tax rates.

26 CFR 1.6654–1—1.6696–1

Additions to tax, Administration and procedure, Income taxes, Penalties.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulation

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by:

(a) Removing the following citation: "Section 1.56–1T is also issued under 26 U.S.C. 56(f)(2)(H)" and

(b) Adding the following citation:

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

Section 1.56–1 is also issued under 26 U.S.C. 56(f)(2)(H).

§ 1.56–0T [Redesignated as § 1.56–0]

Para. 2. 26 CFR part 1 is amended by redesignating § 1.56–0T as § 1.56–0 and removing the word "(temporary)" from the end of the section heading.

Para. 3. Section 1.56–0 (as redesignated) is revised to read as follows:

§ 1.56–0 Table of contents to § 1.56–1, adjustment for book income of corporations.

(a) Computation of the book income adjustment.
(1) In general.
(2) Taxpayers subject to the book income adjustment.
(3) Consolidated returns.
(4) Examples.
(b) Adjusted net book income.
(1) In general.
(2) Net book income.
(i) In general.
(ii) Measures of net book income.
(iii) Tax-free transactions and tax-free income.
(iv) Treatment of dividends and other amounts.
(3) Additional rules for consolidated groups.
(i) consolidated adjusted net book income.
(ii) Consolidated net book income.
(iii) Consolidated pre-adjustment alternative minimum taxable income.
(iv) Cross references.
(4) Computation of adjusted net book income when taxable year and financial accounting year differ.
(i) In general.
(ii) Estimating adjusted net book income.
(iii) Election to compute adjusted net book income based on the financial statement for the year ending within the taxable year.
(A) In general.
(B) Time of making election.
(C) Eligibility to make and manner of making election.
(D) Election or revocation of election made on an amended return.
(iv) Quarterly statement filed with the Securities and Exchange Commission (SEC).
(5) Computation of net book income using current earnings and profits.
(i) In general.
(ii) Current earnings and profits of a consolidated group.
(6) Additional rules for computation of net book income of a foreign corporate taxpayer.
(i) Adjusted net book income of a foreign taxpayer.
(ii) Effectively connected net book income of a foreign taxpayer.
(A) In general.
(B) Certain exempt amounts.
(iii) Computation of net book income of a foreign taxpayer using current earnings and profits.
(7) Examples.
(c) Applicable financial statement.
(1) In general.
(i) Statement required to be filed with the Securities and Exchange Commission (SEC).
(ii) Certified audited financial statement.
(iii) Financial statement provided to a government regulator.
(iv) Other financial statements.
(v) Required use of current earnings and profits.
(2) Election to treat net book income as equal to current earnings and profits for the taxable year.
(i) In general.
(ii) Time of making election.
(iii) Eligibility to make and manner of making election.
(iv) Election by common parent of consolidated group.
(v) Election or revocation of election made on an amended return.
(3) Priority among statements.
(i) In general.
(ii) Special priority rules for use of certified audited financial statements and other financial statements.
(iii) Priority among financial statements provided to a government regulator.
(iv) Statements of equal priority.
(A) In general.
(B) Exceptions to the general rule in paragraph (c)(3)(iv)(A).
(4) Use of financial statement for a substantial non-tax purpose.
(5) Special rules.
(i) Applicable financial statement of related corporations.
(A) Applicable financial statement of a consolidated group.
(B) Special rule for statements of equal priority.
(C) Special rule for related corporations.
(D) Anti-abuse rule.
(ii) Applicable financial statement of foreign corporation with a United States trade or business.
(A) In general.
(B) Special rules for applicable financial statement of a trade or business of a foreign taxpayer.
(C) Special rule for statements of equal priority.
(D) Anti-abuse rule.
(iii) Supplement or amendment to an applicable financial statement.
(A) Excluding a restatement of net book income.
(B) Restatement of net book income.
(6) Examples.
(d) Adjustments to net book income.
(1) In general.
(2) Definitions.
(i) Historic practice.
(ii) Accounting literature.
(3) Adjustments for certain taxes.
(i) In general.
(ii) Exception for certain foreign taxes.
(iii) Certain valuation adjustments.
(iv) Examples.
(4) Adjustments to prevent omission or duplication.
(i) In general.
(ii) Special rule for depreciating an asset below is cost.
(iii) Consolidated group using current earnings and profits.
(iv) Restatement of a prior year's applicable financial statement.
(A) In general.
(B) Reconciliation of owner's equity in applicable financial statements.
(B) Use of different priority applicable financial statements in consecutive taxable years.
(D) First successor year defined.
(E) Exceptions.
(v) Adjustment for items previously taxed as subpart F income.
(vi) Adjustment for pooling of interests.
(vii) Adjustment for certain deferred foreign taxes.
(viii) Examples.
(5) Adjustments resulting from disclosure.
(i) Adjustment for footnote disclosure or other supplementary information.
(A) In general.
(B) Disclosures not specifically authorized in the accounting literature.
(ii) Equity adjustments.
(A) In general.
(B) Definition of equity adjustment.
(iii) Amount disclosed in an accountant's opinion.
(iv) Accounting method changes that result in cumulative adjustments to the current year's applicable financial statement.
(A) In general.
(B) Exception.
(v) Examples.
(6) Adjustments applicable to related corporations.
(i) Consolidated returns.
(A) In general.
(B) Corporations included in the consolidated Federal income tax return but excluded from the applicable financial statement.
(C) Corporations included in the applicable financial statement but excluded from the consolidated tax return.
(ii) Adjustment under the principles of section 482.
(iii) Adjustment for dividends received from section 936 corporations.
(A) In general.
(B) Treatment as foreign taxes.
(C) Treatment of taxes imposed on section 936 corporations.
(iv) Adjustment to net book income on sale of certain investments.
(v) Examples.
(7) Adjustments for foreign taxpayers with a United States trade or business.
(i) In general.
(ii) Example.
(8) Adjustment for corporations subject to subchapter F.
(e) Special rules.
(1) Cooperatives.
(2) Alaska Native Corporations.
(3) Insurance companies.
(4) Estimating the net book income adjustment for purposes of estimated tax liability.

§ 1.56–1T [Redesignated as § 1.56–1]

Para. 4. 26 CFR part 1 is amended by redesignating § 1.56–1T as § 1.56–1 and

removing the word "(temporary)" from the end of the section heading.

Para. 5. Section 1.56–1 (as redesignated) is revised to read as follows:

1.56–1 Adjustment for the book income of corporations.

(a) *Computation of the book income adjustment*—(1) *In general.* For taxable years beginning in 1987, 1988, and 1989, the alternative minimum taxable income of any taxpayer is increased by the book income adjustment described in this paragraph (a)(1). The book income adjustment is 50 percent of the excess, if any, of—

(i) The adjusted net book income (as defined in paragraph (b) of this section) of the taxpayer, over

(ii) The pre-adjustment alternative minimum taxable income for the taxable year.

For purposes of this section, pre-adjustment alternative minimum taxable income is alternative minimum taxable income, determined without regard to the book income adjustment or the alternative tax net operating loss determined under section 56(a)(4). See paragraph (a)(4) of this section for examples relating to the computation of the income adjustment.

(2) *Taxpayers subject to the book income adjustment.* The book income adjustment is applicable to any corporate taxpayer that is not an S corporation, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment company (REMIC).

(3) *Consolidated returns.* In the case of a taxpayer that is a consolidated group, the book income adjustment equals 50 percent of the amount, if any, by which its consolidated adjusted net book income (as defined in paragraph (b)(3)(i) of this section) exceeds its consolidated pre-adjustment alternative minimum taxable income (as defined in paragraph (b)(3)(iii) of this section). See paragraph (a)(4), Example (4) of this section. For purposes of this section, with respect to any taxable year the term "consolidated group" has the same meaning as in § 1.1502–1T. See paragraph (d)(6) of this section for rules relating to adjustments attributable to related corporations.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A has adjusted net book income of $200 and pre-adjustment alternative minimum taxable income of $100. A must increase its pre-adjustment alternative minimum taxable income by $50 (($200–$100) × .50).

Example (2). Corporation B has adjusted net book income of $200 and pre-adjustment alternative minimum taxable income of $300. B does not have a book income adjustment for the taxable year because its adjusted net book income does not exceed its pre-adjustment alternative minimum taxable income.

Example (3). Corporation C has adjusted net book income of negative $200 and pre-adjustment alternative minimum taxable income of negative $300. C must increase its pre-adjustment alternative minimum taxable income by $50 ([−$200 − (−$300)] × .50). Thus, C's alternative minimum taxable income determined after the book income adjustment, but without regard to the alternative tax net operating loss, is negative $250 (−$300 + $50).

Example (4). Corporations D and E are a consolidated group for tax purposes. D and E do not have a consolidated financial statement. On their separate financial statements D and E have adjusted net book income of $100 and $50 respectively, and pre-adjustment alternative minimum taxable income of $50 and $80 respectively. Assuming there are no intercompany transactions, DE's consolidated adjusted net book income (as defined in paragraph (b)(3)(i) of this section) is $150 and its consolidated pre-adjustment alternative minimum taxable income (as defined in paragraph (b)(3)(iii) of this section) is $130. DE must increase its consolidated pre-adjustment alternative minimum taxable income by $10 (($150 − $130) × .50).

(b) *Adjusted net book income*—(1) *In general.* "Adjusted net book income" means the net book income (as defined in paragraph (b)(2) of this section) adjusted as provided in paragraph (d) of this section. Except as provided in paragraph (d) of this section, a taxpayer may not make any adjustments to net book income.

(2) *Net book income*—(i) *In general.* "Net book income" means the income or loss for a taxpayer reported in the taxpayer's applicable financial statement (as defined in paragraph (c) of this section). Net book income must take into account all items of income, expense, gain and loss of the taxable year, including extraordinary items, income or loss from discontinued operations, and cumulative adjustments resulting from accounting method changes. Net book income is not reduced by any distributions to shareholders. See paragraph (b)(5)(i) of this section for a similar rule for corporations using current earnings and profits to compute net book income.

(ii) *Measures of net book income.* Except as described in paragraph (b)(5) of this section, net book income is disclosed on the income statement included in a taxpayer's applicable financial statement. Such income statement must reconcile with the balance sheet, if any, that is included in the applicable financial statement and must be used in computing changes in owner's equity reflected in the applicable financial statement. See paragraph (c) of this section for the definition of an applicable financial statement.

(iii) *Tax-free transactions and tax-free income.* Net book income includes income or loss that is reported on a taxpayer's applicable financial statement regardless of whether such income or loss is recognized, realized or otherwise taken into account for other Federal income tax purposes. See paragraph (b)(7), Examples (1), (2) and (3) of this section.

(iv) *Treatment of dividends and other amounts.* The adjusted net book income of a taxpayer shall include the earnings of other corporations not filing a consolidated Federal income tax return with the taxpayer only to the extent that amounts are required to be included in the taxpayer's gross income under chapter 1 of the Code with respect to the earnings of such other corporation (*e.g.*, dividends received from such corporation and amounts included under subpart A). See paragraph (b)(7), Examples (4) and (5) of this section.

(3) *Additional rules for consolidated groups*—(i) *Consolidated adjusted net book income.* "Consolidated adjusted net book income" means the consolidated net book income (as defined in paragraph (b)(3)(ii) of this section), after taking into account the adjustments under the rules of paragraph (d) of this section.

(ii) *Consolidated net book income.* Consolidated net book income is the income or loss of a consolidated group as reported on its applicable financial statement as defined in paragraph (c)(5) of this section.

(iii) *Consolidated pre-adjustment alternative minimum taxable income.* Consolidated pre-adjustment alternative minimum taxable income is the taxable income of the consolidated group for the taxable year, determined with the adjustments provided in sections 56 and 58 (except for the book income adjustment and the alternative tax net operating loss determined under section 56(a)(4)) and increased by the preference items described in section 57.

(iv) *Cross references.* See paragraph (c)(5) of this section for rules relating to the applicable financial statement of related corporations and paragraph (d)(6) of this section for rules relating to adjustments attributable to related corporations.

(4) *Computation of adjusted net book income when taxable year and financial accounting year differ*—(i) *In general.* If a taxpayer's applicable financial

statement is prepared on the basis of a financial accounting year that differs from the year that the taxpayer uses for filing its Federal income tax return, adjusted net book income must be computed either—

(A) By including a pro rata portion of the adjusted net book income for each financial accounting year that includes any part of the taxpayer's taxable year (see paragraph (b)(7), Example (6) of this section), or

(B) In accordance with the election described in paragraph (b)(4)(iii) of this section.

(ii) *Estimating adjusted net book income.* If a taxpayer is using the pro rata approach described in paragraph (b)(4)(i)(A) of this section and an applicable financial statement for part of the taxpayer's taxable year is not available when the taxpayer files its Federal income tax return, the taxpayer must make a reasonable estimate of adjusted net book income for the pro rata portion of the taxable year. If the actual pro rata portion of adjusted net book income that results from the taxpayer's applicable financial statement for the financial accounting year exceeds the estimate of adjusted net book income used on the original tax return and results in additional tax liability, the taxpayer must file an amended Federal income tax return reflecting such additional liability. The amended return must be filed within 90 days of the date the previously unavailable applicable financial statement is available.

(iii) *Election to compute adjusted net book income based on the financial statement for the year ending within the taxable year*—(A) *In general.* If a taxpayer's accounting year ends five or more months after the end of its taxable year, the taxpayer may elect to compute adjusted net book income based on the net book income reported on the applicable financial statement prepared for the financial accounting year ending within the taxpayer's taxable year. See paragraph (b)(7), Examples (7) and (8) of this section. For purposes of this paragraph (b)(4)(iii)(A), if a taxpayer uses a 52–53 week year for financial accounting or Federal income tax purposes, the last day of such year shall be deemed to occur on the last day of the calendar month ending closest to the end of such year.

(B) *Time of making election.* An election under this paragraph (b)(4)(iii) is made by attaching the statement described in paragraph (b)(4)(iii)(C) of this section to the taxpayer's Federal income tax return for the first taxable year in which the taxpayer is eligible to make the election. An election under this paragraph (b)(4)(iii) that is made prior to the first taxable year in which the taxpayer is eligible to make the election (as determined under paragraph (b)(4)(iii)(C) of this section) is valid unless revoked pursuant to paragraph (b)(4)(iii)(D) of this section.

(C) *Eligibility to make and manner of making election.* A taxpayer is eligible to make the election specified in paragraph (b)(4)(iii)(A) of this section in the first taxable year beginning after 1986 in which—

(*1*) The taxpayer has an accounting year ending five or more months after the end of its taxable year,

(*2*) The use of the pro rata approach described in paragraph (b)(4)(i)(A) of this section produces an excess of adjusted net book income over pre-adjustment alternative minimum taxable income, as defined in paragraph (a)(1) of this section, and

(*3*) The taxpayer has an excess of tentative minimum tax over regular tax for the taxable year, as defined in section 55(a), or is liable for the environmental tax imposed by section 59A.

Thus, a taxpayer is not required to evaluate the merits of an election to compute its adjusted net book income based on the applicable financial statement prepared for the financial accounting year ending within the taxpayer's taxable year unless the taxpayer, when using the pro rata approach described in paragraph (b)(4)(i)(A) of this section, either has an excess of tentative minimum tax over its regular tax or is liable for the environmental tax imposed by section 59A. The election statement must set forth the electing taxpayer's name, address, taxpayer identification number, taxable year and financial accounting year. An election under this paragraph (b)(4)(iii) will apply for the taxable year when initially made and for all subsequent years until revoked with the consent of the District Director.

(D) *Election or revocation of election made on an amended return.* An election under paragraph (b)(4)(iii) of this section may be made by attaching the statement described in paragraph (b)(4)(iii)(C) to an amended return for the first taxable year in which the taxpayer is eligible to make the election. An election under paragraph (b)(4)(iii) of this section that was made prior to the first taxable year in which the taxpayer was eligible to make the election, as determined under paragraph (b)(4)(iii)(C) of this section, may be revoked by filing an amended return for the taxable year in which the election was initially made. However, an election made or revoked on an amended return under paragraph (b)(4)(iii) of this section will be allowed only if the amended return is filed no later than December 14, 1990.

(iv) *Quarterly statement filed with the Securities and Exchange Commission (SEC).* A taxpayer with different financial accounting and taxable years that is required to file both annual and quarterly financial statements with the SEC may not aggregate quarterly statements filed with the SEC in order to obtain a statement covering the taxpayer's taxable year. See paragraph (b)(7), Example (9) of this section. See paragraph (c)(3)(iv)(B)(*1*) of this section for priority rules relating to statements required to be filed with the SEC.

(5) *Computation of net book income using current earnings and profits*—(i) *In general.* If a taxpayer does not have an applicable financial statement, or only has a statement described in paragraph (c)(1)(iv) of this section and makes the election described in paragraph (c)(2) of this section, net book income for purposes of this section is equal to the taxpayer's current earnings and profits for its taxable year Generally, a taxpayer's current earnings and profits is computed under the rules of section 312 and the regulations thereunder. Current earnings and profits therefore is reduced by Federal income tax expense and any foreign tax expense for foreign taxes eligible for the foreign tax credit under section 27 of the Code. Current earnings and profits is then adjusted as described in paragraph (d) of this section to arrive at adjusted net book income. No adjustment is made under paragraph (d) of this section, however, for any adjustment that is already reflected in current earnings and profits. See paragraph (d)(3) of this section for adjustments to net book income with respect to certain taxes. For purposes of this section, current earnings and profits is not reduced by any distribution to shareholders. See paragraph (d)(3)(iv), Example (5) of this section.

(ii) *Current earnings and profits of a consolidated group.* For purposes of this paragraph (b)(5), the current earnings and profits of a consolidated group is the aggregate of the current earnings and profits of each member of the group, as determined pursuant to paragraph (d)(4)(iii) of this section.

(6) *Additional rules for computation of net book income of a foreign corporate taxpayer*—(i) *Adjusted net book income of a foreign taxpayer.* Adjusted net book income of a foreign corporate taxpayer ("foreign taxpayer") means the effectively connected net book income

(as defined in paragraph (b)(6)(ii) of this section) of the foreign taxpayer, after taking into account the adjustments under the rules of paragraph (d) of this section.

(ii) *Effectively connected net book income of a foreign taxpayer*—(A) *In general.* Effectively connected net book income of a foreign taxpayer is the income or loss reported in its applicable financial statement (as defined in paragraph (c)(5)(ii) of this section), but only to the extent that such amount is attributable to items of income or loss that would be treated as effectively connected with the conduct of a trade or business in the United States by the foreign taxpayer as determined under either the principles of section 864(c) and the regulations thereunder, or any other applicable provision of the Internal Revenue Code of 1986. Thus, if for tax purposes an item of income or loss is treated as effectively connected with the conduct of a trade or business in the United States, then the income or loss reported on the foreign taxpayer's applicable financial statement attributable to such item is effectively connected net book income. See paragraph (b)(7), Examples (11), (12) and (13) of this section.

(B) *Certain exempt amounts.* Effectively connected net book income does not include any amount attributable to an item that is exempt from United States taxation under sections 883, 892, 894 or 895 of the Internal Revenue Code of 1986. See paragraph (b)(7), Examples (14) and (15) of this section.

(iii) *Computation of net book income of a foreign taxpayer using current earnings and profits.* If a foreign taxpayer does not have an applicable financial statement or only has a statement described in paragraph (c)(1)(iv) of this section and makes the election described in paragraph (c)(2) of this section, net book income for purposes of this section is equal to the foreign taxpayer's current earnings and profits that are attributable to income or loss that is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States. Effectively connected current earnings and profits are computed under the rules of section 884(d) and the regulations thereunder, relating to effectively connected earnings and profits for purposes of computing the branch profits tax, but without regard to the exceptions set forth under section 884(d)(2)(B) through (E). For purposes of this section, effectively connected current earnings and profits are not reduced by any remittances or distributions. Effectively connected current earnings and profits takes into account Federal income tax expense and any foreign tax expense; however, see paragraph (d)(3) of this section for adjustments to net book income with respect to certain taxes.

(7) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A owns 100 percent of corporation B and the AB affiliated group files a consolidated Federal income tax return. AB uses a calendar year for both financial accounting and tax purposes. During 1987, A transfers all of its stock in B for stock on an acquiring corporation in a transaction described in section 368(a)(1)(B). Although AB recognizes no taxable gain on the transfer pursuant to section 354, gain from the transfer is reported on AB's 1987 applicable financial statement. Pursuant to paragraph (b)(2)(iii) of this section, AB's net book income includes the book gain attributable to the transfer.

Example (2). Corporation C uses a calendar year for both financial accounting and tax purposes. C adopted a plan of liquidation prior to August 1, 1986. On June 1, 1987, C makes a bulk sale of all of its assets subject to liabilities and completely liquidates. Pursuant to section 633(c) of the Tax Reform Act of 1986 (the Act), section 337, as in effect prior to its amendment by the Act, applies. Thus, C will generally not recognize taxable gain upon the bulk sale. However, C's applicable financial statement for the period January 1, 1987 through June 1, 1987, reports net book income of $500, $400 of which is attributable to the bulk sale of assets on June 1, 1987. Pursuant to paragraph (b)(2)(iii) of this section, C's net book income includes the amount attributable to the bulk sale. Thus, assuming C has no other adjustments to net book income, its adjusted net book income for the period January 1, 1987 through June 1, 1987, is $500.

Example (3). Corporation Z has a large inventory of marketable securities. On its applicable financial statement, Z marks these securities to market, i.e., as they appreciate in value, Z restates their value on its balance sheet to their fair market value, and increases the income on its income statement by that amount. Pursuant to paragraph (b)(2)(iii) of this section, the adjusted net book income of Z includes the income from the valuation adjustment.

Example (4). Corporation D owns 100 percent of E, a controlled foreign corporation as defined in section 957. Both D and E use a calendar year for financial accounting and tax purposes. D's applicable financial statement includes E. Pursuant to section 951, D includes $100 of E's subpart F income in its gross income for 1987. Although D's applicable financial statement is adjusted to eliminate E's income, pursuant to paragraph (b)(2)(iv) of this section, D's adjusted net book income for 1987 includes the $100 of gross income included under section 951.

Example (5). Corporation F owns 20 percent of G, a foreign corporation. Both F and G use a calendar year for financial accounting and tax purposes. During 1987, G pays F a $100 dividend. F's applicable financial statement accounts for F's investment in G by the equity method. F is eligible for a deemed paid foreign tax credit of $30 with respect to the dividend from G and must include the $130 in gross income pursuant to section 78 of the Code. Although F's applicable financial statement is adjusted to eliminate F's income from G under the equity method, pursuant to paragraph (b)(2)(iv) of this section, F's adjusted net book income for 1987 includes the $130 of gross income recognized with respect to the dividend from G.

Example (6). Corporation H files its Federal income tax return on a calendar year basis. However, its applicable financial statement is based on a fiscal year ending June 30. H does not make the election described in paragraph (b)(4)(iii) of this section. Pursuant to paragraph (b)(4)(i) of this section, H's adjusted net book income for calendar year 1987 is computed by adding 50 percent of adjusted net book income from the applicable financial statement for the year ending June 30, 1987 and 50 percent of adjusted net book income from the applicable financial statement for the year ending June 30, 1988.

Example (7). Corporation J files its Federal income tax returns for 1987, 1988, and 1989 on a calendar year basis. However, its applicable financial statement is based on a year ending May 31. Pursuant to paragraph (b)(4)(iii) of this section, J elects in 1987 to compute its adjusted net book income by using the applicable financial statement for the fiscal year ending May 31, 1987. Unless the District Director consents to revocation of the election, for calendar year 1988 or 1989, J's adjusted net book income for 1988 and 1989 is determined from its applicable financial statements for the years ending May 31, 1988 and May 31, 1989, respectively.

Example (8). The facts are the same as in Example (7), except that J's applicable financial statement is based on a year ending April 30. Since April 30, is less than 5 months after December 31, the end of J's taxable year, J is not permitted to make the election described in paragraph (b)(4)(iii) of this section.

Example (9). The facts are the same as in Example (8), except H files quarterly and annual financial statements with the Securities and Exchange Commission (SEC). The fourth quarter statement is included as a footnote to the annual statement that it files with the SEC. Pursuant to paragraph (b)(4)(iv) of this section, H may not determine its net book income by aggregating its four quarterly statements for 1987. Thus, H's net book income is computed as described in Example (8).

Example (10). Corporation I is a United States corporation with a 100 percent owned subsidiary, J, a foreign sales corporation (FSC). I uses a calendar year for both financial accounting and tax purposes. Income from J is consolidated in I's applicable financial statement. I and J do not file a consolidated tax return. In 1987, J pays a dividend to I of $100 out of J's earnings and profits. For purposes of this example, it is assumed that the distribution is made out of the profits attributable solely to foreign trade

income determined through use of the administrative pricing rules of section 925(a)(1) and (2). Accordingly, the distribution is eligible for the 100 percent dividends received deduction under section 245(c). Although I's applicable financial statement is adjusted to eliminate income or loss attributable to J, the entire amount of the dividend distribution must be included in I's adjusted net book income pursuant to paragraph (b)(2)(iv) of this section.

Example (11). Corporation K is a foreign corporation incorporated under the laws of country X. K uses a calendar year for both financial accounting and tax purposes. In 1987, K actively conducts a real estate business, L, in the United States. The financial statement that is used as K's applicable financial statement (as determined under paragraph (c)(5)(ii) of this section) discloses total net income of $150. Of this amount, $100 is attributable to L's real estate business and $50 is attributable to dividends paid to L from its investment in certain securities. The securities investment is not connected with L's real estate business. Under the rules of section 864, only $100 is effectively connected to the conduct of a trade or business in the United States. Thus, K's effectively connected net book income for 1987 equals $100.

Example (12). Assume the same facts as in Example (11) except that K's applicable financial statement also discloses $75 attributable to investment real property located in the United States, so that the net income amount reported on the financial statement equals $225. The $75 of income is not effectively connected with the conduct of a trade or business in the United States. K, for regular tax purposes, makes an election under section 882(d) to treat this income as effectively connected with the conduct of a trade or business in the United States. As a result, K's effectively connected net book income for 1987 equals $175 ($100+$75).

Example (13). Corporation M is a foreign corporation that actively conducts a manufacturing business, N, in the United States. M is a calendar year taxpayer for both financial accounting and tax purposes. In 1987, the financial statement that is used as M's applicable financial statement (as determined under paragraph (c)(5)(ii) of this section) reflects an anticipated loss from the sale of a division of N. For Federal income tax purposes the loss is not recognized in 1987, but rather is recognized in 1988 when M sells the division. In determining M's effectively connected net book income for 1987, the anticipated loss reported on M's 1987 applicable financial statement is taken into account because the reported loss is effectively connected to the conduct of a trade or business in the United States under the principles of section 864.

Example (14). Corporation O is a foreign corporation that is engaged in the international shipping business. O is incorporated under the laws of X. O is a calendar year taxpayer for both financial accounting and tax purposes. In 1987, O actively conducts a shipping business, P, within the United States. The statement that is used in 1987 as O's applicable financial statement (as determined under paragraph (c)(5)(ii) of this section) discloses income of $100 that is attributable to P's operation of ships in international traffic. Under section 864, $50 is effectively connected with the conduct of a trade or business in the United States. However, the United States income tax treaty with X exempts from United States income tax any income derived by a resident of X from the operation of ships in international traffic. Thus, pursuant to paragraph (b)(6)(ii)(B) of this section, no amount of P's income is includible in O's effectively connected net book income.

Example (15). Assume the same facts as in Example (14) except that there is no United States income tax treaty with X. However, X by statute exempts United States citizens and United States corporations from tax imposed by X on gross income derived from the operation of a ship or ships in international traffic. Under section 883(a), P's income of $50 that is effectively connected with the conduct of a trade or business in the United States is exempt from United States taxation. Thus, pursuant to paragraph (b)(6)(ii)(B) of this section, no amount of P's income is includible in O's effectively connected net book income.

(c) *Applicable Financial Statement*—(1) *In general.* A taxpayer's applicable financial statement is the statement described in this paragraph (c)(1) that has the highest priority, as determined under paragraph (c)(3) of this section. Generally, an applicable financial statement includes an income statement, a balance sheet (listing assets, liabilities, and owner's equity including changes thereto), and other appropriate information. An income statement alone may constitute an applicable financial statement for purposes of this section if the other materials described in this paragraph are not prepared or used by the taxpayer. However, an income statement that does not reconcile with financial materials otherwise issued will not qualify as an applicable financial statement. For purposes of determining the book income adjustment, the following may be considered applicable financial statements (subject to the rules relating to priority among statements under paragraph (c)(3) of this section)—

(i) *Statement required to be filed with the Securities and Exchange Commission (SEC).* A financial statement that is required to be filed with the Securities and Exchange Commission.

(ii) *Certified audited financial statement.* A certified audited financial statement that is used for credit purposes, for reporting to shareholders or for any other substantial non-tax purpose. Such a statement must be accompanied by the report of an independent (as defined in the American Institute of Certified Public Accountants Professional Standards, Code of Professional Conduct, Rule 101 and its interpretations and rulings) Certified Public Accountant or, in the case of a foreign corporation, a similarly qualified and independent professional who is licensed in any foreign country. A financial statement is "certified audited" for purposes of this section if it is—

(A) Certified to be fairly presented (an unqualified or "clean" opinion),

(B) Subject to a qualified opinion that such financial statement is fairly presented subject to a concern about a contingency (a qualified "subject to" opinion),

(C) Subject to a qualified opinion that such financial statement is fairly presented, except for a method of accounting with which the accountant disagrees (a qualified "except for" opinion), or

(D) Subject to an adverse opinion, but only if the accountant discloses the amount of the disagreement with the statement.

Any other statement or report, such as a review statement or a compilation report that is not subject to a full audit is not a certified audited statement. See paragraph (c)(3)(iv)(B)(*2*) of this section for a special rule for a statement accompanied by a review report when there are statements of equal priority. See also paragraph (d)(5)(iii) of this section for rules relating to adjustments for information disclosed in an accountant's opinion to a certified audited statement.

(iii) *Financial statement provided to a government regulator.* A financial statement that is required to be provided to the Federal government or any agency thereof (other than the Securities and Exchange Commission), a state government or any agency thereof, or a political subdivision of a state or any agency thereof. An income tax return, franchise tax return or other tax return prepared for the purpose of determining any tax liability that is filed with a Federal, state or local government or agency cannot be an applicable financial statement.

(iv) *Other financial statements.* A financial statement that is used for credit purposes, for reporting to shareholders, or for any other substantial non-tax purpose, even though such financial statement is not described in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(v) *Required use of current earnings and profits.* If a taxpayer does not have a financial statement described in paragraphs (c)(1)(i) through (c)(1)(iv) of this section, the taxpayer does not have an applicable financial statement. In that case, net book income for the

taxable year will be treated as being equal to the taxpayer's current earnings and profits for the taxable year. See paragraph (b)(5) of this section for rules relating to the computation of current earnings and profits for the taxable year. See paragraph (c)(4) of this section for rules relating to use of a financial statement for a substantial non-tax purpose.

(2) *Election to treat net book income as equal to current earnings and profits for the taxable year*—(i) *In general.* If a taxpayer's only financial statement is a statement described in paragraph (c)(1)(iv) of this section, the taxpayer may elect to treat net book income as equal to the taxpayer's current earnings and profits for all taxable years in which the taxpayer is eligible to make the election.

(ii) *Time of making election.* An election under this paragraph (c)(2) is made by attaching the statement described in paragraph (c)(2)(iii) of this section to the taxpayer's Federal income tax return for the first taxable year the taxpayer is eligible to make the election. An election under this paragraph (c)(2), which is made prior to the first taxable year in which the taxpayer is eligible to make the election, as determined under paragraph (c)(2)(iii) of this section, is valid unless revoked pursuant to paragraph (c)(2)(iv) of this section.

(iii) *Eligibility to make and manner of making election.* A taxpayer is eligible to make the election in the first taxable year in which—

(A) The taxpayer has an applicable financial statement described in paragraph (c)(1)(iv) of this section;

(B) The use of this applicable financial statement produces an excess of adjusted net book income over preadjustment alternative minimum taxable income, as defined in paragraph (a)(1) of this section, and

(C) The taxpayer has, as determined under section 55(a), an excess of tentative minimum tax over regular tax for the taxable year, or is liable for the environmental tax imposed by section 59A.

Thus, a taxpayer is not required to evaluate the merits of an election to use its current earnings and profits as its net book income unless the taxpayer, when using an applicable financial statement described in paragraph (c)(1)(iv) of this section, has an excess of tentative minimum tax over its regular tax or is liable for the environmental tax imposed by section 59A. The election statement must set forth the electing taxpayer's name, address and taxpayer identification number, state that the election is being made under the provisions of section 56(f)(3)(B), and state that the only financial statement of the taxpayer is a financial statement described in paragraph (c)(1)(iv) of this section. An election under this paragraph (c)(2) is effective for every taxable year in which the taxpayer does not have a financial statement described in paragraphs (c)(1)(i) through (c)(1)(iii) of this section and may be revoked only with the consent of the District Director. See paragraph (c)(6), Example (1) of this section.

(iv) *Election or revocation of election made on an amended return.* An election under paragraph (c)(2) of this section may be made by attaching the statement described in paragraph (c)(2)(iii) to an amended return for the first taxable year in which the taxpayer is eligible to make the election. An election under paragraph (c)(2) of this section that was made prior to the first taxable year in which the taxpayer was eligible to make the election, as determined under paragraph (c)(2)(iii) of this section, may be revoked by filing an amended return for the taxable year in which the election was initially made. However, an election made or revoked on an amended return will be allowed only if the amended return is filed no later than December 14, 1990.

(v) *Election by common parent of consolidated group.* The election by the common parent of a consolidated group to treat net book income as equal to current earnings and profits shall bind all members of the group. This rule shall not apply in the case of any taxpayer that first, has made the election on a return filed before August 16, 1990, second, applied the election only to those members of the group that are themselves eligible to make the election, and third, properly consolidated the adjusted net book income of the group. In order to change its election to apply to all members of the group, a taxpayer must attach a statement to an amended return for the first taxable year the taxpayer is eligible to make the election. However, an election made on an amended return under this paragraph (c)(2)(iv) will be allowed only if the amended return is filed no later than December 14, 1990. See paragraph (b)(5)(ii) of this section regarding the current earnings and profits of a consolidated group. See paragraph (d)(4)(iii) of this section for adjustments that apply when a consolidated group uses current earnings and profits to compute its net book income.

(3) *Priority among statements*—(i) *In general.* If a taxpayer has more than one financial statement described in paragraph (c)(1)(i) through (c)(1)(iv) of this section, the taxpayer's applicable financial statement is the statement with the highest priority. Priority is determined in the following order—

(A) A financial statement described in paragraph (c)(1)(i) of this section.

(B) A certified audited statement described in paragraph (c)(1)(ii) of this section.

(C) A financial statement required to be provided to a Federal or other government regulator described in paragraph (c)(1)(iii) of this section.

(D) Any other financial statement described in paragraph (c)(1)(iv) of this section.

For example, corporation A, which uses a calendar year for both financial accounting and tax purposes, prepares a financial statement for calendar year 1987 that is provided to a state regulator and an unaudited financial statement that is provided to A's creditors. The statement provided to the state regulator is A's financial statement with the highest priority and thus is A's applicable financial statement.

(ii) *Special priority rules for use of certified audited financial statements and other financial statements.* In the case of financial statements described in paragraphs (c)(1)(ii) and (c)(1)(iv) of this section, within each of these categories the taxpayer's applicable financial statement is determined according to the following priority—

(A) A statement used for credit purposes,

(B) A statement used for disclosure to shareholders, and

(C) Any other statement used for other substantial non-tax purposes.

For example, corporation B uses a calendar year for both financial accounting and tax purposes. B prepares a financial statement for calendar year 1987 that it uses for credit purposes and prepares another financial statement for calendar year 1987 that it uses for disclosure to shareholders. Both financial statements are unaudited. The statement used for credit purposes is B's financial statement with the highest priority and thus is B's applicable financial statement.

(iii) *Priority among financial statements provided to a government regulator.* In the case of two or more financial statements described in paragraph (c)(1)(iii) of this section (relating to financial statements required to be provided to a Federal or other governmental regulator) that are of equal priority, the taxpayer's applicable financial statement is determined according to the following priority—

(A) A statement required to be provided to the Federal government or any of its agencies,

(B) A statement required to be provided to a State government or any of its agencies, and

(C) A statement required to be provided to any subdivision of a state or any agency of a subdivision.

(iv) *Statements of equal priority*—(A) *In general.* Except as provided in paragraph (c)(3)(iv)(B) and paragraph (c)(5)(i)(B) of this section, if a taxpayer has two or more financial statements of equal priority (determined under paragraphs (c)(3)(i), (c)(3)(ii) and (c)(3)(iii) of this section), the taxpayer's applicable financial statement is the statement that results in the greatest amount of adjusted net book income.

(B) *Exceptions to the general rule in paragraph (c)(3)(iv)(A)—(1)* In the case of two or more financial statements described in paragraph (c)(1)(i) of this section (relating to financial statements required to be filed with the SEC) that are of equal priority, a certified audited financial statement has a higher priority than an unaudited financial statement.

(2) In the case of two or more financial statements described in paragraph (c)(1)(iv) of this section (relating to other financial statements) that are of equal priority, a financial statement accompanied by an auditor's "review report" has a higher priority than another financial statement of otherwise equal priority. For purposes of this section, an auditor's review report is defined in the American Institute of Certified Public Accountant Professional Standards, AR section 100.32. See paragraph (c)(6), Examples (2) and (3) of this section.

(4) *Use of financial statement for a substantal non-tax purpose.* In order to be an applicable financial statement for purposes of computing the book income adjustment, a financial statement described in paragraph (c)(1)(ii) or (c)(1)(iv) must be used by the taxpayer for credit purposes, for disclosure to shareholders, or for any other substantial non-tax purpose. A financial statement is used by a taxpayer if the taxpayer reasonably anticipates that users of the statement will rely on it for non-tax purposes. Thus, a financial statement used for the purpose of computing the book income adjustment is not an applicable financial statement even if it is provided to shareholders or creditors, unless the taxpayer reasonably anticipates that users of the statement will rely on it for non-tax purposes. See paragraph (c)(6), Examples (4), (5), (19 and (20) of this section.

(5) *Special rules*—(i) *Applicable financial statement of related corporations*—(A) *Applicable financial statement of a consolidated group.* The applicable financial statement of a consolidated group (as defined in paragraph (a)(3) of this section) is the financial statement of the common parent (within the meaning of section 1504(a)(1)) of the consolidated group that has the highest priority under the rules of paragraphs (c)(3)(i), (c)(3)(ii) and (c)(5)(i)(B) of this section. See paragraph (d)(6)(i) of this section for rules relating to adjustments to net book income of a consolidated group. See paragraph (c)(6), Example (7) of this section. See paragraph (c)(2)(iv) of this section for rules relating to the election by the common parent of a consolidated group to use current earnings and profits to compute net book income.

(B) *Special rule for statements of equal priority.* If a consolidated group has two or more financial statements of equal priority (determined under paragraphs (c)(3)(i) and (c)(3)(ii) of this section and this paragraph (c)(5)), the consolidated group's applicable financial statement is determined under either paragraph (c)(5)(i)(B) *(1)* or *(2)*, whichever is applicable.

(1) Two or more financial statements reporting on the same corporations. If two or more financial statements of equal priority report on the same corporations, the consolidated group's applicable financial statement is determined under the rules of paragraph (c)(3)(iv) of this section. Thus, the financial statement that results in the greatest consolidated adjusted net book income is the consolidated group's applicable financial statement.

(2) Two or more financial statements reporting on different corporations. If two or more financial statements of equal priority report on different corporations, the consolidated group's applicable financial statement is—

(i) The statement that reflects the greatest amount of gross receipts attributable to members of the consolidated group, or

(ii) The statement that reflects the greatest amount of gross receipts (including gross receipts attributable to corporations that are not members of the consolidated group), but only if the consolidated group has financial statements of equal priority after applying the rules of paragraph (c)(5)(i)(B)(2)(*i*).

If after applying the rules of paragraphs (c)(5)(i)(B)(2) (*i*) and (*ii*) of this section, the consolidated group still has financial statements of equal priority, the rules of paragraph (c)(3)(iv) of this section apply. See paragraph (c)(6), Examples (7) and (8) of this section.

(C) *Special rule for related corporations.* If any portion of the net book income of a corporation (the "first corporation") is included on the applicable financial statement of a second corporation, but the first and second corporations are not members of the same consolidated group, the applicable financial statement of the second corporation is disregarded when determining the applicable financial statement of the first corporation. Thus, the applicable financial statement of the first corporation is the financial statement of highest priority determined under the rules of paragraph (c)(3) of this section without regard to the financial statement of the second corporation. Pursuant to paragraph (c)(1)(iv) of this section, if a separate financial statement is not prepared by the first corporation, the rules of paragraph (b)(5) (relating to current earnings and profits) apply. See paragraph (c)(6), Examples (9) and (10) of this section.

(D) *Anti-abuse rule.* The special rules of this paragraph (c)(5)(i) will not apply if the taxpayer rearranges its corporate structure or modifies its financial reporting and the principal purpose of such action is to use the special rules of this paragraph (c)(5)(i) to reduce the amount of the book income adjustment. In such cases, the District Director may, based upon all the facts and circumstances, determine the taxpayer's applicable financial statement. See paragraph (c)(6), Examples (13) and (14) of this section.

(ii) *Applicable financial statement of a foreign corporation with a United States trade or business*—(A) *In general.* The applicable financial statement of a foreign taxpayer conducting one or more trades or businesses in the United States is the financial statement prepared by any such trade or business (or attributable to more than one such trades or businesses) that has the highest priority as determined under paragraph (c)(3) of this section. See paragraph (c)(6), Example (15) of this section.

(B) *Special rules for applicable financial statement of a trade or business of a foreign taxpayer—(1) Financial statement prepared under foreign generally accepted accounting principles.* Subject to the rules of this section, a financial statement prepared by a United States trade or business using generally accepted accounting principles of a foreign country may be an applicable financial statement under

this paragraph (c). See paragraph (c)(6), Example (16) of this section.

(2) *Financial statement denominated in United States dollars.* Except as provided in paragraph (c)(5)(ii)(D) of this section, the financial statement of a United States trade or business must be denominated in United States dollars in order to be considered the applicable financial statement of the foreign taxpayer under this paragraph (c). See paragraph (c)(6), Example (17) of this section.

(C) *Special rule for statements of equal priority.* If a foreign taxpayer has two or more financial statements of equal priority (determined under paragraphs (c)(3)(i) and (c)(3)(ii) of this section and this paragraph (c)(5)(ii)), the foreign taxpayer's applicable financial statement is determined under either paragraph (c)(5)(ii)(C) (1) or (2) of this section, whichever is applicable.

(1) *Two or more financial statements reporting on the same trades or businesses.* If two or more financial statements of equal priority report on the same United States trades or businesses, the applicable financial statement of the foreign taxpayer is determined under the rule of paragraph (c)(3)(iv) of this section. In applying this rule, adjusted net book income (as defined under paragraph (b)(6) of this section) shall be used. Thus, the financial statement that results in the greatest amount of adjusted net book income is the foreign taxpayer's applicable financial statement.

(2) *Two or more financial statements reporting on different trades or businesses.* If two or more financial statements of equal priority report on different United States trades or businesses, the foreign taxpayer's applicable financial statement is—

(*i*) The financial statement that reflects the greatest amount of gross receipts attributable to United States trades or businesses, or

(*ii*) If after applying the rules of paragraph (c)(5)(ii)(C)(2)(*i*) of this section, the foreign taxpayer still has financial statements of equal priority, the financial statement determined under the rules of paragraph (c)(3)(iv) of this section (using effectively connected adjusted net book income).

See paragraph (c)(6), Example (18) of this section.

(D) *Anti-abuse rules.* The special rules of this paragraph (c)(5)(ii) will not apply if a trade or business conducted in the United States by a foreign taxpayer modifies its financial reporting and the principal purpose of such action is to reduce the amount of the book income adjustment. In such cases, the District Director may, based upon all the facts and circumstances, determine the taxpayer's applicable financial statement. See paragraph (c)(6), Example (21), of this section.

(iii) *Supplement or amendment to an applicable financial statement*—(A) *Excluding a restatement of net book income.* An applicable financial statement includes any supplement or amendment thereto (excluding a restatement of net book income) for the taxable year that is prepared and used for a substantial non-tax purpose (within the meaning of paragraph (c)(4) of this section) prior to the date the taxpayer's Federal income tax return for the taxable year would be due if the time for filing were extended under section 6081. For example, a calendar year taxpayer's applicable financial statement includes any supplement or amendment prepared and used prior to September 15 of the year immediately following its taxable year. If a taxpayer files its Federal income tax return before the issuance of a supplement or amendment to the applicable financial statement and before the extended due date for filing under section 6081, the taxpayer must file an amended Federal income tax return reporting any additional tax that results from treating the supplement or amendment as part of the applicable financial statement. A supplement or amendment (excluding restatements of net book income) to an applicable financial statement after the date specified in section 6081 is disregarded for purposes of the book income adjustment.

(B) *Restatement of net book income.* If a taxpayer restates net book income in what otherwise would have been its applicable financial statement (its "original financial statement"), referred to in this section as a "restatement of net book income," prior to the date that the taxpayer's Federal income tax return for such taxable year would be due if the time for filing were extended under section 6081, then—

(1) If the financial statement that includes the restated net book income is of a higher priority than the original financial statement, the restated financial statement is the taxpayer's applicable financial statement.

(2) If the financial statement that includes the restated net book income is of equal priority to the original financial statement and—

(*i*) The restatement is attributable to an error (as described in Accounting Principles Board Opinion No. 20, paragraph 13), the restated financial statement is the taxpayer's applicable financial statement, or

(*ii*) The restatement is not attributable to an error, the original and restated financial statements will be considered of equal priority, and paragraph (c)(3)(iv) will apply. Thus, the taxpayer's applicable financial statement is the financial statement that results in the greatest amount of adjusted net book income.

See paragraph (d)(4)(iv) of this section for rules that apply to restatements occurring after the due date (including the extension under section 6081) of the return for the taxable year to which the applicable financial statement relates. See paragraph (c)(6), Examples (11) and (12) of this section.

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

Example (1). In 1987, Corporation A only has a financial statement described in paragraph (c)(1)(iv) of this section and elects to treat net book income as equal to its current earnings and profits. In 1988, A has a certified audited financial statement (as described in paragraph (c)(1)(ii) of this section). In 1989, A only has a statement described in paragraph (c)(1)(iv) of this section. In 1988, A's certified audited financial statement is its applicable financial statement. However, in 1989, A is bound by the election it made in 1987 (unless revoked with the consent of the District Director) and must treat net book income as equal to its current earnings and profits.

Example (2). Corporation B prepares two unaudited financial statements. Both statements are distributed to creditors and are used for substantial non-tax purposes. The first financial statement is accompanied by an auditor's review report while the second statement has no auditor's review report. B has no other financial statement. Pursuant to paragraph (c)(3)(iv)(B)(2) of this section, the financial statement accompanied by the auditor's review report is B's applicable financial statement.

Example (3). Assume the same facts as in Example (2), except the financial statement accompanied by an auditor's review report is distributed to shareholders while the other statement is distributed to creditors, and both statements are used for substantial non-tax purposes. Pursuant to paragraph (c)(3)(ii) of this section, B's applicable financial statement is the statement distributed to its creditors. Paragraph (c)(3)(iv)(B)(2) of this section does not apply because the two statements are not of equal priority after applying paragraphs (c)(3) (i) and (ii) of this section.

Example (4). Corporation C is a closely held corporation with two shareholders. Both shareholders participate in the business on a day-to-day basis and are aware of the financial status of the business. C prepares a financial statement that is used by C's two shareholders to calculate bonuses. The financial statement prepared by C is used for a substantial non-tax purpose.

Example (5). Corporation D prepares a financial statement that it only sends to banks with which D is neither currently doing business nor negotiating. D does not reasonably anticipate that the financial statement will be relied on by the banks for any non-tax purpose, and therefore, for purposes of computing net book income, the financial statement is not used for a substantial non-tax purpose. The result would be the same if D sent the statement to a bank whose only relationship to D is that it holds a mortgage on D's property and D's rights and obligations under the mortgage are not affected by changes in its financial condition. the result would also be the same if D sent the statement to a bank with which D is doing business, and the statement is not reasonably expected to come to the attention of the bank's employees who are responsible for D's account.

Example (6). Corporation E and its subsidiaries, F and G are a consolidated group. Certified audited financial statements are prepared by EF and by FG. Both statements are used for substantial non-tax purposes. Pursuant to paragraph (c)(5)(i)(A) of this section, the financial statement that is prepared by EF is the applicable financial statement of the consolidated group. However, pursuant to paragraph (d)(6)(i)(B) of this section, an adjustment will be required to include the adjusted net book income attributable to G. The result would be the same even if the financial statement prepared by FG is of higher priority (under the rules of paragraph (c)(3) of this section) than the statement prepared by E and F.

Example (7). Corporation H and its subsidiaries I, J and K are a consolidated group. Certified audited financial statements are prepared by H and I and by H, J and K. Both statements are used for substantial non-tax purposes. The financial statement prepared by H, J, and K includes the greater amount of gross receipts attributable to members of the consolidated group and thus, pursuant to paragraph (c)(5)(i)(B)(*2*)(*i*) of this section, it is the consolidated group's applicable financial statement.

Example (8). Corporation L and its subsidiary M are a consolidated group. Corporation L also owns 100 percent of N, a foreign corporation that is not part of the consolidated group. A certified audited financial statement prepared by L, M and N discloses gross receipts of $200, of which $150 is attributable to L and M, and a separate certified audited financial statement prepared by L and M discloses gross receipts of $150. Both statements are used for substantial non-tax purposes. Pursuant to paragraph (c)(5)(i)(B) of this section, the consolidated group's applicable financial statement is the statement prepared by L, M and N.

Example (9). Corporation O is 60 percent owned by corporation P and 40 percent owned by corporation Q. Both P and Q prepare financial statements that are required to be filed with the SEC reflecting their respective interests in O. O also separately prepares a certified audited financial statement, or uses a summary of its books and records for credit purposes. Under paragraph (c)(5)(i)(C), O's separate statement is its applicable financial statement.

Example (10). Assume the same facts as in Example (9) except that O does not prepare a separate financial statement or a summary of its books and records for credit purposes. Pursuant to paragraph (c)(5)(i)(C) of this section, O must treat its net book income as equal to its current earnings and profits.

Example (11). Corporation R uses a calendar year for both financial accounting and tax purposes. Initially, R issues its calendar year 1987 financial statement on March 1, 1988. R's adjusted net book income resulting from this statement is $80. This would be R's applicable financial statement for 1987, but for the restatement described in the next sentence. On September 1, 1988, R restates its 1987 financial statement to correct an error (as described in Accounting Principles Board Opinion No. 20, paragraph 13). The restated financial statement is of the same priority as the initial financial statement. The restatement results in adjusted net book income for calendar year 1987 of $50. Pursuant to paragraph (c)(5)(iii)(B)(*2*)(*i*) of this section, the restated financial statement is treated as R's 1987 applicable financial statement.

Example (12). Assume the same facts as in Example (11), except that R restates its financial statement in order to reflect a change in accounting method. Since the restatement does not result from an error, paragraph (c)(5)(iii)(B)(*2*)(*i*) of this section does not apply. Pursuant to paragraph (c)(5)(iii)(B)(*2*)(*ii*) of this section, R's 1987 applicable financial statement is the financial statement for 1987 that results in the greater amount of adjusted net book income. Thus, R's March 1, 1988 financial statement is treated as its 1987 applicable financial statement.

Example (13). Corporation S, which is not a member of an affiliated group, uses a calendar year for both financial accounting and tax purposes. S's 1987 applicable financial statement is a certified audited financial statement. On January 1, 1988, S transfers all of its assets subject to liabilities to T, a newly created subsidiary that is 100 percent owned by S. The principal purpose of the transfer is to use the special rules of paragraph (c)(5)(i) of this section to reduce the adjusted net book income of S. For calendar year 1988, T prepares and uses a certified audited financial statement. Since S's only asset is its investment in T, S does not prepare a financial statement for calendar year 1988. In addition, since S is only a holding company, T's 1988 certified audited financial statement reports the same net book income that would have been reported on a consolidated ST financial statement. If paragraph (c)(5)(i)(D) of this section does not apply, ST's 1988 applicable financial statement is the financial statement of S (the parent of the consolidated group) with the highest priority. Under paragraph (c)(1) of this section, since S does not have a financial statement in 1988, the net book income of the ST consolidated group is ordinarily deemed to equal the aggregate earnings and profits of the members of the consolidated group. However, given these facts, the District Director may determine that the 1988 certified audited financial statement of T is the 1988 applicable financial statement of the ST consolidated group.

Example (14). The facts are the same as in Example 13, except that S has owned 100 percent of T for several years prior to calendar year 1987. In addition, prior to 1987, ST prepared a consolidated certified audited financial statement. For calendar year 1987, ST does not prepare a consolidated certified audited financial statement. Instead, T prepares and uses a certified audited financial statement while S does not prepare a financial statement. The principal purpose of the change in financial reporting is to use the special rules of paragraph (c)(5)(i) of this section to reduce the adjusted net book income of the ST consolidated group. Given these facts, the District Director may determine that the 1987 certified audited financial statement of T is the 1987 applicable financial statement of the ST consolidated group.

Example (15) Corporation U is a foreign corporation incorporated in A. U is a calendar year taxpayer for both financial accounting and tax purposes. U actively conducts three real estate businesses, X, Y and Z, in the United States. In 1987, X prepares a certified audited financial statement that it provides to its United States creditor. In addition, in 1987, X, Y and Z each prepare unaudited financial statements that they provide to U for incorporation in U's worldwide financial statement. Under paragraph (c)(5)(ii)(A) of this section, U's applicable financial statement is the certified audited financial statement prepared by X. However, pursuant to paragraph (d)(7) of this section, an adjustment is required to include any of U's effectively connected net book income that is not included in X's certified audited financial statement (*i.e.*, the effectively connected net book income attributable to Y and Z).

Example (16). Corporation A is a foreign corporation incorporated in Z. A is a calendar year taxpayer for both financial accounting and tax purposes. A actively conducts a real estate business, B, in the United States. B prepares a certified audited financial statement for 1987 using the accounting principles of Z that it provides to A for incorporation into A's worldwide financial statement. In addition, B prepares a review statement for 1987 using United States generally accepted accounting principles that it provides to its United States creditors. Both the certified statement and the review statement are denominated in United States dollars. Under paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B)(*1*) of this section, the financial statement prepared under the accounting principles of Z is the applicable financial statement.

Example (17). Assume the same facts as in Example (16) except that amounts are reported on B's certified audited financial statement in the currency of Z and amounts are reported on B's review statement in United States dollars. Since the review statement is denominated in United States dollars, under paragraph (c)(5)(ii)(B)(*2*) of this section, it is the applicable financial statement.

Example (18). Corporation C is a foreign corporation incorporated in Z. C is a calendar year taxpayer for both financial accounting

and tax purposes. C actively conducts two real estate businesses, D and E, in the United States. D and E each separately prepare a certified audited financial statement for 1987 that they provide to their United States creditors. D's financial statement reports gross receipts of $100. E's financial statement reports gross receipts of $200. Under paragraph (c)(5)(ii)(C)(2) of this section, E's certified audited financial statement is the applicable financial statement and must be adjusted under the rules of paragraph (d)(7) of this section to include effectively connected book income attributable to D.

Example (19). F is a foreign corporation incorporated in X. F is a calendar year taxpayer for both financial accounting and tax purposes. F actively conducts a banking business, G, in the United States. G has been engaged in business in the United States since 1977. For the years 1977 through 1986, G did not prepare a separate financial statement. However, each year G provided F with its books, records and other raw financial data. F used this data in preparing its worldwide financial statement. G provides F with its 1987 books and records on January 5, 1988, in accordance with its historic practice. On February 15, 1988, G prepares an unaudited financial statement for calendar year 1987 that it provides to F. The principal purpose of creating this financial statement is to reduce net book income. Under these facts, the financial statement provided by G is not intended to be reasonably relied upon by F in preparing its worldwide financial statement. Therefore, for purposes of computing net book income, G's financial statement has not been used for a substantial non-tax purpose.

Example (20). Assume the same facts as in Example (19) except that for purposes of preparing F's 1987 worldwide financial statement, G does not provide F with any raw financial data, and G only provides F with an audited financial statement that is prepared for a substantial non-tax purpose. Under these facts, the financial statement provided by G is intended to be relied upon by F in preparing its worldwide financial statement. Therefore, for purposes of computing net book income, G's financial statement has been used for a substantial non-tax purpose.

Example (21). Corporation H is a foreign corporation incorporated in I. H is a calendar year taxpayer for both financial accounting and tax purposes. H actively conducts a real estate business, J, in the United States. For the years 1976 through 1986, J prepared a certified audited financial statement using United States dollars that it provided to H. In 1987, J prepares a certified audited financial statement using the currency of I. The principal purpose of the modification of J's financial reporting is to reduce the amount of the book income adjustment. Given these facts, the District Director may determine that J's 1987 certified audited financial statement prepared in the currency of I is J's applicable financial statement for 1987, and such statement must be converted into United States dollars based upon the translation used to prepare the certified audited financial statement in the currency of I. Accordingly, the effectively connected net book income of J for 1987 is the effectively connected net book income reported on the financial statement that has been converted into United States dollars.

(d) *Adjustments to net book income*—(1) *In general.* Adjusted net book income is computed by making the adjustments described in this paragraph (d) to net book income (as defined in paragraph (b)(2) of this section). No adjustment may be made to net book income except as provided in this paragraph (d).

(2) *Definitions*—(i) *Historic practice.* For purposes of this paragraph (d), historic practice is defined as an accounting practice that—

(A) Was used consistently by the taxpayer for each of the 2 years immediately preceding its first taxable year beginning after 1986, and

(B) Was used on the financial statement that would have been the taxpayer's applicable financial statement (as determined under paragraph (c) of this section) for each of the 2 years immediately preceding its first taxable year beginning after 1986 if section 56(f), as amended by the Tax Reform Act of 1986, had been in effect. Thus, in order for a calendar year corporation to have an historic practice in 1987, the corporation must have used the accounting practice in its 1985 and 1986 financial statements. However, to be treated as used for purposes of this paragraph, an accounting practice must have been used prior to April 23, 1987. For example, an accounting practice that is first used after April 23, 1987, in a restatement of a taxpayer's 1985 and 1986 financial statements is not the taxpayer's historic practice.

(ii) *Accounting literature.* For purposes of this paragraph (d), the term "accounting literature" means—

(A) Generally accepted accounting principles (GAAP) as defined in the American Institute of Certified Public Accountants Professional Standards, AU § 411.05, paragraphs (a) through (c), and

(B) Pronouncements by the SEC including, but not limited to, Regulations S–X, SEC Financial Reporting Releases, and SEC Staff Accounting Bulletins, that are effective for the accounting period covered by the applicable financial statement.

(3) *Adjustments for certain taxes*—(i) *In general.* Net book income for purposes of this paragraph (d) must be adjusted to disregard (for example, by adding back) any Federal income taxes or income, war profits, or excess profits taxes imposed by any foreign country or possession of the United States that are directly or indirectly taken into account on the taxpayer's applicable financial statement. No adjustment is made for taxes not described in the preceding sentence. Taxes directly or indirectly taken into account consist of the taxpayer's total income tax expense that includes both current and deferred income tax expense. In addition, items of income and expense, including extraordinary items that are stated net of tax, must be adjusted to disregard the taxes described in this paragraph (d)(3)(i). See paragraph (d)(4)(viii) of this section for an adjustment for certain deferred foreign taxes.

(ii) *Exception for certain foreign taxes.* Net book income is not adjusted to disregard taxes imposed by a foreign country or possession of the United States if the taxpayer does not choose to take the benefits of section 901 (relating to the foreign tax credit) with respect to these taxes for the taxable year. The rule in the preceding sentence only applies to the amount of taxes the taxpayer deducts in the current taxable year under section 164(a). See paragraph (d)(3)(iv), Example (4) of this section. Net book income also is not adjusted to disregard foreign taxes that cannot be claimed as a credit (other than by virtue of a foreign tax credit limitation). Thus, a taxpayer does not add back to net book income any taxes it is not allowed to claim as a credit against its United States income tax liability because of section 245(a)(8), 901(j), 907(b) or 908 of the Code.

(iii) *Certain valuation adjustments.* Income tax expense under paragraph (d)(3)(i) of this section does not include valuation adjustments such as the valuation adjustments related to purchase accounting described in Accounting Principles Board (APB) Opinion No. 16, paragraph 89. However, income tax expense does include the tax associated with any gain or loss on the sale or other disposition of any asset the basis of which was adjusted under paragraph 89 of Opinion 16. See paragraph (d)(3)(iv), Example (6) of this section.

(iv) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). Corporation A has $120 of net book income. In calculating net book income, A has deducted $20 of state income tax expense and $60 of Federal income tax expense. Assuming there are no other adjustments to net book income, A's adjusted net book income is $180 ($120 of net book income + $60 of Federal income tax expense). Pursuant to paragraph (d)(3)(i) of this section, no adjustment is made for the state income tax expense.

Example (2). Assume the same facts as in Example (1), except that A also has a net extraordinary item of $40. Thus, A has net book income of $160 ($120 + $40). The $40 net extraordinary item is composed of a $70

gross extraordinary item less $30 of Federal income tax expense. Assuming there are no other adjustments to net book income, A's adjusted net book income is $250 ($160 of net book income + $60 of Federal income tax expense on book income other than the extraordinary item + $30 of Federal income tax expense on the extraordinary item).

Example (3). Assume the same facts as in Example (1), except that in calculating A's $120 of net book income, A has $50 of Federal income tax expense and $10 of foreign income tax expense. The $10 of foreign income tax expense results from a foreign branch and is composed of $7 of current foreign income tax expense and $3 of deferred foreign income tax expense. A chooses to take the benefits of the foreign tax credit under section 901 for the current taxable year. Assuming there are no other adjustments to net book income, A's adjusted net book income is $180 ($120 of net book income + $50 of Federal income tax expense + $10 of foreign income tax expense).

Example (4). Assume the same facts as in Example (3), except that A does not choose to take the benefits of the foreign tax credit in the current taxable year and instead deducts the $7 of current foreign income tax paid. Pursuant to paragraph (d)(3)(ii) of this section, net book income is not adjusted for the $7 of current foreign income tax expense. However, net book income is adjusted for the $3 of deferred foreign income tax expense. Thus, assuming there are no other adjustments to net book income, D's adjusted net book income is $173 ($120 of net book income + $50 of Federal income tax expense + $3 of deferred foreign income tax expenses).

Example (5). In 1987, corporation B only has a financial statement described in paragraph (c)(1)(iv) of this section. B elects pursuant to paragraph (c)(2) of this section to treat net book income as equal to its current earnings and profits. B's current earnings and profits in 1987 is $60, after reduction for $40 of Federal income tax (see paragraph (b)(5)(i) of this section). Pursuant to paragraph (d)(3) of this section, B must make a $40 adjustment to net book income. Thus, assuming no other adjustments to net book income, B's 1987 adjusted net book income is $100 ($60 of net book income + $40 adjustment for Federal income taxes).

Example (6). Corporation A acquires assets from corporation B in a transaction where the tax basis of B's assets will carry over to A. For financial accounting purposes, A will account for the acquisition in accordance with Accounting Principles Board (APB) Opinion No. 16. One of the assets acquired from B has an appraised value of $10,000. However, because the tax basis of B's assets will carry over to A, A's tax basis in the asset is only $7,000. Given these facts, APB Opinion No. 16, paragraph 89 requires that the asset be recorded at $10,000 less the tax effect of the difference between the appraised value and the tax basis. Assuming a 30 percent tax rate for A, the asset would be recorded at $9,100 ($10,000 appraised value—($3,000 difference between the appraised value and the tax basis × 30 percent)). If A sells the asset for $10,000, A will recognize a book gain of $900 with respect to the sale (assuming the asset is not amortized for book purposes). However, A will also have income tax expense of $900 (($10,000 sales proceeds—$7,000 tax basis) × 30 percent) with respect to the sale. Thus, A will have no net book income from the sale. Pursuant to paragraph (d)(3)(iii) of this section, A's income tax expense includes the $900 of income tax expense attributable to the effects of the valuation adjustment made in accordance with APB Opinion No. 16, paragraph 89. As a result, A's adjusted net book income with respect to its asset sale is $900 ($0 of net book income + $900 adjustment for income tax expense).

(4) *Adjustments to prevent omission or duplication*—(i) *In general.* In order to prevent omissions or duplications, net book income must be adjusted for the items described in paragraph (d)(4)(ii) through (d)(4)(vii) of this section and for such other items as approved or required by the Commissioner in published guidance. Except as provided in this paragraph (d), a taxpayer may not adjust net book income to prevent omission or duplication of items. See paragraph (d)(4)(viii), Example (1) of this section.

(ii) *Special rule for depreciating an asset below its cost.* Net book income must be adjusted to exclude depreciation or amortization expense to the extent such expense exceeds the asset's financial accounting historical cost ("excess depreciation"). However, no adjustment is required if excess depreciation has been the taxpayer's historic practice (as defined in paragraph (d)(2)(i) of this section) or if the excess depreciation is properly attributable to negative salvage value (*i.e.*, where the cost of removal or clean-up exceeds the salvage value).

(iii) *Consolidated group using current earnings and profits.* In the case of a consolidated group that uses its aggregate current earnings and profits as net book income (as determined under the rules of paragraph (b)(5)(ii) of this section), the current earnings and profits of the group is the aggregate of the current earnings and profits of each member of the group. In determining aggregate current earnings and profits, the adjustments described in § 1.1502-33 apply except for the adjustment for intercompany distributions with respect to stock and obligations or members of the group described in § 1.1502-33(c)(1) and the investment adjustment described in § 1.1502-33(c)(4)(ii)(*a*).

(iv) *Restatement of a prior year's applicable financial statement*—(A) *In general.* If a taxpayer restates an applicable financial statement and as a result, the net book income for a taxable year is restated after the last date that the taxpayer could have filed its Federal income tax return for such taxable year (if it had obtained an extension of time under section 6081 of the Code), net book income for the first successor year (as defined in paragraph (d)(4)(iv)(D) of this section) must be adjusted by that part of the cumulative effect of the restatement on net book income attributable to taxable years beginning after 1986. To the extent that the cumulative effect of the restatement on net book income includes a tax component, paragraph (d)(3) of this section may apply. See paragraph (c)(5)(iii) of this section for rules relating to the restatement of an applicable financial statement prior to the date the taxpayer's return for the taxable year would be due if the time for filing the return is extended.

(B) *Reconciliation of owner's equity in applicable financial statements.* If—

(*1*) The beginning balance of owner's equity on the taxpayer's applicable financial statement for the current taxable year is different than the ending balance of owner's equity on the taxpayer's applicable financial statement for the preceding taxable year, and

(*2*) The taxpayer is not otherwise subject to the restatement rules in paragraph (d)(4)(iv)(A) of this section, the taxpayer will be deemed to have restated its applicable financial statement for the preceding year and paragraph (d)(4)(iv)(A) of this section will apply.

(C) *Use of different priority applicable financial statements in consecutive taxable years.* If the priority of a taxpayer's applicable financial statement (as determined under the rules of paragraph (c)(3) of this section) for the current taxable year is different than the priority of the taxpayer's applicable financial statement for the preceding taxable year, the taxpayer shall be required to adjust net book income to the extent required under the rules of either paragraph (d)(4)(iv) (A) or (B) of this section.

(D) *First successor year defined.* The "first successor year" is the first taxable year for which the taxpayer could have timely filed a return if it had obtained an extension of time under section 6081 of the Code after the restatement occurs. For example, if a calendar year corporation restates and uses its 1987 applicable financial statement between September 16, 1988 and September 15, 1989, any adjustment resulting from the restatement will be made in the taxpayer's 1988 Federal income tax return. If the restatement occurs prior to September 15, 1988, the rules of paragraph (c)(5)(iii) of this section will apply.

(E) *Exceptions.* (*1*) No adjustment is made under paragraph (d)(4)(iv)(A) of this section for a restatement prepared in accordance with APB Opinion No. 16, paragraph 53, requiring restatements of financial statements to reflect the combined operation of corporations combined in a pooling transaction.

(*2*) In order to prevent duplication of an adjustment, an adjustment otherwise required under paragraph (d)(4)(iv)(A) of this section may be decreased to take into account an adjustment previously made under the disclosure rules described in paragraph (d)(5) of the section. See paragraph (d)(4)(viii), Example (3) of this section.

(v) *Adjustment for items previously taxed as subpart F income.* Net book income does not include any item excluded from regular taxable income under section 959 if the item was included in adjusted net book income in a prior taxable year under the provisions of paragraph (b)(2)(iv) of this section and due to section 951. A taxpayer may not adjust net book income under this paragraph (d)(4)(v) to the extent any portion of the subpart F income was recognized during taxable years beginning before 1987. See example (5) of paragraph (d)(4)(viii) of this section.

(vi) *Adjustment for poolings of interests.* In a business combination accounted for as a pooling of interests under paragraph 50 of APB Opinion 16, net book income does not include the income of a separate corporation for that part of the taxable year preceding the combination of that corporation with the taxpayer, to the extent the separate corporation included this income in its net book income for the taxable year preceding the business combination. A taxpayer may not adjust net book income under this paragraph (d)(4)(vi) to the extent the separate corporation's income is attributable to taxable years beginning before 1987.

(vii) *Adjustment for certain deferred foreign taxes.* In the case of deferred foreign taxes that were previously added back to net book income in accordance with paragraph (d)(3) of this section, a deduction is allowed in computing adjusted net book income for the taxable year in which the deferred foreign taxes are deducted under section 164 (a). A taxpayer may not adjust net book income under this paragraph (d)(4)(vii) to the extent the foreign taxes were deferred during taxable years beginning before 1987.

(viii) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A uses a calendar year for both financial accounting and tax purposes. In 1986, A's financial statement included a $100 financial accounting loss for a plant shutdown. A could not deduct the loss on its 1986 Federal income tax return. In 1987, A deducts the loss from the 1986 plant shutdown in its 1987 Federal income tax return. As a result, A's 1987 adjusted net book income exceeds its 1987 pre-adjustment alternative minimum taxable income by $100 (an amount equal to the deduction for the 1986 plant shutdown). Pursuant to paragraph (d)(4)(i) of this section, A cannot make an adjustment to net book income.

Example (2). Corporation B uses a calendar year for both financial accounting and tax purposes. B issues its calendar year 1987 applicable financial statement on March 1, 1988. The applicable financial statement reports net book income for the calendar years 1985 through 1987 of $50, $70, and $80, respectively. On March 1, 1989 when it issues its calendar year 1988 applicable financial statement, B restates its 1985, 1986 and 1987 applicable financial statements. The restatement results from a change in accounting method that is made during calendar year 1988. After restatement, B's net book income for 1985, 1986, and 1987 is $60, $80, and $90, respectively. Based upon these facts, the cumulative effect of the restatement on B's net book income for years prior to 1988 is $30. However, since $20 of the cumulative effective is attributable to years beginning before 1987, B's 1988 net book income is increased by only $10 ($30−$20). If the cumulative effect includes a tax adjustment, see paragraph (d)(3) of this section.

Example (3). Assume the same facts for Corporation B as in Example (2), except that B's 1987 net book income of $89 is increased by $10 for purposes of B's 1987 Federal income tax return. The $10 adjustment is made pursuant to paragraph (d)(5)(iii) of this section relating to disclosure in the accountant's opinion. Specifically, the accountant's opinion on B's 1987 applicable financial statement disclosed that if D had used a certain accounting method, B's 1987 net book income would have been $90 rather than $80. The restatement of B's 1987 applicable financial statement on March 1, 1988 results entirely from B changing to the accounting method referred to in the 1987 accountant's opinion. Pursuant to paragraph (d)(4)(iv)(E)(*2*) of this section, no adjustment is made to B's 1988 net book income as a result of the restatement of B's 1987 applicable financial statement.

Example (4). Assume the same facts as in Example (1), except that when A issues its 1987 applicable financial statement it also restates the net book income reported on its 1986 financial statement to exclude the $100 loss attributable to the plant shutdown. Furthermore, the $100 loss from the plant shutdown is included in A's 1987 net book income as reported on its 1987 applicable financial statement. Pursuant to paragraph (d)(4) of this section, no adjustment is made to A's 1987 net book income as a result of the restatement of A's 1986 net book income.

Example (5). Corporation D is a domestic corporation. D owns ten percent of the issued and outstanding stock of corporation F, a foreign corporation. D and F file separate financial statements and federal income tax returns, both on a calendar-year basis. F is a controlled foreign corporation as defined in section 957. In 1987, D includes ten percent of F's subpart F income in its income under section 951. F makes no actual distributions to D in that year, and D's applicable financial statement includes the earnings of F only when actual distributions are made. See paragraph (d)(6)(i)(A) of this section. In 1987, D must adjust its net book income under paragraph (b)(2)(iv) of this section to include ten percent of F's subpart F income. In 1988, F makes an actual distribution to D which qualifies for the exclusion of section 959. D includes this actual distribution as income on its applicable financial statement for 1987. Pursuant to paragraph (d)(4)(v) of this section, D must adjust its net book income for 1988 to exclude the actual distribution from F.

(5) *Adjustments resulting from disclosure*—(i) *Adjustment for footnote disclosure or other supplementary information*—(A) *In general.* Except as described in this paragraph (d)(5)(i), net book income must be increased by any amount disclosed in a footnote or other supplementary information to the applicable financial statement if the disclosure supports a calculation of a net book income amount that would be greater than the net book income reported on the taxpayer's applicable financial statement. However, net book income will not be increased if the disclosure—

(*1*) Is specifically authorized by the accounting literature described in paragraph (d)(2)(ii) of this section, or

(*2*) Is in accordance with the taxpayer's historic practice as defined in paragraph (d)(2)(i) of this section.

See paragraph (d)(5)(v), Examples (1) and (2) of this section.

(B) *Disclosures not specifically authorized in the accounting literature.* The following footnote or other supplementary disclosure will not be considered specifically authorized in the accounting literature—

(*1*) Disclosure of what the taxpayer's net book income would have if GAAP had been used in preparing the applicable financial statement instead of tax accounting rules (or disclosure of the adjustment necessary to determine net book income on a GAAP basis), and

(*2*) Disclosure of what the taxpayer's net book income would have been if the accrual method had been used in preparing the applicable financial statement instead of the cash method (or disclosure of the adjustment necessary to determine net book income on the accrual method).

(ii) *Equity adjustments*—(A) *In general.* Except as described in this

paragraph (d)(5)(ii), net book income must be increased by the amount of any equity adjustment (as defined in paragraph (d)(5)(ii)(B) of this section) included in the applicable financial statement if the equity adjustment increases owner's equity as reported on the taxpayer's applicable financial statement and the increase is attributable to the taxpayer or a member of the taxpayer's consolidated group. However, net book income will not be increased if the equity adjustment—

(*1*) Is specifically authorized by the accounting literature described in paragraph (d)(2)(ii) of this section, or

(*2*) Is in accordance with the taxpayer's historic practice as defined in paragraph (d)(2)(i) of this section.

See paragraph (d)(5)(v), Examples (3) and (4) of this section.

(*B*) *Definition of equity adjustment.* An equity adjustment is any reconciling item between beginning and ending owner's equity as reported on the taxpayer's applicable financial statement for the current taxable year. However, if properly accounted for, the following reconciling items are not considered equity adjustments and do not require adjustment under paragraph (d)(5)(ii)(A) of this section—

(*1*) Net book income,

(*2*) Non-liquidating dividend distributions, and

(*3*) Contributions to capital.

(iii) *Amounts disclosed in an accountant's opinion.* Net book income must be increased by the amount of any item disclosed in the accountant's opinion (as described in paragraphs (c)(1)(ii)(C) and (c)(1)(ii)(D) of this section) if the disclosure supports a calculation of a net book income amount that would be greater than the net book income reported on the taxpayer's applicable financial statement. However, net book income will not be increased if the disclosure is in accordance with the taxpayer's historic practice, as defined in paragraph (d)(2)(i) of this section.

(iv) *Accounting method changes that result in cumulative adjustments to the current year's applicable financial statement*—(A) *In general.* If net book income for the current taxable year includes a cumulative adjustment attributable to an accounting method change and the amount of the cumulative adjustment may be determined upon review of the applicable financial statement (including footnotes) or other supplementary disclosure, net book income for the current taxable year shall be adjusted to exclude that portion of the cumulative adjustment attributable to taxable years beginning before 1987. To the extent the cumulative adjustment is reported net of a tax, paragraph (d)(3) of this section may apply. See paragraph (d)(5)(V), Example (5) of this section. If an accounting method change results in a restatement of an applicable financial statement, paragraphs (c)(5)(iii) or (d)(4)(iv)(A) of this section may apply.

(B) *Exception.* In order to prevent duplication of an adjustment, the adjustment required under paragraph (d)(5)(iv)(A) of this section may be decreased to take into account any adjustment for the accounting method change previously made under the rules described in paragraph (d)(5) of this section (relating to adjustments resulting from disclosure).

(v) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A uses a calendar year for both financial accounting and tax purposes. For calendar years 1984 through 1986, A used the cash method of accounting on its financial statement and disclosed in a footnote the net income or loss that would have resulted if the accrual method of accounting had been used. A's 1987 net book income, as reported on its 1987 applicable financial statement, is $100 and is calculated on the cash method of accounting. In addition, a footnote in A's 1987 applicable financial statement states that A's 1987 net book income would have been $30 greater had the accrual method of accounting been used. Pursuant to paragraph (d)(5)(i)(B)(*2*) of this section, A's 1987 footnote disclosure is not considered specifically authorized by the accounting literature. However, since A made such disclosure for calendar years 1985 and 1986, the 1987 disclosure is in accordance with A's historic practice, as defined in paragraph (d)(2)(i) of this section. Since A satisfies the exception described in paragraph (d)(5)(i)(A)(*2*) of this section, no adjustment is made to A's 1987 net book income for the footnote disclosure.

Example (2). Assume the same facts for corporation B as in Example (1), except that B's 1985 and 1986 financial statements did not disclose the amount of income or loss that would result if the accrual method of accounting (rather than the cash method of accounting) were used. Since B does not satisfy either of the exceptions described in paragraph (d)(5)(i)(A) of this section, B's 1987 adjusted net book income is $130 ($100 of net book income plus $30 adjustment for footnote disclosure).

Example (3). Corporation C uses a calendar year for both financial accounting and tax purposes. C's 1987 net book income, as reported on its 1987 applicable financial statement, is $200. However, as specifically authorized in FASB Statement of Standards No. 52, C's 1987 applicable financial statement also includes a $50 equity adjustment (as defined in paragraph (d)(5)(ii)(B) of this section) for foreign currency translation gains. Since the equity adjustment is specifically authorized in the accounting literature, C satisfies the exception described in paragraph (d)(5)(ii)(A)(*1*) of this section, and no adjustment is made to C's 1987 net book income for the $50 equity adjustment.

Example (4). Assume the same facts for coporation D as in Example (3), except that D's equity adjustment is for foreign currency transaction gains instead of foreign currency translation gains. Pursuant to FASB Statement of Financial Accounting Standards No. 52, foreign currency transaction gains (as compared with foreign currency translation gains) are included in the income statement rather than in equity. In addition, in 1985 and 1986, D included foreign currency transaction gains in its income statement. Since D does not satisfy either of the exceptions described in paragraph (d)(5)(ii)(A) of this section, D's 1987 adjusted net book income is $250 ($200 of net book income plus $50 equity adjustment).

Example (5). Corporation E uses a calendar year for both financial accounting and tax purposes. E's net book income for 1988 is $100. The $100 of net book income includes $30 of financial accounting loss attributable to a cumulative adjustment as of January 1, 1988, resulting from a change in E's accounting method. The $30 cumulative loss is disclosed in E's 1988 applicable financial statement. If E had made the accounting method change in calendar year 1987, the cumulative loss as of January 1, 1987 would have been $20. Based upon the above facts, E must increase net book income by $20 to disregard that portion of the cumulative adjustment attributable to years beginning before 1987. Thus, assuming no other adjustments to net book income, E's adjusted net book income for 1988 is $120 ($100 plus $20).

(6) *Adjustments applicable to related corporations*—(1) *Consolidated returns*—(A) *In general.* Pursuant to paragraphs (a)(3) and (b)(3) of this section, the book income adjustment with respect to a consolidated group (as described under paragraph (a)(3) of this section) is computed based on the consolidated adjusted net book income (as defined in paragraph (b)(3)(i) of this section). In the case of any corporation that is not included in the consolidated group, consolidated adjusted net book income of the consolidated group shall include only the sum of the dividends received from such other corporation and other amounts includible in gross income under this chapter with respect to the earnings of such other corporation. See paragraph (d)(6)(v), Example (4) of this section.

(B) *Corporations included in the consolidated Federal income tax return but excluded from the applicable financial statement—(1) In general.* Consolidated net book income reported on the applicable financial statement (as determined under paragraph (c)(5) of this section) shall be adjusted to include net book income attributable to a

corporation that is included in the consolidated group but is not included in the applicable financial statement. Net book income for the corporation not included in the applicable financial statement of the consolidated group is the net book income reported on such corporation's applicable financial statement (determined under the rules of paragraph (c) of this section and adjusted under the rules of this paragraph (d)). The adjusted net book income of such corporation must be consolidated with the adjusted net book income of other members of the consolidated group and appropriate adjustments, including consolidating elimination entries, must be made.

(*2*) *Adjustments to net book income for minority interests.* Consolidated net book income must be adjusted to include income or loss allocated to minority interests in members of the consolidated group. Failure to include income or loss allocated to minority interests shall be treated as an omission of net book income. See paragraph (d)(6)(v), Example (1) of this section.

(*3*) *Corporations included in the consolidated group that are accounted for under the equity method of accounting.* No adjustment is required to consolidated net book income for income or loss of a member of the consolidated group that is reported in the applicable financial statement under the equity method of accounting (as described in APB Opinion No. 18, paragraph (6)). However, consolidated adjusted net book income (as defined in paragraph (b)(3)(i) of this section) must include 100 percent of the net book income attributable to such member. See paragraph (d)(6)(i)(B)(*2*) of this section. For example, if consolidated net book income (as defined in paragraph (b)(3)(ii) of this section) only includes 85 percent of the equity income attributable to a member of the consolidated group, an adjustment will be required to include the 15 percent of equity income excluded from consolidated net book income. In addition, to the extent the equity income reflects an adjustment for tax expense or benefit, paragraph (d)(3) may apply. See paragraph (d)(6)(v), Examples (2) and (3) of this section.

(C) *Corporations included in the applicable financial statement but excluded from the consolidated tax return.* Net book income or consolidated net book income must be adjusted to eliminate the income or loss of a corporation that is included in the applicable financial statement, but is not included in the consolidated group. When net book income attributable to a corporation that is not a member of the consolidated group is removed from the computation of net book income in the applicable financial statement, consolidating elimination entries attributable to the excluded member must also be removed.

(ii) *Adjustment under the principles of section 482.* In order to fairly allocate items relating to intercompany transactions between corporations that are owned or controlled directly or indirectly by the same interests but are not members of a consolidated group, adjustments must be made to the net book income reported on the applicable financial statement of each corporation under the principles of section 482 and the regulations thereunder (relating to allocation of income and deductions among related taxpayers). For example, assume corporation A owns 100 percent of F, a foreign subsidiary, but A and F are not members of a consolidated group. However, A and F prepare a consolidated financial statement. In adjusting A's applicable financial statement to eliminate the net book income attributable to F, A must apply the principles of section 482. If a corporation fails to make appropriate adjustments to its applicable financial statement under the rules of this paragraph (d)(6)(ii), the District Director may make such adjustments under the principles of section 482 and the regulations thereunder.

(iii) *Adjustment for dividends received from section 936 corporations*—(A) *In general.* Any dividend received from a corporation eligible for the credit provided by section 936 (relating to the possession tax credit) shall be included in adjusted net book income. For example, assume corporation A owns 100 percent of B, a section 936 corporation, and B pays a $100 dividend to A. Furthermore, assume that of the $100 dividend, $15 of withholding tax is paid to a possession of the United States, so that A only receives $85 from the dividend. Given these facts, A's adjusted net book income includes $100 with respect to the dividend from B.

(B) *Treatment as foreign taxes.* Fifty percent of any withholding tax paid to a possession of the United States with respect to dividends referred to in paragraph (d)(6)(iii)(A) of this section may be treated for purposes of the alternative minimum foreign tax credit as a tax paid to a foreign country by the corporation receiving the dividend. However, if the aggregate of these dividends exceeds the excess referred to in paragraph (a)(1) of this section, the amount treated as a tax paid to the foreign country shall not exceed 50 percent of the aggregate amount of the tax withheld multiplied by a fraction.

(*1*) The numerator of which is the excess referred to in paragraph (a)(1) of this section; and

(*2*) The denominator numerator of which is the aggregate amount of these dividends.

(C) *Treatment of taxes imposed on section 936 corporations.* Taxes paid by any corporation eligible for the credit provided under section 936 shall be treated as a withholding tax paid with respect to any dividend paid by such corporation, and thus subject to the rules of this paragraph (d)(6)(iii), but only to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902.

(iv) *Adjustment to net book income on sale of certain investments.* If a taxpayer accounts for an investment under any method equivalent to the equity method of accounting (as described in APB Opinion No. 18, paragraph 6) and pursuant to paragraphs (b)(2)(iv) or (d)(6)(i) of this section the taxpayer excludes net book income attributable to that investment, the taxpayer must adjust its net book income in the year the investment is sold (or partially sold). The adjustment equals the amount of net book income previously excluded under paragraphs (b)(2)(iv) or (d)(6)(i)(A) of this section). See paragraph (d)(6)(v), Example (4) of this section.

(v) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A and its 100 percent owned subsidiary B and its 90 percent owned subsidiary C are a consolidated group. A also owns 100 percent of D, a foreign corporation. ABC's applicable financial statement is a certified audited financial statement that includes A, B, C and D. The net book income reported on the statement excludes $10 of C's net book income that is attributable to the 10 percent minority interest in C held outside of the consolidated group. Pursuant to paragraph (d)(6)(i)(B)(*2*) of this section, net book income of the consolidated group must be adjusted to include the $10 of net book income attributable to the minority interest in C. In addition, pursuant to paragraph (d)(6)(i)(C) of this section, net book income shown on the applicable financial statement must be adjusted to eliminate the net book income attributable to D.

Example (2). Corporation E owns 100 percent of F, a finance subsidiary, and EF are a consolidated group. Since F is a finance subsidiary E's applicable financial statement accounts for F under the equity method of accounting. F also prepares a separate financial statement that is of equal or higher priority than E's applicable financial

statement. In 1987, E's applicable financial statement includes $60 of equity income from F. The $60 of equity income reflects a reduction for $40 of Federal income tax expense. Thus, E's equity income from F prior to the reduction for Federal income tax expense, is $100 ($60 + $40). Since E's applicable financial statement includes E's equity income in F, F's separate financial statement is not relevant for determining the adjusted net book income of the EF consolidated group. However, pursuant to paragraphs (d)(3) and (d)(6)(i)(B)(3) of this section, E is required to adjust its equity income in F by the $40 of Federal income tax expense attributable to F. Thus, assuming there are no other adjustments, E's adjusted net book income with respect to F is $100.

Example (3). The facts are the same as Example (2), except that E reports its equity income in F without reduction for F's Federal income tax expense. The $40 of Federal income tax expense attributable to F is combined with E's Federal income tax expense. Assuming no other adjustments, E's adjusted net book income with respect to F is $100. Thus, E's adjusted net book income with respect to F will be the same regardless of whether E's equity income in F is reported before or after taxes.

Example (4). A, a domestic corporation, uses a calendar year for both financial accounting and tax purposes. On January 1, 1987, A purchases 100 percent of F, a foreign corporation, for $100. F does not file a Federal income tax return and A does not recognize any taxable income with respect to F under section 951 (relating to controlled foreign corporations). In its applicable financial statement, A accounts for its investment in F under the equity method of accounting. Thus, A's initial investment in F is $100. During calendar year 1987, F has $50 of net book income but makes no dividend payments to A. Under the equity method of accounting, A's net book income includes the $50 of net book income attributable to A's net book investment in F. Thus, A's investment in F is increased to $150. Pursuant to paragraph (d)(6)(i)(C) of this section, A's net book income is adjusted to eliminate the $50 of net book income attributable to F. On January 1, 1988, A sells F for $150. Since A's investment in F under the equity method of accounting is $150, A's net book income for 1988 will not include any gain on the sale of F. However, pursuant to paragraph (d)(6)(iv), A's 1988 net book income must be increased by $50, the amount of net book income previously eliminated with respect to A's investment in F. The result would be the same if instead of accounting for its investment in F under the equity method of accounting, A and F prepare a consolidated financial statement.

(7) *Adjustments for foreign taxpayers with a United States trade or business*—(i) *In general.* Pursuant to paragraph (b)(6) of this section, the book income adjustment with respect to a foreign taxpayer with a United States trade or business is computed based on the effectively connected net book income of the foreign taxpayer (as defined in paragraph (b)(6)(ii) of this section). The net book income amount reported on the applicable financial statement of the foreign taxpayer (as determined under paragraph (c)(5)(ii) of this section) must be adjusted to—

(A) Include effectively connected net book income attributable to a trade or business conducted in the United States by the foreign taxpayer that is not reported on the applicable financial statement. Such amounts shall be determined from a financial statement (determined under paragraph (c) of this section and adjusted under the rules of this paragraph (d)) that would have qualified as an applicable financial statement of such excluded trade or business or upon effectively connected earnings and profits (if the rules of section (b)(6)(iii) of this section apply), and

(B) Exclude any amount reported on such applicable financial statement that does not qualify as effectively connected net book income.

See the example in paragraph (d)(7)(ii) of this section.

(ii) *Example.* The provisions of this paragraph may be illustrated by the following example.

Example. Foreign corporation A, a calendar year taxpayer for financial accounting and tax purposes, is incorporated in X. A actively conducts two real estate businesses, B and C, in the United States. B prepares a certified audited financial statement that it provides to its United States creditor. C does not prepare a financial statement. The certified audited financial statement prepared by B is treated as A's applicable financial statement under paragraph (c)(5)(ii) of this section. B's certified audited financial statement, in addition to amounts related to the conduct of its real estate business, also reports income received from its investment in United States securities, unrelated to its conduct of business in the United States that does not qualify as effectively connected net book income. In order to determine A's effectively connected net book income from the net book income reported on the applicable financial statement, such statement must be adjusted to exclude amounts attributable to the securities. In addition, book income or loss attributable to C, to the extent effectively connected to its business in the United States, must be included in the effectively connected net book income reported on B's financial statement. Since C does not have a financial statement, C's effectively connected net book income is determined by computing its effectively connected earnings and profits under paragraph (b)(6)(iii) of this section.

(8) *Adjustment for corporations subject to subchapter F.* A corporation subject to tax under subchapter F of chapter 1 of the Code shall adjust its book income to exclude all items of income, loss or expense other than those relating to the calculation of unrelated business taxable income for purposes of section 512(a).

(e) *Special rules*—(1) *Cooperatives.* For purposes of computing the book income adjustment, net book income of a cooperative to which section 1381 applies is reduced by patronage dividends and per-unit retain allocations under section 1382(b) that are paid by the cooperative to the extent such amounts are deductible for regular income tax and general alternative minimum tax purposes under section 1382, and not otherwise taken into account in determining adjusted net book income.

(2) *Alaska Native Corporations.* In computing the net book income of an Alaska Native Corporation, cost recovery and depletion are computed using the asset basis determined under section 21(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1620(c)). In addition, net book income is reduced by expenses payable under either section 7(i) or section 7(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606 (i) and (j)) only when deductions for such expenses are allowed for tax purposes.

(3) *Insurance companies.* In the case of an insurance company whose applicable financial statement is a statement describing in paragraph (c)(1)(iii) of this section (relating to statements provided to a government regulator), net book income for purposes of the book income adjustment is the net income or loss from operations, after reduction for dividends paid to policyholders, but without reduction for Federal income taxes.

(4) *Estimating the book income adjustment for purposes of the estimated tax liability.* See § 1.6655–7 for special rules for estimating the corporate alternative minimum tax book income adjustment under the annualization exception.

Para. 6. 26 CFR part 1 is amended as follows:

§ 1.6655–7T [Redesignated as § 1.6655.7]

(a) Section 1.6655–7T is redesignated as § 1.6655–7 and the word "(temporary) is removed at the end of the section heading.

(b) Section 1.6655–7 (as redesignated) is revised to read as follows:

§ 1.6655–7 Special rules for estimating the corporate alternative minimum tax book income adjustment under the annualization exception.

(a) *In general.* For purposes of section 6655(e) (relating to the "annualization exception") a corporate taxpayer must take into account the tax imposed by section 55 (relating to the alternative minimum tax) and the tax imposed by

section 59A (relating to the environmental tax). Thus, a taxpayer using the annualization exception must estimate alternative mimimum taxable income, including the book income adjustment, for the period of the taxable year that is annualized (the "annualization period").

(b) *Estimating the book income adjustment.* The book income adjustment for the annualization period is determined in accordance with the rules of § 1.56–1, except as otherwise provided in this section.

(c) *Applicable financial statement for the annualization period*—(1) *In general.* A taxpayer's applicable financial statement for an annualization period is the financial statement of highest priority described in section 56(f)(3)(A) and § 1.56–1(c) that is prepared for such annualization period by the date the installment payment is due. However, if a taxpayer reasonably expects to have a financial statement of higher priority for such period no later than 30 days after the date the installment payment is due, the taxpayer shall make a reasonable estimate of the adjusted net book income that will result from such statement, and such estimate shall be used as the taxpayer's adjusted net book income for that annualization period. If the date that is 30 days after the due date of the installment falls on a Saturday, Sunday or legal holiday, the 30-day period is extended to the immediately following day that is not a Saturday, Sunday or legal holiday. For example, an event arising subsequent to the installment due date that causes the taxpayer's estimate of net book income to be understated will not result in a recomputation of the book income adjustment for the annualization period, if, based on all the facts and circumstances at the time the installment payment was made, it was not reasonably foreseeable that the subsequent event would occur.

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

Example. A is a public corporation that is a calendar year taxpayer. A's first installment payment of estimated tax is due April 15. A uses the annualization exception under section 6655(e) in order to determine whether it is liable for an addition to tax due to an underpayment of estimated tax. In the case of the first installment, the applicable annualization period is the first three months of the taxable year. On April 15, A has an unaudited financial statement for the first three-month period that is used for credit purposes. By May 15, A will file a quarterly report, Form 10-Q, with the Securities and Exchange Commission. Since the financial statement filed with the SEC has higher priority than the unaudited statement and A can reasonably expect to have such statement no later than 30 days after the installment due date, A must make a reasonable estimate of the adjusted net book income that will result from such statement. This estimate shall be used as A's adjusted net book income for the annualization period.

(d) *Earnings and profits*—(1) *In general.* If an applicable financial statement is not available by the date a payment is due for an annualization period or reasonably expected to be available no later than 30 days after the payment is due under the rules of paragraph (c) of this section, current earnings and profits for the applicable annualization period must be used in lieu of net book income. See § 1.56–1(b)(5) for rules relating to computing current earnings and profits for purposes of computing the book income adjustment.

(2) *Election to use earnings and profits*—(i) *In general.* A taxpayer may elect to use current earnings and profits for the applicable annualization period if the taxpayer has only a statement for such period that is described in section 56(f)(3)(A)(iv) and § 1.56–1(c)(1)(iv) and th taxpayer has elected under the rules of section 56(f)(3)(B)(ii) and § 1.56–1(c)(2) to use current earnings and profits to compute the book income adjustment for purposes of filing its annual Federal income tax return. Once the election has been made, current earnings and profits must be used for any annualization period for which the taxpayer has only an applicable financial statement described in section 56(f)(3)(A)(iv) and § 1.56–1(c)(1)(iv).

(ii) *Election during 1987 taxable year.* During its taxable year beginning in 1987, a taxpayer may elect to use current earnings and profits for an applicable annualization period even if the taxpayer has not elected to use current earnings and profits for purposes of computing its annual Federal income tax liability under section 56(f)(3)(B)(ii) and § 1.56–1(c)(2). In addition, a taxpayer electing in 1987 to use current earnings and profits for purposes of its installment payments of estimated tax is not required to use current earnings and profits to compute the book income adjustment when filing its annual Federal income tax return. However, unless an annual election under section 56(f)(3)(B)(ii) is made when filing the taxpayer's 1987 Federal income tax return, the election to use current earnings and profits for purposes of computing its estimated tax liability in taxable years beginning after 1987 is terminated.

(iii) *Manner of making election.* If a taxpayer elects to use current earnings and profits for the applicable annualization period under the rules of this section, the taxpayer must attach a statement to its Federal income tax return for the taxable year in which the election was made. The statement must include the electing taxpayer's name, address and taxpayer identification number, identify the election and indicate that it was made under the provisions of § 1.6655–7, state that the only financial statement of the taxpayer available for the annualization period is described in § 1.56–1(c)(1)(iv).

PART 602—[AMENDED]

Para. 7. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Para. 8. The table of OMB control numbers in § 602.101(c) is amended as follows: The entry reading: "1.56–1T . . . 1545–0123" is revised to read: "1.56–1 . . . 1545–0123", and the entry reading: "1.6655–7T . . . 1545–0123" is revised to read: "1.6655–7 . . . 1545–0123".

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: July 27, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–19440 Filed 8–16–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 511

Increase in the per Diem Allowance Paid to Members of the Special Industry Committee

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document increases from $186 per day to $200 per day the allowance to which special industry committee members in American Samoa are entitled. This increase is in accordance with changes in General Schedule salary rates effective January 14, 1990, for regular employees of the U.S. Government.

The industry committee, whose members are appointed by the Secretary of Labor and includes representatives of employees, employers, and the public, meets periodically pursuant to the Fair Labor Standards Act, to review the

wage rates in various industries and to recommend wage increases where appropriate. The FLSA authorizes the establishment of minimum wage rates, which may be lower than the mainland minimum wage rate, by special industry committee recommendation in American Samoa.

EFFECTIVE DATE: August 17, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: It is standard practice to compensate special industry members for each day actually spent in the work of the committee and to adjust such compensation in accordance with changes in General Schedule salary rates. This notice increases the compensation of each member of the special industry committee from $186 to $200 and accords with changes in General Schedule salaries effective January 14, 1990.

As this amendment concerns only a rule of agency practice and is not substantive, having no impact on the general public, notice of proposed rulemaking and opportunity for public participation are not required by 5 U.S.C. 553. Furthermore good cause is found to make the regulation effective immediately in order that industry committee members may be afforded the benefit of the revised rates for the hearing scheduled to commence September 10, 1990. It does not appear that public participation or delay would serve any useful purpose. Accordingly, this revision shall be effective immediately.

Paperwork Reduction Act

The changes made by this notice impose no reporting or recordkeeping requirements on the public.

Executive Order 12291

This rule is not subject to Executive Order 12291 on Federal Regulations since it is related to agency organization, management, or personnel. Section 1(a)(3) of Executive Order 12291 excludes such rules from coverage.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirement to prepare regulatory flexibility analyses does not apply.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 511

Administrative practice and procedure, Minimum wages, Wage and hour division, American Samoa.

For the reasons set out in the Preamble, part 511 of chapter 5 of title 29 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC, on this 30th day of July, 1990.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

PART 511—WAGE ORDER PROCEDURE FOR AMERICAN SAMOA

1. The authority citation for part 511 continues to read as follows:

Authority: Secs. 5, 6, 8, 52 Stat. 1062, 1064 (29 U.S.C. 205, 206, 208) secs. 2-12, 60 Stat. 237-244; (5 U.S.C. 1001-1011). Section 4 is issued under sec. 5, 52 Stat. 1062 as amended (29 U.S.C. 205).

2. Section 511.4 is revised to read as follows:

§ 511.4 Compensation of committee members.

Each member of an industry committee will be allowed per diem compensation of $200 for each day actually spent in the work of the committee, and will, in addition, be reimbursed for necessary transportation and other expenses incident to traveling in accordance with Standard Government Travel Regulations then in effect. All travel expenses will be paid on travel vouchers certified by the Administrator or an authorized representative. Any other necessary expenses which are incidental to the work of the committee may be incurred by the committee upon approval of, and shall be paid upon, certification of the Administrator or an authorized representative.

[FR Doc. 90-19429 Filed 8-16-90; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-90-08]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Algiers Alternate Route, Louisiana

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Plaquemines Parish Council and the Louisiana Department of Transportation and Development, the Coast Guard is changing the regulation governing the operation of the State Route 23 lift span bridge across the Gulf Intracoastal Waterway, Algiers Alternate Route, mile 3.8, at Belle Chasse, Plaquemines Parish, Louisiana. The new additional regulation will permit the draw to remain closed to navigation from 6 a.m. to 8:30 a.m., Monday through Friday, except holidays. Presently the draw opens on signal; except that, from 3:30 p.m. to 5:30 p.m., Monday through Friday, except holidays, the draw need not be opened for passage of vessels. This action is being taken to help relieve vehicular traffic congestion during the peak morning commuting period, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On June 4, 1990, the Coast Guard published a proposed rule (55 FR 22823) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated June 19, 1990. In each notice interested parties were given until July 19, 1990, to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Comments

Three letters were received in response to public notification of the proposed rule change. The Federal Emergency Management Agency and the National Marine Fisheries Service offered no objection to the proposed addition to the existing rule. The other commentor expressed full support of the new addition to the existing regulation. After careful consideration of all factors involved, the final rule is unchanged from the proposed rule.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This regulation is 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 of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the mariners that require an opening of the draw are repeat users of the waterway and scheduling their trips to avoid arriving at the bridge during the morning and afternoon closure periods should be relatively easy and should involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it 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 and 33 CFR 1.05–1(g).

2. Section 117.451(b) is revised to read as follows:

§ 117.451 Gulf Intracoastal Waterway

* * * * *

(b) The draw of the S23 bridge, Algiers Alternate Route, mile 3.8 at Belle Chasse, shall open on signal; except that, from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

* * * * *

Dated: August 7, 1990.

J.M. Loy,

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

[FR Doc. 90-19391 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-039; FRL-3822-1]

Approval and Promulgation of Implementation Plans; Tennessee: Harman Automotive, Incorporated Bubble

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today disapproves a State Implementation Plan (SIP) revision submitted by the State of Tennessee. The SIP revision, if approved, would provide for the Harman Automotive, Incorporated facility located in Bolivar, Tennessee (Hardeman County) to achieve compliance with the applicable volatile organic compound (VOC) regulation by averaging or "bubbling" of emissions from Source 09 (mirror coating line) and Source 27 (mask paint department) within the facility. The bubble does not meet the requirements that any emissions trade must be surplus and quantifiable and is therefore not consistent with current Agency policy. This bubble was proposed for disapproval on December 11, 1989 (54 FR 50773).

EFFECTIVE DATE: This action will become effective on September 17, 1990.

ADDRESSES: Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Department of Health and Environment, Air Pollution Control Division, 4th Floor, Customs House, 701 Broadway, Nashville, Tennessee 37219

FOR FURTHER INFORMATION CONTACT: Kay T. Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: The Harman facility operates a mirror frame coating line (Source 09) and a mask painting department (Source 27). Application of paints within this facility is governed by the Tennessee reasonably available control technology (RACT) regulation 1200-3-18-.21, which limits volatile organic compound (VOC) emissions for the two sources to 3.5 pounds VOC per gallon of coating, excluding water.

On July 30, 1986, the State of Tennessee, through the Tennessee Department of Health and Environment, officially submitted a source-specific SIP revision prepared by the State for a certificate of alternate control for the Harman Automotive, Incorporated facility located in Bolivar, Tennessee (Hardeman County). Hardeman County is an unclassified area for ozone. The SIP revision would allow Harman to average or "bubble" VOC emissions from Source 09 (mirror coating line) and Source 27 (mask paint department) in lieu of achieving compliance with the surface coating of miscellaneous metal parts and products RACT regulation on a line-by-line basis. Specifically, the proposed bubble provided for demonstration of compliance by: (1) Limiting the daily sum of emissions from Sources 09 and 27 to the product of the following five factors: (a) 19.33 pounds per thousand mirror frames; (b) thousand mirror frames coated in Source 09 for day; (c) ratio of mirror frames coated in Source 09 for day to metal mirror frames coated in Source 09 for day; (d) ratio of average film thickness for day to 1.5 mils; and (e) ratio of an area coated per mirror frame for day to 0.37 square foot; (2) using electrostatic coating application equipment in Source 09; and (3) limiting emissions from Source 27 to 25 pounds per day.

The certificate of alternate control for Harman was submitted to EPA on July 30, 1986, prior to publication of the December 4, 1986, Emission Trading Policy Statement (ETPS). Despite this fact, the submittal cannot be treated as a pending bubble under the ETPS because it did not meet the requirements of the April 7, 1982, version of the trading policy and was therefore never a complete submittal. Specifically, the submittal did not meet the following criteria:

1. All reductions must be surplus. To demonstrate that the reduction is surplus, a baseline emission level must first be established. Historical emissions data was submitted for source 09 but not for source 27, and, therefore there was not sufficient information to determine whether or not the reduction was surplus. Furthermore, the emissions information which was submitted was based on 1980 production data. Although the 1982 policy did not specifically define the baseline period, it is the Region's opinion that a more recent time period should be used unless

a demonstration is made that the submitted data was more representative. No such demonstration has been made by the State.

2. Alternate emission limits must be enforceable. The compliance instrument must specify applicable restrictions on hours of operation, production rates or input rates; enforceable test methods for determining compliance; and necessary recordkeeping or reporting requirements. The certificate of alternate control did not specify test methods or recordkeeping requirements.

3. All reductions must be quantifiable. To quantify the emission reduction, emissions must be calculated both before and after the reduction. Since no emissions data was submitted for source 27, the required calculations cannot be made. Therefore, the bubble did not meet the requirement to be quantifiable.

Once it was established that the bubble did not meet the requirements to be considered as a pending bubble, the submittal was evaluated against the December 4, 1986, ETPS. The State was advised on August 3, 1987, that the proposed SIP revision was deficient in that it did not meet the following criteria required by the ETPS for the bubble to be approvable:

1. The action must be surplus. To determine whether or not the reduction is surplus, the state must first establish the appropriate level of baseline emissions. Baseline emissions for any source are the product of three factors: emission rate, capacity utilization, and hours of operation. Net baseline emissions are the sum of the individual baseline emissions of all sources involved in the bubble. In attainment or unclassified areas, the lower of actual or allowable values must generally be used for each of these baseline values for each source involved in the trade. For bubbles, a source's actual emissions equal its average historical emissions, in tons per year, for the two-year period preceding the source's application to trade. The State submitted 1980 emissions data for Source 09 and no data for Source 27. Furthermore, the two-year period preceding the source's application to trade is May 1984 through April 1986. No information was submitted to support the use of another time period. Therefore, the bubble does not meet the 1986 ETPS requirement that the trade be surplus.

2. Alternate emission limits must be enforceable. The April 7, 1982, and the December 6, 1986, trading policies both require that appropriate test methods and adequate recordkeeping requirements be included in the submittal in order for the bubble to be enforceable. Therefore, since the submittal did not meet the enforceability requirements of the 1982 policy, it also did not meet those of the 1986 ETPS.

3. The emission reduction must be quantifiable. The requirements that the reduction be quantifiable are the same for both the 1982 and 1986 trading policies. Therefore, the bubble does not meet the requirement that the reduction be quantifiable as specified in the December 4, 1986, ETPS for the same reasons as those cited previously for the 1982 policy.

Because there is no additional technical information which needs to be addressed, no technical support document has been prepared.

On December 11, 1989 (54 FR 50773), EPA proposed to disapprove the bubble for Harman Automotive in Bolivar, Tennessee. The public was invited to submit written comments on the proposed action. However, no comments were received.

Final Action

The Harman Automotive, Incorporated bubble is not consistent with EPA's ETPS. Therefore, EPA is today disapproving this revision to the Tennessee SIP.

Under Executive Order 12291, today's action is not "major." It has been submitted to the Office of Management and budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. Sections 7401–7642.

Dated: August 7, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90–19422 Filed 8–16–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 148

[FRL–3821–9]

Underground Injection Control Program; Hazardous Waste Injection Restrictions, Land Disposal Restrictions for Third Third Scheduled Wastes; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: EPA is correcting several errors in the final rule establishing effective dates prohibiting the injection of Third Third scheduled wastes restricted under section 3004(g) of RCRA. These rules were published in the **Federal Register** on June 1, 1990 (55 FR 22520 *et. seq.*).

EFFECTIVE DATE: May 8, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce J. Kobelski, Underground Injection Control Branch, Office of Drinking Water (WH–550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7275.

SUPPLEMENTARY INFORMATION: On June 1, 1990, the Agency promulgated rules establishing effective dates prohibiting the land disposal by injection of Third Third list wastes (i.e. wastes covered by section 3004(g) of RCRA and prohibited from land disposal on May 8, 1990—the last of three deadlines prohibiting land disposal established under that section of the law).

In the preamble to this final rule, the Agency clearly stated that pursuant to section 3004(h) of RCRA, multi-source leachate wastewaters, designated by Hazardous Waste Number F039 (wastewaters), would receive a two-year capacity variance based on lack of adequate alternative treatment capacity. In the rule, the Agency presented data demonstrating that such capacity was not available.

However, the regulatory language in § 148.16(c) is incorrect in the final rule, as it indicates that Hazardous Waste Number F039 (both wastewaters and nonwastewaters) will be prohibited from injection at off-site injection facilities effective August 8, 1990. EPA is, therefore, issuing a technical amendment to § 148.16, clarifying that injected multi-source leachate wastewater has been granted a two-year capacity variance and may be underground injected at both on-site and off-site injection facilities until May 8, 1992. According to data provided to the Agency for Third Third rulemaking, multi-source leachate nonwastewaters are not being underground injected. F039

(nonwastewater) will be prohibited from underground injection effective August 8, 1990.

The Agency is also correcting an oversight concerning U246 and a newly listed waste, F025. EPA has not received any data during the Third Third rulemaking indicating that either U246 or F025 wastes were being underground injected. Accordingly, in Table III.B.2.(a) of the preamble to this rule, the Agency stated that it would prohibit underground injection of U246 and F025 effective August 8, 1990. Both U246 and newly listed F025 were inadvertently omitted from the regulations in part 148, and these wastes are therefore being added to § 148.16(c) in this correction.

Additionally, several waste codes which were addressed in previous rulemakings, but were erroneously included in § 148.16(c), are being deleted.

List of Subjects in 40 CFR Part 148

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Water pollution control.

Dated: August 9, 1990.

Robert Wayland,

Acting Assistant Administrator For Water.

The following correction is made in EPA/OSW–FR–90–010; SWH–FRL–3751–1, Land Disposal Restrictions for Third Third Scheduled Wastes, published in the **Federal Register** on June 1, 1990 (55 FR 22520).

PART 148—[AMENDED]

1. The authority citation for part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 32 U.S.C. 6901 *et. seq.*

2. Section 148.16 (c) and (f) are revised to read as follows:

§ 148.16 Waste specific prohibitions—Third Third wastes.

* * * * *

(c) Effective August 8, 1990, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Number F039 (nonwastewaters); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K002, K003, K005 (wastewaters), K006, K007 (wastewaters), K026, K032, K033, K034, and K100 (wastewaters); the wastes specified in 40 CFR 261.33 as P006, P009, P017, P022, P023, P024, P028, P031, P033, P034, P038, P042, P045, P046, P047, P051, P056, P064, P065, P073, P075, P076, P077, P078, P088, P093, P095, P096, P101, P103, P116, P118, P119, U001, U004, U006, U017, U024, U027, U030, U033, U034, U038, U039, U042, U045, U048, U052, U055, U056, U068, U071, U072, U075, U076, U079, U081, U082, U084, U085, U087, U090, U091, U096, U112, U113, U117, U118, U120, U121, U123, U125, U126, U132, U136, U139, U141, U145, U148, U152, U153, U156, U160, U166, U167, U181, U182, U183, U184, U186, U187, U191, U194, U197, U201, U202, U204, U207, U222, U225, U234, U236, U240, U243, U246, and U247; the wastes identified in 40 CFR 262.21, 261.23, or 261.24 as hazardous based on a characteristic alone, designated as D001, D004, D005, D006, D008, D009 (wastewaters), D010, D011, D012, D013, D014, D015, D016, D017; and newly listed waste F025 are prohibited from underground injection at off-site facilities.

* * * * *

(f) Effective May 8, 1992, the waste identified in 40 CFR 261.31 as EPA Hazardous Waste Number F039 (wastewaters); the wastes identified in 40 CFR 261.22, 261.23 or 261.24 as hazardous based on a characteristic alone, designated as D002 (wastewaters and nonwastewaters), D003 (wastewaters and nonwastewaters), D007 (wastewaters and nonwastewaters), and D009 (nonwastewaters) are prohibited from underground injection. These effective dates do not apply to the wastes listed in 40 CFR 148.12(b) which are prohibited from underground injection on August 8, 1990.

* * * * *

[FR Doc. 90–19423 Filed 8–16–90; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 9F3798/R1089; FRL–3795–3]

Pesticide Tolerances for Lactofen (1-(Carboethoxy)Ethyl-5-(2-Chloro-4-(Trifluoromethyl)Phenoxy)-2-Nitrobenzoate); Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: This technical amendment redesignates 40 CFR 180.453 as added in the **Federal Register** of June 14, 1990 (55 FR 24084) and corrected in the **Federal Register** of July 13, 1990 (55 FR 28760) by redesignating the text as 40 CFR 180.432(b) to vacate a duplicative listing and consolidate the text in a preexisting section for the herbicide lacotfen. This document merely consolidates existing regulations. No new regulatory requirements are being added; therefore, advance notice and period for public comments are not necessary prerequisites for the promulgation of this amendment.

DATES: This technical amendment becomes effective August 17, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Acting Product Manager (PM) 23, (H7505C), Registration Division, 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: In the **Federal Register** of June 14, 1990 (55 FR 24084), EPA issued a final rule adding an interim tolerance for residues of the herbicide lactofen (1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate) and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity (RAC) cotton at 0.05 part per million ("cotton" changed to "cottonseed" by a correction in the **Federal Register** of July 13, 1990 (55 FR 28760)). But a section, 40 CFR 180.432, for lactofen already existed, and the interim tolerance should have been added under 40 CFR 180.432. This technical amendment corrects that oversight by redsignating the text of 40 CFR 180.453 as 40 CFR 180.432(b) and removing 40 CFR 180.453.

As this technical amendment merely corrects an oversight, consolidates existing text, and adds no new regulatory requirements, advance notice and period for public comments are not necessary prerequisites to the issuance of this amendment and it is effective upon publication in the **Federal Register**

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 6, 1990.

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. By revising § 180.432, to read as follows:

§ 180.432 Lactofen; tolerances for residues.

(a) Tolerances are established for the combined residues of lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its associated metabolites containing the diphenyl ether linkage expressed as lactofen in or on soybeans at 0.05 part per million.

(b) An interim tolerance, set to expire May 31, 1991, is established for residues of the herbicide 1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate and its metabolites containing the diphenyl ether linkage in or on the following raw agricultrual commodity:

Commodity	Parts per million
Cottonseed	0.5

§ 180.453 [Removed]

2. By removing § 180.453 *1-(Carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate; tolerances for residues.*

[FR Doc. 90-19363 Filed 8-16-90; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 8F3630/R1085; FRL-3772-7]

Pesticide Tolerances for Fenarimol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a permanent tolerance for residues of the fungicide fenarimol in or on cherries. This regulation to establish the maximum permissible level for residues of fenarimol in or on this raw agricultural commodity was requested by Elanco Products Co.

DATES: This regulation becomes effective August 17, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 8F3630/R1085], 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: Susan T. Lewis, Product Manager (PM) 21, (H7505C), Registration Division, 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: In the Federal Register of June 14, 1990 (55 FR 24117), EPA issued a proposed rule that gave notice that Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285, had submitted pesticide petition (PP) 8F3630 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose to establish a permanent tolerance for the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on the raw agricultural commodity cherries at 1.0 part per million (ppm). A tolerance for a period of 1 year for the fungicide fenarimol had been previously established in the Federal Register of October 30, 1989 (54 FR 45733).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule to establish a permanent tolerance rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is 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. 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 Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 1990.

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 § 180.421(b), by amending the table therein by deleting the column "Expiration date"; amended, the table reads as follows:

§ 180.421 Fenarimol; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
Cherries	1.0
Grapes	0.2

[FR Doc. 90-19364 Filed 8-16-90; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-3821-8]

Washington; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final authorization.

SUMMARY: The State of Washington has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Environmental Protection Agency (EPA) has reviewed Washington's application and has made a decision, subject to public review and comment, that four of the five hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve these four hazardous waste program revisions. Washington's application for program revision is available for public review and comment.

DATES: Final authorization for Washington shall be effective October 16, 1990, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on

Washington's program revision application must be received by the close of business September 17, 1990.

ADDRESSES: Copies of Washington's program revision application are available during the business hours of 9 a.m. to 4:30 p.m. at the following addresses for inspection and copying:

Washington Department of Ecology, Solid and Hazardous Waste Program, Rowesix, Building 4, 4224 Sixth Avenue SE., Olympia, Washington 98504, Phone: (206) 459–6598

U.S. EPA Headquarters Library, PM 211 A, 401 M Street SW., Washington, DC 20460, Phone: (202) 382–5926

U.S. EPA Region X Library-Information Center, 1200 Sixth Avenue, Seattle, Washington 98101, Phone: (206) 442–1259.

Written comments should be sent to Patricia Springer, U.S. EPA Region X (HW–112), 1200 Sixth Avenue, Seattle, Washington 98101; phone: (206) 442–2858.

FOR FURTHER INFORMATION CONTACT: Patricia Springer at the above address and phone number.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6929(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266 and 124 and 270.

B. Washington

Washington initially received final authorization on January 30, 1986 for the base program, and a subsequent program revision was approved September 22, 1987. On August 10, 1988, EPA received Washington's program revision application for additional program approvals. Today, Washington is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

Washington is requesting approval for state program revisions which incorporate the closure, post-closure, and financial responsibility amendments; revised listing for spent pickle liquor; corporate guarantee for liability insurance; and public availability of information.

The August 10, 1988 application also requested approval to revisions to Chapter 70.105 of the Revised Code of Washington, concerning the non-operating landowner certification requirement for hazardous waste treatment, storage, and disposal permit applicants. However, EPA has disagreed with the State's assertion that the proposed revision was equivalent and as stringent as the Federal program. On November 28, 1988, Washington requested that the portion of the application which refers to the permit certification language be withdrawn. Therefore, references in Part IV. B. (pages 3–5) of the Attorney General Statement, the paragraph 3 of II.B.4. (page II–8) and paragraph III.8. (page II–52) of the Program Description regarding changes in the permit certification language are not considered a part of the application and are not approved as a program revision.

Washington had previously requested authorization for the RCRA 3006(f) availability of information requirement. The September 22, 1987 Federal Register Notice (52 FR 3556) granting Washington final authorization for certain program revisions included a schedule of compliance for making State program revisions which would enable Washington to meet the Federal authorization requirements for RCRA 3006(f). Washington has made the necessary State program revisions to satisfy all requirements necessary to qualify for final authorization.

Specifically, Washington is applying for authorization for the following Federal hazardous waste statute and regulations:

Federal requirement	State authority
Public Availability of Information,	RCW 42.17.010 (11); RCW 42.17.250, .260, .290, .300, .310, .320, and .340. RCW 43.21A.160; WAC 173-03-070, -080, and 090; WAC 173-303-905.
Closure, Post Closure, and Financial Responsibility Requirements (51 FR 16422, May 2, 1986).	WAC 173-303-040(108)-(111); 173-303-045; -400(3)(a); 173-610(1)(a), (b); (2)(a) (i) & (ii); (2)(b); (3)(a); (3)(a)(i)-(iii); (3)(a)(v)-(vii); (3)(b); (3)(c) and (3)(c)(iv); (4)(a)-(c); (5); (6); (7)(a)-(e); (8)(a)-(d); (9); (10)(a)-(c); (11); 173-303-620(2); (3)(a)-(c); (4)(b); (5)(a)-(c); (6)(a)-(b); (10); 173-303-805(7)(d); 173-303-806(4)(a)(xiv)-(xvi); 173-303-830(4)(d).
Listing for spent pickle liquor (51 FR 19320, May 28, 1986 and 51 FR 33612, September 22, 1986).	WAC 173-303-9904.
Liability Coverage—Corporate Guarantee (51 FR 25350, July 11, 1986).	WAC 173-303-045, -400(3); WAC 173-303-620(8) (a) and (b); WAC 173-303-620(10); RCW 23A.08.

EPA has reviewed Washington's application, and has made an immediate final decision that Washington's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization, excluding that portion of the application which has been withdrawn.

Consequently, EPA intends to grant final authorization for the additional program modifications to Washington. The public may submit written comments on EPA's immediate final decision up until September 17, 1990. Copies of Washington's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Washington's program revision shall become effective in 60 days unless an adverse comment pertaining to Washington's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Washington's program revision contains no State requirements that are broader in scope than the relevant Federal requirements. Washington is not seeking authorization to operate on Indian lands.

C. Decision

I conclude that Washington's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Washington is granted final authorization to operate its hazardous waste program as revised. Washington has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Washington also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Washington's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Thomas P. Dunne,

Acting Regional Administrator.

[FR Doc. 90-19419 Filed 8-16-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD-601-F]

RIN 0938-AD76

Medicare Program; Payment for Outpatient Surgery at Eye Specialty Hosptials and Eye and Ear Specialty Hospitals

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

ACTION: Final rule.

SUMMARY: In accordance with section 4068(a) of the Omnibus Budget Reconciliation Act of 1987, this final rule revises the payment provisions concerning outpatient hospital services furnished in connection with ambulatory surgical procedures for certain qualified eye specialty hospitals and eye and ear specialty hospitals. It establishes that, for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990, the blended payment amount applicable to these hospitals remains at 75 percent of the hospital-specific amount and 25 percent of the ambulatory surgical center amount.

EFFECTIVE DATE: This final rule is effective September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Linda McKenna, (301) 966-4530.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9343(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), enacted on October 21, 1986, set forth a new methodology to be used in determining Medicare payment for facility services furnished in a hospital on an outpatient basis in connection with covered ambulatory surgical center (ASC) procedures that are specified by the Secretary in accordance with section 1833(i)(1)(A) of the Social Security Act (the Act) and 42 CFR 416.65. Section 9343(a) of Public Law 99-509 amended section 1833(a)(4) of the Act and added a new section 1833(i)(3) to the Act to provide that, for hospital cost reporting periods beginning on or after October 1, 1987, payment for outpatient facility services in the aggregate shall be based on a comparison between two amounts. The payment is the lesser of the following:

- The amount for the services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges for the services, reduced by the applicable deductible and coinsurance amounts).
- An amount based on a blend of—
  - —The amount that would be paid to the hospital for the services under section 1833(a)(2)(B) of the Act (referred to below as the hospital-specific amount); and
  - —The amount that would be paid to a freestanding ASC for the same procedure in the same geographic area, in accordance with section 1833(i)(2)(A) of the Act, which is equal to 80 percent of the standard overhead amount reduced by the applicable deductible amount (referred to below as the ASC payment amount).

Section 1833(i)(3)(B) of the Act, as added by section 9343(a) of Public Law 99-509, provided that for cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blended amount is based on 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount attributable to the procedure. For cost reporting periods beginning on or after October 1, 1988, the blended payment amount is based on 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount.

We published a final rule in the Federal Register on October 1, 1987 (52 FR 36765) to implement the revised payment methodology for hospital outpatient ASC procedures which is set forth at 42 CFR 413.118.

II. New Legislation

Section 4068(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), enacted on December 22, 1987, amended section 1833(i)(3)(B)(ii) of the Act to provide certain hospitals a 2-year extension of the blended payment amount applicable for cost reporting periods beginning in Federal fiscal year (FY) 1988. The extension of that blended payment amount (that is, 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount) applies to eye specialty hospitals and eye and ear specialty hospitals that meet certain criteria discussed below and is effective for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990.

Section 4068(a)(2) of Public Law 100-203 amended section 1833(i)(3)(B)(ii) of the Act to provide that a hospital may make an application to the Secretary for an extension of the blended payment amount (75 percent of the hospital-specific amount and 25 percent of the ASC payment amount) if it demonstrates that it—

• Specializes in eye services, or eye and ear services, as determined by the Secretary;

• Receives more than 30 percent of its total revenues from outpatient services; and

• Was an eye specialty hospital or eye and ear specialty hospital on October 1, 1987.

On January 26, 1989, we published a proposed rule to implement the provisions of section 4068(a) of Public Law 100–203.

III. Provisions of the Proposed Rule

As set forth in the proposed rule, to qualify as an eye specialty hospital or an eye and ear specialty hospital under section 4068(a) of Public Law 100–203, a hospital, in addition to making an application as discussed below, would have to meet certain qualifying criteria set forth in section 1833(i)(3)(B)(ii) of the Act.

One of the criteria that a hospital would have to meet to qualify for the extension of the FY 1988 blended payment amount (that is, a blended amount based on 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount) is that it would have to specialize in eye services or eye and ear services.

We proposed that a hospital that has more than 60 percent of its Medicare discharges classified into the diagnosis-related groups (DRGs) relating to diseases and disorders of the eye (that is, DRGs 36 through 48), or ear, nose, and throat (that is, DRGs 49 through 74), clearly specializes in eye procedures or eye and ear procedures and thus could qualify as an eye specialty hospital or an eye and ear specialty hospital for purposes of section 1833(i)(3)(B)(ii) of the Act.

The second criterion that a hospital would have to meet to qualify for the extension of the FY 1988 blended payment amount is that it receives more than 30 percent of its total revenues from outpatient services. For purposes of these provisions, the proposed rule stated that we would consider revenues to be a hospital's gross charges as defined for the purpose of Medicare reimbursement. That is, gross charges are the regular rates established by a provider for services furnished to beneficiaries and other charge-paying patients. Each charge should be related to the cost of the service and applied uniformly to all patients, that is, both inpatients and outpatients.

The third criterion is that a hospital must have been an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987. Therefore, as proposed, the data available for a hospital's cost reporting period beginning on or after October 1, 1986, and before October 1, 1987, would be used to determine if the hospital meets the necessary criteria. Whereas the statute is silent with respect to the period during which the hospital's outpatient revenues must represent 30 percent of its total revenues, section 1833(i)(3)(B)(ii) of the Act requires that a hospital demonstrate it was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987. Thus, we believe it is fully consistent and appropriate to apply the outpatient revenue test during the cost reporting period when the hospital's specialty is determined.

The proposed rule stated that a hospital seeking to qualify for the 2-year extension of the FY 1988 blended payment rate under the criteria described above would be required to submit its request in writing to its fiscal intermediary by March 27, 1989 (that is 60 days from from the date of publication) or by the start of the hospital's cost reporting period beginning on or after October 1, 1988, whichever is later. As discussed above, in determining whether a hospital qualifies for an extension, the intermediary would use data available from cost reporting periods beginning on or after October 1, 1986, and before October 1, 1987. Upon completion of its determination, the intermediary would notify the hospital and the appropriate HCFA regional office of its determination.

As proposed, a hospital that meets the three criteria and has its application approved would be eligible for an extension of the FY 1988 blended payment amount under § 413.118 for cost reporting periods beginning on or after October 1, 1988, and before October 1, 1990. We proposed that each hospital that qualifies for the extension would have the extension granted retroactive to its first cost reporting period beginning on or after October 1, 1988. The blended payment amount would be equal to the sum of 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount. For cost reporting periods beginning on or after October 1, 1990, the blended payment amount for eye specialty hospitals and eye and ear specialty hospitals would be equal to the sum of 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount (which is the blended payment amount applicable to all hospitals not eligible for the extension effective with cost reporting periods beginning on or after October 1, 1988). We noted in the proposed rule that hospitals that qualify for the extension would continue to be subject to the payment principle in § 413.118(c) that provides that the aggregate amount of payments for facility services that are related to ASC procedures furnished by a hospital on an outpatient basis is equal to the lesser of—

• The hospital's reasonable costs or customary charges; or

• The blended payment amount.

We proposed to amend § 413.118(d) to implement the special payment provisions for eye specialty hospitals and eye and ear specialty hospitals required by section 4068(a) of Public Law 100–203. We also proposed to revise an incorrect statutory citation in § 413.118(a) so that paragraph (a) correctly states that § 413.118 implements sections 1833 (a)(4) and (i)(3) of the Act.

In August of 1988, before publication of the proposed rule, we issued instructions implementing section 4068(a) of Public Law 100–203 in new § 2830.8 of the Provider Reimbursement Manual (PRM). We indicated in that new section that the requirements would be subject to change based on notice and comment rulemaking. In the new § 2830.8 of the PRM, we stated that to quality as an eye specialty hospital or an eye and ear specialty hospital more than 50 percent of a hospital's Medicare discharges would have to be classified into DRGs that relate to diseases and disorders of the eye or ear (DRGs 36 through 74). However, we later proposed that more than 60 percent of a hospital's Medicare discharges would have to be classified into eye or ear DRGs for a hospital to be considered an eye specialty hospital or an eye and ear specialty hospital. Under this final rule, we are adopting the requirements as stated in the proposed rule.

To take into account the requirement of this final rule that differs from the program instruction, we will apply the following procedures:

• A hospital that is in its first year of the extension based on meeting the criterion in § 2830.8 of the PRM, (that is, that has more than 50 percent of its Medicare discharges classified into eye and ear DRGs), but which will no longer qualify for the extension because more than 60 percent of the Medicare discharges are not classified into eye and ear DRGs, will receive a blended payment amount based on 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount effective 30 days after publication of this final rule in the **Federal Register**.

• A hospital that is in its second year of the extension and would otherwise

not continue to qualify for the extension will continue to receive the blended payment amount based on 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount for the remainder of its second year.

Section 2830.8 of the PRM will be corrected to reflect this new provision.

IV. Discussion of Comments

We received only one comment on the provisions of the proposed rule as follows:

Comment: The commenter requested that the application of the selection criteria should focus on a hospital "operating entity" rather than Medicare provider number. The commenter believes that the proposed qualification process penalizes single Medicare providers that operate multihospital medical centers that provide a full range of services. The commenter suggested that in applying the criteria for selection as a qualified eye or eye and ear specialty hospital, the regulations should acknowledge that major medical centers that use one provider number for cost reporting purposes often consist of many specialized hospitals. Therefore, the provider should be allowed to submit a request for one of its component hospitals and use only the data from that hospital to meet the selection criteria.

Response: A multihospital medical center is comprised of several hospitals that have chosen to be treated as a single provider of services. A multihospital medical center is certified as a single hospital, and all hospitals within the medical center have agreed to be paid as though they were one hospital. Therefore, we believe it would be inconsistent to treat the various hospitals of the medical center as one hospital for certification purposes and for purposes of calculating payment for all other services and as individual hospitals for purposes of receiving the extension of the blended payment amount for ASC procedures. The multihospital medical center must be considered as a single entity (or hospital) in determining whether it meets the qualifying criteria to receive an extension of the blended payment amount. Since we believe this application of the qualifying criteria to be both reasonable and equitable, no changes have been made in the final regulations.

V. Regulatory Impact Statement

A. Executive Order 12291

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

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

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

C. Regulatory Flexibility Act

We generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all hospitals are treated as small entities.

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

Based on the definition of specialty hospital set forth in this final rule, we have identified 15 hospitals that would qualify as either eye specialty hospitals or eye and ear specialty hospitals. Although the effects of the statute and this final rule may have a significant effect on those hospitals that qualify as specialty hospitals, we believe that the number of hospitals that will qualify represents a small fraction of all small rural hospitals and of all hospitals. Thus, because affected hospitals do not represent a substantial number either of all small rural hospitals or of all hospitals, the Secretary certifies that a regulatory flexibility analysis and an analysis of the effects of this final rule on small rural hospitals is not required.

V. Other Required Information

Paperwork Reduction Act

This final rule contains no information collection requirements; therefore, it need not be reviewed by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICE

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a) and (i), 1861(v), 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a) and (i), 1395x(v), 1395hh, 1395rr, and 1395ww).

2. In § 413.118, paragraph (a) is revised; the spelling of the word "date" in paragraph (c)(2) is corrected to read "data"; the word "reasonble" in paragraph (d)(1)(i) is corrected to read "reasonable"; paragraph (d)(2)(is revised; and a new paragraph (d)(3) is added to read as follows:

§ 413.118 Payment for facility services related to covered ASC surgical performed in hospitals on an outpatient basis.

(b) *Basis and scope.* This section implements sections 1833 (a)(4) and (i)(3) of the Act and establishes the method for determining Medicare payments for services related to covered ambulatory surgical center (ASC) procedures performed in a hospital on an outpatient basis. It does not apply to services furnished by an ASC operated by a hospital that has an agreement with HCFA to be paid in accordance with § 416.30 of this chapter. [For regulations governing ASCs see part 416 of this chapter.]

* * * * *

(d) *Blended payment amount.* * * *

(2) Except as provided in paragraph (d)(3) of this section, for cost reporting periods beginning on or after October 1, 1988, the blended payment amount is equal to 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount.

(3) For cost reporting periods beginning on or after October 1, 1988

and before October 1, 1990, the blended payment amount is equal to the sum of 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount for a hospital that makes an application to its fiscal intermediary and meets the following requirements:

(i) More than 60 percent of the hospital's inpatient hospital discharges, as described in § 412.60 of this chapter, occurring during its cost reporting period beginning on or after October 1, 1986 and before October 1, 1987, are classified in diagnosis-related groups 36 through 74.

(ii) During its cost reporting period begining on or after October 1, 1986 and before October 1, 1987, more than 30 percent of the hospital's total revenues is derived from outpatient services.

* * * * *

(Catalog of Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance; and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: April 25, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: June 11, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-19410 Filed 8-16-90; 8:45 am]

BILLING CODE 4120-01-M

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42 CFR Part 435

[MB-016-FC]

RIN 0938-AC82

Medicaid Program; Eligibility of Qualified Severely Impaired Individuals Who Work

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

ACTION: Final rule with comment period.

SUMMARY: This rule amends the Medicaid regulations to specify, for Medicaid coverage, a permanent eligibility group of qualified individuals who, although severely impaired, work and demonstrate ability to perform substantial gainful activity and who are considered to be Supplemental Security Income (SSI) recipients. It also specifies how SSI payments made to certain institutionalized individuals are to be disregarded as income under Medicaid for a limited period. The amendments conform the regulations to provisions of the Omnibus Budget Reconciliation Act of 1986 and the Employment Opportunities for Disabled Americans Act.

DATES: The effective date of these regulations is November 15, 1990. Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 16, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB-016-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC,

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code MB-016-FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, (301) 966-6529.

SUPPLEMENTARY INFORMATION:

Background

Under section 1902(a)(10)(A)(i)(II) of the Social Security Act (the Act), recipients of Supplementary Security Income (SSI) under title XVI of the Act are automatically entitled to Medicaid coverage as cash assistance recipients in States with Medicaid programs unless the State chooses to apply more restrictive eligibility requirements under the provisions of section 1902(f) of the Act. Under section 1902(f) of the Act, a State may apply more restrictive eligibility requirements than SSI to aged, blind, or disabled individuals, provided these requirements are no more restrictive than those applied under its approved Medicaid plan as of January 1, 1972. In States that elect to use more restrictive criteria, individuals receiving SSI are not automatically entitled to Medicaid by virtue of their eligibility for SSI benefits. These individuals must apply for and be determined eligible for Medicaid under the State's more restrictive requirements as discussed in detail later in this preamble.

Under section 1619 of the Act, certain blind and severely impaired disabled individuals who work and who otherwise would be ineligible under SSI because of their earnings are given special title XVI benefits and retain SSI status for purposes of Medicaid eligibility. Specifically, under section 1619(a) of the Act, disabled individuals who otherwise would lose SSI because they work and demonstrate the ability to perform substantial gainful activity in spite of severe medical impairments may continue to receive special SSI benefits if they continue to meet the eligibility requirements for SSI benefits. Under section 1619(b), disabled individuals whose income exceeds the amount allowed to retain financial eligibility for regular SSI payments or the special SSI benefit under section 1619(a) (and/or Federally administered State supplementary payments, where applicable) and blind individuals who lose regular SSI payments (and/or Federal administered State supplementary payments) may continue to retain special SSI status for purposes of Medicaid eligibility under certain specified conditions. We refer to these individuals as being "in section 1619(b) status."

For purposes of Medicaid, disabled individuals receiving cash benefits under section 1619(a) of the Act and blind and disabled individuals determined to be in section 1619(b) status are considered to be SSI recipients. Thus, individuals in a State that covers individuals receiving SSI payments (all those except States using the more restrictive criteria of section 1902(f)) and has an agreement under section 1634 of the Act to have the Social Security Administration (SSA) determine Medicaid eligibility are not required to file a separate application with the Medicaid agency—their SSI eligibility automatically confers Medicaid eligibility. Individuals in a State that covers SSI recipients but does not have a section 1634 agreement with SSA must file applications with the Medicaid agency and be found eligible by the agency in order to receive Medicaid benefits. Individuals in States using more restrictive eligibility requirements than those under SSI under the authority of section 1902(f) (i.e., where an individual's SSI recipient status under section 1619 does not automatically confer Medicaid eligibility) must file a separate application for Medicaid with the Medicaid agency and be determined eligible under the State's eligibility criteria, some, if not all, of which are more restrictive than those under SSI.

Legislative Amendments

Congress, in the Omnibus Budget Reconciliation Act of 1986 (OBRA'86), Public Law 99–509, enacted on October 21, 1986, established a mandatory categorically needy Medicaid eligibility group of qualified severely impaired individuals who meet the section 1619 eligibility criteria to ensure continued Medicaid for these individuals. Section 9404 of OBRA'86 amended section 1902(a)(10)(A)(i)(II) of the Act to provide that, in addition to individuals receiving SSI already provided for under that section, States must provide Medicaid eligibility for individuals who are qualified severely impaired individuals as defined in a new section 1905(q) of the Act. The new section 1905(q) defines a qualified severely impaired individual as an individual under age 65—

(1) Who, for the month preceding the first month in which section 1905(q) applies to the individual—

- Received an SSI payment under section 1611(b) on the basis of blindness or disability; a supplementary payment under section 1616 of the Act or under section 212 of Public Law 93–66 on the basis of blindness or disability; a payment of monthly benefits under section 1619(a); or a supplementary payment under section 1616(c)(3); and
- Was eligible for medical assistance under the State approved Medicaid plan; and

(2) With respect to whom the Secretary determines that—

- The individual continues to be blind or continues to have a disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all nondisability-related requirements for eligibility for SSI benefits;
- The income of the individual would not, except for his earnings, be equal to or in excess of the amount that would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments);
- The lack of eligibility for Medicaid benefits would seriously inhibit his ability to continue or obtain employment; and
- The individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under title XVI (including any federally administered State supplementary payments), Medicaid, and publicly funded attendant care services (including personal care assistance) that would be available to him in the absence of such earnings.

The statutory language of OBRA '86 used to describe qualified severely impaired individuals in section 1905(q) of the Act is virtually identical to the language describing individuals under the provisions of section 1619(b) of the Act. (The latter authority was to have expired on June 30, 1987.) The new section 1905(q) also provides that an individual who is eligible for medical assistance under section 1619(b) in June 1987 is also considered a qualified severely impaired individual for as long as the individual meets the requirements of section 1905(q)(2) of the Act. Shortly after OBRA '86 was enacted, Congress passed the Employment Opportunities for Disabled Americans Act (EODAA), Public Law 99–643, on November 10, 1986. Section 2 of EODAA made section 1619 permanent. Thus, individuals who were eligible or who became eligible under section 1619 for SSI benefits and thus were entitled to Medicaid continued to be eligible for these benefits after June 20, 1987. EODAA also made some conforming and technical amendments to sections 1619 (a) and (b) of the Act to reflect the permanent nature of this special benefits program.

In addition, section 7 of EODAA revised section 1619(b) and section 1902(f) of the Act. Under these revisions, States using more restrictive Medicaid eligibility requirements than SSI under the authority of section 1902(f) of the Act must provide mandatory categorically needy Medicaid coverage to certain disabled and blind individuals covered under section 1619 of the Act. These are individuals who either: (1) Qualify for cash benefits under section 1619(a) of the Act, or (2) are determined by SSA to be in section 1619(b)(1) status and were eligible for Medicaid under the State's approved Medicaid plan in the month immediately preceding the first month in which they qualified for benefits under section 1619(a) or went into section 1619(b)(1) status.

Sections 2 and 7 of EODAA and section 9404 of OBRA '86 were effective on July 1, 1987, except in two instances. If the Secretary determined that State legislation (other than legislation appropriating funds) was required in order for the State's Medicaid plan to meet these legislative requirements, the State Medicaid plan was not to be considered as failing to comply with the requirements of title XIX solely on the basis of its failure to meet the legislative requirements until 60 days after the close of the first regular session of the State legislature that began after November 10, 1986 with respect to section 7 of EODAA, and until the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that began after October 21, 1986, with respect to section 9404 of OBRA '86.

Proposed Implementation of Legislative Changes

On May 4, 1988, we published a proposed rule to implement these legislative amendments (53 FR 15857). Below is a discussion of how we proposed to implement them.

In States covering SSI recipients, Medicaid eligibility is granted on the basis of an individual's SSI recipient Status. We considered the group of "qualified severely impaired individuals" created by section 9404 of OBRA '86 to be equivalent to the group of individuals who are in section 1619(b) status and, therefore, are treated for Medicaid purposes in the same way as SSI recipients. Thus, in States covering SSI recipients, we proposed to continue to apply the policy in existence before the legislative revisions that provided automatic Medicaid coverage to individuals in section 1619 status who were considered to be SSI recipients.

In States that use more restrictive eligibility criteria than SSI under section 1902(f) of the Act, an individual's SSI recipient status does not confer Medicaid eligibility. Before the legislative revisions, section 1902(f) States were not required to provide automatic Medicaid eligibility to SSI recipients or individuals considered to be SSI recipients, such as under section 1619 of the Act. Section 7 of the EODAA amended section 1619(b) and section 1902(f) of the Act to provide that, in section 1902(f) States, an individual who qualified for benefits under section 1619(a) of the Act or meets the requirements of section 1619(b)(1) of the Act, as determined by SSA, and who was eligible for Medicaid under the State's more restrictive Medicaid eligibility criteria in the State approved Medicaid plan in the month immediately preceding the first month in which the individual meets the conditions for section 1619 (a) or (b)(1) status and who continues in section 1619 (a) or (b)(1) status must be covered as mandatory categorically needy under Medicaid. In this context, we proposed to interpret the provision in section 1619(b)(3)(B) that the individual was eligible for medical assistance under the State plan approved under title XIX (in the reference month for purposes of Medicaid eligibility) to mean that the State must verify that the individual actually had been determined eligibile for Medicaid as either categorically or medically needy in the (reference) month immediately preceding the first month of section 1619 (a) or (b)(1) status

without having to satisfy any additional conditions. We did not propose to interpret this to mean that the individual must have actually used Medicaid services during the reference month. Generally, an individual is considered eligible during the reference month if a Medicaid card was issued to him for that month.

In order for an individual to remain eligible for Medicaid in section 1902(f) States under the amendments made by section 7 of EODAA, the individual must continue to be eligible under section 1619 (a) or (b)(1) as determined by the Social Security Administration. Thus, if the individual loses section 1619 (a) or (b)(1) status or, if there is a break in this status, he would not be eligible for Medicaid under section 1619(b)(3) of the Act for the months when he was not eligible under section 1619 (a) or (b)(1). An individual who is not protected by section 1619(b)(3) may still become eligible for Medicaid on some other basis, such as under a State's medically needy program. If the individual is considered for eligibility on some other basis, he needs to satisfy the State's more restrictive eligibility requirements imposed under section 1902(f).) If the individual returns to section 1619 (a) or (b)(1) status, continued Medicaid coverage would be determined by the eligibility test for the initial month of section 1619 eligibility.

It is not clear from the statute or the legislative history of EODAA whether, in the phrase "month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements" in section 1619(b)(3), the term "first month" means the first month in an individual's life in which he qualified for section 1619 (a) benefits or (b)(1) status or the first month of the individual's current continuous section 1619 (a) or (b)(1) eligibility. Therefore, we proposed to allow States maximum flexibility in providing Medicaid coverage to these severely impaired individuals. We proposed to provide States with two options in determining the first month of section 1619 (a) or (b)(1) eligibility (the reference month) in cases where an individual has more than one period of eligibility under section 1619 (a) or (b)(1). This occurs in situations where there are breaks in section 1619 (a) or (b)(1) status, such as when an individual returns to regular SSI status under section 1611, becomes ineligible for section 1619(a) benefits or section 1619(b)(1) status altogether.

The option that the State chooses would have to be applied to all individuals. Under the first option, the first month of section 1619 (a) or (b)(1) status would be the first month of the first period the individual went into this status—that is, there were no periods of section 1619 (a) or (b)(1) status occurring before this period. Under the second option, the first month of section 1619 (a) or (b)(1) status would be the first month the individual went into this status in the most recent period of eligibility under section 1619. We gave examples to illustrate the application of these options.

Under section 1616 of the Act, States may make supplementary payments to individuals in addition to the regular Federal SSI payment. Section 1616(c)(3) of the Act also provides States the option of making supplementary payments to individuals eligibile under section 1619 of the Act. These optional State supplementary payments are administered either by SSA or the State making the payment. Under the changes made by EODAA to section 1619 of the Act, federally administered payments (that is, regular Federal SSI benefits and federally administered State supplementary payments) are considered by SSA in determining eligibility under section 1619(a). SSA also considers State-administered optional State supplementary payments in determining whether an individual is eligible under section 1619(a). Specific regulations governing eligibility requirements as determined by SSA under section 1619 (a) and (b)(1) are located in 20 CFR part 416, subpart B.

In States that have agreements with SSA under section 1634 of the Act to determine Medicaid eligibility of SSI recipients, individuals determined to be in section 1619 (a) or (b)(1) status would be automatically determined eligible for Medicaid without the need to apply to the Medicaid State agency for Medicaid benefits. In States that cover individuals receiving SSI but do not have section 1634 agreements with SSA, individuals in section 1619 (a) or (b)(1) status, as do individuals receiving regular SSI benefits, must file a separate application with the State Medicaid agency in order to obtain Medicaid benefits. In these cases, the Social Security Administration notifies these individuals of their potential eligibility for Medicaid and their need to file an application with the State Medicaid agency in order to receive Medicaid.

In States that apply more restrictive criteria than SSI requirements under section 1902(f), individuals who have been determined by SSA to be eligible under section 1619(a) or in section 1619(b)(1) status also would have to apply to the State Medicaid agency for Medicaid benefits. If SSA determines that an individual is in section 1619 (a) or (b)(1) status, the State agency in 1902(f) States then would determine if these individuals are eligible for Medicaid as mandatory categorically needy under the more restrictive requirements of the State's approved Medicaid plan in accordance with the provisions of section 1619(b)(3) as added by section 7 of EODAA as discussed previously.

States would need to ascertain only an individual's section 1619 (a) or (b)(1) status as determined by SSA through, for example, the use of the SSI State Data Exchange (SDX) System. For section 1902(f) States and those States that do not have section 1634 agreements, we have issued instructions that specify how to determine an individual's status under section 1619 through use of the SDX system and how to determine the first month that an individual went into such status, since the system does not indicate the first month of section 1619 status.

With respect to individuals in section 1619 (a) or (b)(1) status who do not meet the Medicaid eligibility requirements as mandatory categorically needy under the provisions of section 1619(b)(3), section 1902(f) States also have the option of treating these individuals under the State's more restrictive criteria in the same manner in which they treat other SSI recipients. These States may, at their option, disregard some or all of the income that individuals in section 1619(b)(1) status have that is in excess of the SSI income eligibility level. Depending on whether the State applies an income level that is the same as or lower than the SSI categorically needy income level, this could result in these individuals obtaining eligibility for Medicaid without the need for any spenddown or after meeting a reduced spenddown. (If a section 1902(f) State uses a more restrictive definition of disability than SSI's, this optional treatment of income does not result in providing Medicaid for an individual who does not meet the more restrictive definition of disability. For purposes of section 1619(b)(3) of the Act, if an individual does not meet the State's more restrictive disability criteria, he or she will not qualify for protection under that provision, unless he or she met those criteria or was eligible for Medicaid on another basis during the reference month.)

Additional Related Legislative Change

Before EODAA, under section 1611(e)(1)(A) of the Act, when an SSI recipient entered a hospital, extended

care facility, skilled nursing facility, or intermediate care facility in which a substantial portion of the cost of care (that is, over 50 percent) was paid by Medicaid, the individual's monthly Federal SSI benefit was limited to a maximum of $25 (which was later raised to $30), beginning with the first full calendar month the individual was in the institution. Individuals whose countable income exceeded $25/$30 were not eligible for a Federal SSI payment.

Section 3 of EODAA amended section 1611(e)(1) of the Act by adding a new section 1611(e)(1)(E) to provide that individuals eligible under section 1619 (a) or (b) in the month preceding the first full month of institutionalization in a hospital, extended care facility, skilled nursing facility, intermediate care facility, or public medical or psychiatric facility remain eligible for SSI based on the full Federal SSI benefit rate under section 1611(b) of the Act for the first full month of institutionalization and, if they remain institutionalized, for the subsequent month. This additional receipt of SSI payments is intended for the individual's use in meeting expenses outside the institution (e.g., maintaining his place of residence). Section 1611(e)(1)(E)(iii) of the Act, as amended by EODAA, indicates that any individual who "under an agreement of the public institution or the hospital, extended care facility, nursing home, or intermediate care facility is permitted to retain" the increased SSI benefit for one month (or two months, as appropriate) will be considered an eligible individual or spouse for purposes of SSI. We proposed to consider that an institution that has a Medicaid provider agreement with the State will have satisfied the requirement under section 1611(e)(1)(E)(iii) of the Act for the "agreement" and no further agreement is necessary to meet this condition.

Section 3 of EODAA also amended section 1902 of the Act to add a Medicaid State plan requirement to provide that any SSI benefits paid under the new section 1611(e)(1)(E) of the Act to an individual who is eligible for Medicaid and who is in a hospital, skilled nursing facility, or intermediate care facility must be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility. This provision was effective on July 1, 1987.

Provisions of the Proposed Regulations

In the May 4, 1988, proposed rule we proposed to amend § 435.120 of the Medicaid regulations to incorporate as a permanent eligibility group the new qualified severely impaired group of individuals for mandatory Medicaid coverage as individuals who are considered to be receiving SSI under section 1619 of the Act by removing the June 30, 1987 expiration date. We also proposed to amend § 435.121 (relating to coverage of individuals in States using more restrictive eligibility criteria than SSI) to provide for the mandatory coverage of individuals who are eligible under section 1619 (a) or (b)(1) and who met the State's more restrictive Medicaid eligibility requirements in the month before the month they became eligible under section 1619 (a) or (b)(1). The proposed revised § 435.121 also specified the option of the section 1902(f) State to consider individuals who are recipients under section 1619(a) or who have section 1619(b)(1) status to have income equal to, but not less than, the SSI Federal benefit rate.

We proposed to amend §§ 435.725 and 435.733 to provide for the disregard of the SSI benefit paid under section 1611(e)(1)(E) in determining the amount of any post-eligibility contribution by the individual to the cost of services provided by the hospital, skilled nursing facility, or intermediate care facility.

In addition, we proposed to make a technical change to § 435.120. Section 2 of Public Law 97-123 repealed section 1622 of the Act. Section 1622 of the Act provided entitlement to minimum benefits under SSI for certain individuals who lost eligibility for minimum social security benefits but excluded these individuals from being considered as SSI recipients for purposes of other provisions of the Act, including eligibility for Medicaid. This exclusion from being eligible on the basis of receipt of SSI is reflected in the existing regulations under § 435.120(b). We proposed to delete this paragraph (b) to conform the regulations to repeal of section 1622 of the Act.

Comments and Responses

We received six comments on the proposed revisions. Four of the comments were positive and supportive; the remaining two expressed concern over certain aspects of implementation. We discuss these below.

1. *Comment:* One of the commenters recommends that the SDX system (described earlier) be changed to include dates of section 1619 changes. The commenter would like there to be more information on the SDX or would like the State to be held harmless for section 1619-related quality control errors that are the result of procedural errors.

Response: Acceptance of the commenter's suggestion does not require revision to the proposed rule. We discussed with SSA the possibility of that agency adding the necessary information. SSA suggested the commenter either switch from "option 2" that his State now uses to another option with room for expansion or to determine dates for 1619 cases by looking at the record processing date; a record is sent to his State each time there is a change in 1619 status. We are also considering the hold-harmless suggestion. If changes are made they will be included in program instructions.

2. *Comment:* The other commenter suggested that we collect data concerning the implementation of the option that allows the State to choose its reference month and its impact on individuals over time.

Response: Of the 13 States that have the option of choosing which reference month to use, none currently chose the month before the first month of eligibility, rather than the month before the current period of eligibility. (At the time the proposed rule was published, one State did choose the month before the first month of eligibility.) We have decided to eliminate the option that no State is using (see discussion below in "Final rule") and will therefore do no monitoring.

Final rule

We are adopting the proposed rules as final rules, with the following exceptions:

a. In §§ 435.725(c)(5) and 435.733(c)(5), we are moving the word "paid". This is a technical change only, to clarify that the description of facilities flows from section 1902(o) of the Act rather than section 1611(e)(1)(E).

b. We would also like to point out that section 4211 of the Omnibus Budget Reconciliation Act of 1987 generally replaces the terms "skilled nursing facility" and "intermediate care facility" with "nursing facility" effective October 1, 1990. Therefore, effective October 1, 1990, we expect the provisions of §§ 435.725(c)(5) and 435.733(e)(5) to apply to individuals in nursing facilities.

c. In § 435.121(b)(2) we are defining the reference month for determining Medicaid eligibility for individuals in 1902(f) States under section 1619 of the Act to be the month immediately preceding the first month of the most recent period of eligibility under section 1619(a) or 1619(b)(1). This eliminates the option for States to use the first month of 1619(a) or 1619(b)(1) status in an individual's lifetime as the reference month in cases where an individual has

had more than one period of 1619 status. We are making this change to conform the rule to the actual procedure currently used by all 1902(f) States and to reduce the potential administrative burden of determining eligibility in these cases.

All 1902(f) States are currently interpreting the statutory language at 1619(b)(3)(B), "the month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements" as meaning the month immediately preceding the first month of the most recent period of eligibility under section 1619.

This interpretation facilitates eligibility determinations by avoiding the need to go back in time to determine if the individual would have qualifed under State Medicaid requirements at some earlier date.

Given the purpose of 1619 benefits in minimizing disincentives associated with potential loss of SSI and Medicaid benefits for disabled individuals who are able to work and earn income, it is sensible to use the month preceding the most recent period of 1619 eligibility as a reference month. Otherwise, the possibility exists that a disabled individual now in transition from SSI and Medicaid eligibility in a 1902(f) State to 1619(a) or 1619(b)(1) could lose Medicaid eligibility because he or she did not meet State Medicaid eligibility criteria in an earlier reference period in his or her lifetime. Since the individual's degree of disability or financial status may change significantly over his or her lifetime, it is desirable to use the most recent possible reference month. We are defining as eligible for Medicaid those individuals who were issued Medicaid cards for the reference month. We request comments on this provision.

Impact Statement

Executive Order 12291 and Regulatory Flexibility Act of 1980 (Pub. L. 96-354).

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that meets one of the E.O. criteria for a major rule; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation does not have a significant impact on a substantial number of small entities. For purposes of the RFA, State Medicaid agencies and individuals who will be affected by this rule are not considered as small entities.

Implementation of these provisions is expected to increase Medicaid program expenditures by approximately five million dollars each year. We have, therefore, determined that a regulatory impact analysis is not required because this regulation does not meet the major rule threshold criteria of E.O. 12291. Further, we have determined, and the Secretary certifies, that this rule does not have a significant economic impact on a substantial number of small entities, and, therefore, we have not prepared a regulatory flexibility analysis.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this rule does not have a significant impact on the operations of a substantial number of small rural hospitals.

Paperwork Reduction Act of 1980 (Pub. L. 96-511)

These regulations do not impose information collection or reporting requirements that are subject to review by the Office of Management and Budget under the authority of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Response to Comments

Because of the large number of items of correspondence we normally receive on a final rule with comment period, we are not able to acknowledge or respond to them individually. However, if we prepare a final rule following this final rule with comment period, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble and we will respond to the comments in the preamble of that rule.

Waiver of Proposed Rulemaking

The Administrative Procedure Act (5 U.S.C. 553) requires us to publish general notice of proposed rulemaking in the **Federal Register** and afford prior public comment on proposed rules. Such notice includes a statement of the time, place and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this requirement does not apply when the agency finds good cause that such a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rules issued.

We have in this final rule with comment removed the option presented in the proposed rule that allowed a State to choose the month preceding the first month of 1619(a) or (b)(1) status in an individual's lifetime as the reference month of eligibility. We are requesting comments on this provision but do not believe it is necessary or in the public interest to publish a proposed rule to obtain public comment.

It is not necessary to publish a proposed rule because although 1902(f) States have had two options concerning which reference month to use, all of them are using the same option. The one State that did use the option we are removing has abandoned its status as a section 1902(f) State.

The change we are making also benefits the public and the States. The remaining option is administratively simpler to administer, as it is not necessary to determine the eligibility rules at some point in the past; the State need only keep track of current and very recent eligibility rules. In addition, some recipients might lose Medicaid eligibility if they do not meet State Medicaid eligibility in an earlier reference period.

Because it is unnecessary and to the public benefit we find good cause to waive proposed rulemaking.

List of Subjects in 42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

Accordingly, 42 CFR part 435 is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

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

2. Section 435.120 is revised to read as follows:

§ 435.120 Individuals receiving SSI.

Except as allowed under § 435.121, the agency must provide Medicaid to aged, blind, and disabled individuals or couples who are receiving or are deemed to be receiving SSI. This includes individuals who are—

(a) Receiving SSI pending a final determination of blindness or disability;

(b) Receiving SSI under an agreement with the Social Security Administration to dispose of resources that exceed the SSI dollar limits on resources; or

(c) Receiving benefits under section 1619(a) of the Act or in section 1619(b) status (blind individuals or those with disabling impairments whose income equals or exceeds a specific Supplemental Security Income limit). (Regulations at 20 CFR 416.260 through 416.269 contain requirements governing determinations of eligibility under this provision.) For purposes of this paragraph (c), this mandatory categorically needy group of individuals includes those qualified severely impaired individuals defined in section 1905(q) of the Act.

3. Section 435.121 is revised to read as follows:

§ 435.121 Individuals in States using more restrictive requirements for Medicaid than the SSI requirements.

(a) *Option for use of more restrictive eligibility criteria.* The agency may use Medicaid eligibility requirements for the aged, blind, or disabled that are more restrictive than the eligibility requirements for SSI. The agency may be more restrictive in defining blindness or disability, more restrictive in setting financial requirements for income or resources, or both. The requirements may apply to the aged or the blind or the disabled, or to any combination. For example, the agency may use a more restrictive definition of disability for those applying for Medicaid as disabled and a more restrictive income requirement for those who apply as aged, but provide Medicaid to all individuals receiving SSI on the basis of blindness.

(b) *Mandatory coverage of severely impaired individuals who work.* If the agency uses more restrictive eligibility requirements for aged, blind, and disabled individuals than SSI, it must provide Medicaid to individuals who—

(1) Qualify for benefits under section 1619(a) or are in eligibility status under section 1619(b)(1) of the Act as determined by SSA; and

(2) Were eligible for Medicaid under the more restrictive criteria in the State's approved Medicaid plan in the reference month—the month immediately preceding the first month in which they became eligible under section 1619 (a) or (b)(1). "Were eligible for Medicaid" means that individuals were issued Medicaid cards by the State for the reference month. Under this provision, the reference month for determining Medicaid eligibility for all individuals under section 1619 of the Act is the month immediately preceding the first month of the most recent period of eligibility under section 1619.

(c) *Special requirements.* If an agency uses more restrictive requirements under this section—

(1) Each requirement may be no more restrictive than that in effect under the State's Medicaid plan on January 1, 1972, and no more liberal than that applied under SSI or an optional State supplement program that meets the conditions of § 435.230;

(2) In determining financial eligibility of an individual in the category to which the more restrictive requirements apply, the agency must deduct, from the individual's income, his SSI payment, any optional State supplement, and incurred medical expenses as specified in § 435.732; and

(3) For purposes of counting income, with respect to individuals who are receiving benefits under section 1619(a) of the Act or are in section 1619(b)(1) status but who do not meet the requirements of paragraph (b)(2) of this section, the agency may disregard some or all of the amount of the individual's income that is in excess of the SSI Federal benefit rate under section 1611(b) of the Act.

(d) The following sections of this part apply to the agency's use of more restrictive eligibility requirements:

(1) Section 435.135, treatment of individuals who receive OASDI cost-of-living increases.

(2) Section 435.330, medically needy coverage.

(3) Section 435.530, more restrictive definitions of blindness.

(4) Section 435.540, more restrictive definitions of disability.

(5) Sections 435.731 through 435.733, more restrictive income and resource requirements.

(6) Sections 435.812, 435.823, 435.831, and 435.841, medically needy financial eligibility requirements.

4. In § 435.725, paragraph (c) introductory text is republished and a new paragraph (c)(5) is added to read as follows:

§ 435.725 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) *Required deductions.* In reducing its payment to the institution, the agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in the process.

* * * * *

(5) SSI benefits under section 1611(e)(1)(E) of the Act paid to individuals who receive care in a hospital, skilled nursing facility, or intermediate care facility.

* * * * *

5. In § 435.733, paragraph (c) introductory text is republished and a new paragraph (c)(5) is added to read as follows:

§ 435.733 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) *Required deductions.* The agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(5) SSI benefits under section 1611(e)(1)(E) of the Act paid to individuals who receive care in a hospital, skilled nursing facility, or intermediate care facility.

* * * * *

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

Dated: July 21, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: August 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-19168 Filed 8-16-90; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-450; RM-6806]

Radio Broadcasting Services; Rogers, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 232C3 for Channel 232A at Rogers, Arkansas, and modifies the Class A license issued to R & R Broadcasting, Inc. for Station KAMO-FM, as requested, to specify operation on the higher powered channel, thereby providing that community with its first expanded coverage FM service. See 54 FR 43088, October 20, 1989. Coordinates for Channel 232C3 at Rogers are 36-24-00 and 94-04-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-450, adopted July 31, 1990, and released August 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by amending the entry for Rogers, by removing Channel 232A and adding Channel 232C3.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-19434 Filed 8-16-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-410; RM-6828]

Radio Broadcasting Services; Ferriday, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C3 for Channel 296A at Ferriday, Louisiana, and modifies the license of Station KFNV-FM to specify operation on the higher powered channel, at the request of Tom Gay d/b/a The Radio Group. *See* 54 FR 40419, October 2, 1989. Action taken here provides Ferriday with its first expanded FM service. A site restriction of 12.4 kilometers (7.7 miles) east of the city is required. The coordinates are 31-40-00 and 91-26-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-410, adopted July 26, 1990, and released August 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Louisiana, by removing Channel 296A and adding Channel 296C3 at Ferriday.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-19438 Filed 8-16-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-431; RM-6817]

Radio Broadcasting Services; Alamo, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 226C3 for Channel 226A at Alamo, Tennessee, and modifies the license of Station WNBE-FM to specify operation on the higher class co-channel, at the request of Charles C. Allen. *See* 54 FR 41466, October 10, 1989. The coordinates for Channel 226C3 at Alamo are 35-43-31 and 89-03-25. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-431, adopted July 26, 1990, and released August 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Tennessee by removing Channel 226A and adding Channel 226C3 at Alamo.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-19437 Filed 8-16-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-430; RM-6778]

Radio Broadcasting Services; Lost Creek, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 242A to Lost Creek, West Virginia, as that community's first local FM service, at the request of William and Patricia Allman d/b/a AEL Broadcasting of West Virginia. The coordinates for Channel 242A at Lost Creek are 39-09-36 and 80-21-06. *See* 55 FR 41467, October 10, 1989. With this action, this proceeding is terminated.

DATES: Effective September 27, 1990; The window period for filing applications will open on September 28, 1990, and close on October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-430, adopted July 26, 1990, and released August 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under West Virginia by adding Lost Creek, Channel 242A.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-19436 Filed 8-16-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, and 176

[Docket No. HM-126C; Amdt. Nos. 171-102, 172-116, 173-213, 175-45, and 176-28]

RIN Number 2137-AA88

Emergency Response Communication Standards; Corrections In Response to Petitions for Reconsideration; and Extension of Effective Date

AGENCY: Research and Special Program Administration (RSPA), DOT.

ACTION: Final rule; corrections in response to petitions for reconsideration; and extension of the effective date.

SUMMARY: This document revises the final rule under Docket HM-126C published January 10, 1990 (55 FR 870) which, in addition to corrections and clarifications, extended the effective date of the final rule published in June 27, 1989 (HM-126C; 54 FR 27138). On May 21, 1990 (55 FR 20796), RSPA extended the effective dates of the final rules published June 27, 1989 (54 FR 27138) and Jnauary 10, 1990 (55 FR 870) from June 4, 1990 to September 17, 1990. The final rule amended the Hazardous Materials Regulations (HMR; 49 CFR 171-180) to include new requirements for additional emergency response information on shipping papers and packages and maintenance of emergency response information on transportation vehicles and at transportation facilities. The requirements adopted under the final rule are intended to improve hazard communication standards by requiring that more detailed emergency response information accompany shipments of hazardous materials. These revisions are made in response to three petitions for reconsideration of certain aspects of the final rule (55 FR 870).

EFFECTIVE DATES: The effective dates of the final rule published June 27, 1989 (54 FR 27138) and January 10, 1990 (55 FR 870) are changed from September 17, 1990 to December 31, 1990. The effective date of this final rule, which is in response to petitions for reconsideration, is December 31, 1990. However, compliance with this final rule is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Standards Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001. Telephone: (202) 366-4488.

SUPPLEMENTARY INFORMATION:

I. General Discussion

This document revises and clarifies the Final Rules under Docket HM-126C published on June 27, 1989 (54 FR 27138) and January 10, 1990 (55 FR 870). In this amendment, the following paragraphs address the changes made as a result of three petitions for reconsideration of certain aspects of the final rule. This discussion concerns the issues raised in the petitions for reconsideration, and a section-by-section review of the changes and clarifications. To aid the reader, the regulatory text of Docket HM-126C is republished in its entirety. A more complete discussion of the background to this rule is contained in the August 20, 1987, Notice of Proposed Rulemaking (NPRM; 52 FR 31486).

II. Background

As a result of eleven petitions for reconsideration of certain aspects of the final rule entitled "Emergency Response Communication Standards", published June 27, 1989 (54 FR 27138), a correction final rule (55 FR 870) was published, on January 10, 1990, containing revisions, clarifications and an extension of the effective date of the final rule. The January 10, 1990 final rule, made changes that: (1) Revised the definition of "technical name" in § 171.8 to allow the use of recognized chemical names used in scientific handbooks, journals, and texts, provided they readily identify the general chemical group, (2) provided an exception from the requirement for inclusion of technical names of hazardous wastes described by n.o.s. descriptions if the chemical constituents are unknown, provided the EPA hazardous waste number is included in place of the technical name; (3) allowed marking of non-bulk packages with the technical name shown "in association with" rather than "immediately following," the proper shipping name, and (4) provided a one year exception from marking the technical name on non-bulk packages filled prior to the effective date of the final rule. The effective date of the final rule was extended from April 2, 1990 to June 4, 1990. Subsequently, RSPA experienced delays in printing and making available proof copies for commercial reproduction of the revised 1990 DOT "Emergency Response Guidebook" (ERG), which may be used to comply with certain emergency response information requirements of this rule. On May 21, 1990, RSPA extended the effective date of the final rule published

June 27, 1989 and January 10, 1990 under Docket HM-126C from June 4, 1990 to September 17, 1990 (55 FR 870).

RSPA received three petitions for reconsideration of certain aspects fo the final rule (55 FR 870) from Government Service Institute Incorporated (GSI), a company that provides training on the regulations applicable to hazardous materials transportation, the Petroleum Marketers Association of America (PMAA), and the Ocean Carrier Dangerous Goods Coalition. These petitions and the actions being taken by RSPA are addressed in this final rule.

III. Petitions for Reconsideration

A. Technical Names for Hazardous Wastes described by N.O.S. descriptions

GSI petitioned that § 172.203(k)(4)(ii) be reinstated as published in the final rule dated June 27, 1989 (54 FR 27138) to require the inclusion of the technical name of n.o.s. descriptions, with the limited exception of ORM-E classed hazardous wastes that are regulated as hazardous substances. GSI stated:

> Assuming that the technical name information has a safety consequence to emergency response personnel compliance with the rule as modified in the January 10, 1990 Federal Register is unreasonable and not in the public interest to the extent that it deprives those whom it was designed to protect from the very information designed to protect them.

GSI's position is supported by the Chemical Waste Transportation Institute's (CWTI) letter to RSPA. In their letter, CWTI stated:

> The members of the Institute realize from the preamble of the January 10th amendment and the revision to 172.203(k)(4)(ii) that the CWTI position has not been clearly understood. Therefore, this letter should clarify our position on this issue.
>
> In a letter dated April 27, 1989, the Institute clarified for OHMT that the relief we were seeking for hazardous wastes under HM-126C was confined to wastes in the ORM-E class. [The Institute's concerns about additional description requirements for wastes packaged in accordance with 49 CFR 173.12(b) have been successfully resolved through the HM-126C rulemaking and are not at issue here.] The Institute was therefore confused to read in the January 10th preamble that the CWTI was seeking relief from additional description requirements as permitted in 172.203(c) for "DOT hazard classes other than ORM-E." Clearly, the final rule goes far beyond what was intended.
>
> The Institute admits that part of the confusion could have resulted from a subsequent letter dated August 10, 1989 in which the Institute asked for reconsideration of 172.203(k)(4)(ii) on what was a very narrow ground. The publication of this sentence on June 27, 1989 began by providing relief to materials using the proper shipping name "Hazardous Waste, liquid or solid, n.o.s.". Such wastes were, in the Institute's mind, the ORM-E hazard class entries for which relief was sought. We failed to make clear we supported the limitation in our August 10th letter. Again, what we were seeking was a deletion of the phrase, "that are also hazardous substances." OHMT must have assumed when we used the term "n.o.s. ORM-E entries" in our April 27th letter that we were not referring to hazard class but to proper shipping names. In effect, 172.203(k)(4)(ii) provided no more relief than what already existed under 172.203(c). We were trying to extend the relief of 172.203(c) to hazardous wastes, liquid or solid, n.o.s., ORM-E that were shipped in quantities larger than qualified to be packaged according to 173.12(b), but smaller than the reportable quantity for that waste stream.

RSPA did not intend to except all hazardous waste shipments which are described in accordance with the provisions of § 172.203(c) from the requirement for inclusion of the technical name on shipping papers and non-bulk packages, or to allow the use of the EPA hazardous waste number in place of the technical name for all hazardous wastes. Accordingly, except for hazardous wastes correctly using the proper shipping name "Hazardous wastes, liquid or solid, n.o.s.", and meeting the hazard class definition of ORM-E (in which case the EPA Hazardous waste number may be included in place of the technical name), hazardous wastes described by "n.o.s." descriptions must include the technical name of the materials on shipping papers and non-bulk packages. In this amendment, § 172.203(k)(4)(ii) is revised to provide an exception for inclusion of the technical name only for hazardous wastes using the proper shipping name "Hazardous waste, liquid or solid, "n.o.s.".

B. 24-hour Emergency Response Telephone Number

PMAA petitioned RSPA to amend 49 CFR 172.604 to provide for a limited application of the requirement to maintain a "24 hour" emergency response telephone number that is monitored at all times since many petroleum marketers limit their deliveries of hazardous materials to daytime hours only. PMAA stated that many of the smaller petroleum marketers deliver only to residential and farm accounts during the daytime and do not transport product 24 hours per day and, therefore, maintenance of a "24 hour" telephone contact is overly burdensome and imposes unnecessary costs. Secondly, PMAA indicated that these small marketers do not employ common carriers, that they would know when any of their product is being transported and, because they control the delivery, would be able to provide an emergency response telephone number during the times that the product is being shipped. RSPA agrees. Accordingly, § 172.604(a)(1) is revised to clarify that the emergency response telephone number must be monitored at all times the hazardous material is in transportation, including storage incidental to transportation.

C. Applicability of final rule to Import/Export Shipments by Vessel

The Ocean Carrier Dangerous Goods Coalition petitioned RSPA to further delay (indefinitely) implementation of the emergency response information requirements with respect to hazardous materials shipments moving between points of origin and destination in international ocean commerce to or from a U.S. port and, in particular, clarification and/or reconsideration of the final rule with respect to the transportation of hazardous materials by vessel, transiting a U.S. port or being offloaded and transhipped between vessels within U.S. port facilities. The Coalition includes both U.S. and foreign flag carriers. These carriers transport substantial volumes of hazardous materials in freight containers under all-water and intermodal bills of lading.

In reviewing their internal procedures and methods of ensuing compliance by their customers (in the U.S. and abroad) with the requirements for emergency response information, including the 24-hour telephone number, members of the Coalition believe that, despite the efforts of carriers, many shippers in U.S. foreign commerce simply cannot, or will not, comply with the requirements under Docket HM-126C. The petitioner stated:

> * * * In many countries the respect for the rule of law generally is also not what it is in the U.S. Further, carriers must often operate in truly hostile legal and political environments. Shippers and transportation intermediaries in these countries may not only feel little compunction about noncompliance with legal requirements, they are often quite confident that they are beyond the reach of U.S. governmental enforcement efforts, let alone private actions by carriers.
>
> * * * This requirement may be perceived by foreign entities as unimportant since it is intended solely to deal with the speculative possibility of an accident far away, in the U.S. The Coalition believes the burdens of the rule will increase existing incentives to misdescribe by certain foreign chemical and other hazardous goods shippers. The result in certain trades could very well be an increase in international cargoes moving without any ER information whatsoever, including proper shipping name.

Further exacerbating this problem is the increasing involvement of transportation intermediaries, such as non-vessel operating common carriers forwarders, brokers, trading companies, and consolidators. In many foreign trades these entities control the routing and booking of large portions of total trade FCL and consolidated cargo, including hazardous cargo. In fact, the ocean carrier may be several layers removed in the transportation chain from the actual manufacturer. Intermediaries may often be "telephone and desk" operations with little capital investment or staffing, let alone any hazardous cargo expertise. As a result, the intermediaries will generally not be able to provide the ER information themselves. Unfortunately, in many cases it is also likely that they will not require production of the information from their underlying customers (who themselves may be trading companies or other intermediaries). Moreover, these intermediaries will often have a very strong commercial interest in preventing the ocean carrier from identifying the underlying manufacturer-exporter. They may view providing the HM-126C information (for example, the telephone number) to the carrier as inconsistent with this interest.

The Coalition stated that they do not oppose the basic methodology or the objective of the final rule, at least in the domestic market. However, the Coalition is concerned with the implementation of the final rule relative to meeting the effective date as it applies to all-water and intermodal hazardous cargoes moving under single bills of lading (e.g., issued by NVOCC's) in international ocean commerce. It is concerned with the applicability of the emergency response information requirements to hazardous materials shipments by vessels originating outside of the U.S., transiting U.S. ports in the course of being shipped between destinations outside of the U.S., and particularly with the 24-hour emergency response telephone number required on shipping documents.

The emergency response information requirements are intended to improve and enhance the communication of hazard information and the identification of hazardous materials involved in transportation incidents. RSPA is concerned about the views expressed by the Coalition relative to alleged intentional noncompliance with the Hazardous Materials Regulations (HMR). In recent years, RSPA has initiated 19 civil penalty cases and completed 14, with collection of civil penalties from various businesses located outside of the United States in Canada, England, Hong Kong, China, Venezuela, Japan, Scotland and West Germany. The argument that shippers, foreign or domestic, may intentionally attempt to evade or defeat the requirements under the HMR (e.g., misdescription, false telephone numbers, or nondeclaration of dangerous goods) does not, in itself, substantiate or justify indefinite delay of the effective date of the final rule with respect to hazardous materials shipments moving between origin and destination in international ocean commerce. In addition, the Coalition is reminded of the requirements of 49 CFR 171.12(a) that importers of hazardous materials into the U.S. provide shippers and forwarding agents with information concerning not only the requirements of the amendments under this Docket, but other requirements that have been applicable to international ocean shipments for many years, including documentation requirements. Therefore, this portion of the Coalition's petition is denied.

The Coalition also requested reconsideration and/or clarification of the scope of the final rule as it applies to the movement of hazardous materials by vessel from a point of origin outside of the U.S. to a destination outside of the U.S., which transit U.S. ports in vessels or are offloaded between ocean vessels within a U.S. port facility, and are not moved on a public highway. The petitioner stated:

* * * These cargoes have always moved under IMO requirements, both because of the foreign-to-foreign and essentially maritime nature of the transportation, as well as the minimal contact with the U.S.* * *

RSPA currently provides requirements, in §§ 171.12(d) and 176.11(a), regarding hazardous materials shipped by vessel from the point of origin outside of the U.S., destined for places outside of the U.S., and which transit U.S. ports, or are offloaded between ocean vessels at port facilities. Hazardous materials transported solely under, and in full compliance with, the requirements of the International Maritime Organization's (IMO) International Maritime Dangerous Goods Code (IMDG Code), are excepted from compliance with the corresponding requirements in the HMR pertaining to packaging, making, labelling, classification, description, certification, placarding, stowage and segregation, including transportation by motor vehicles used in connection with the discharge or loading of vessels, if they are not operated on a public highway. Also, following present international practice under the IMDG code, technical names of materials described by n.o.s. entries are required on the dangerous cargo manifest for international shipments by vessel. In the event of an incident, the IMO "Emergency Procedures for Ships Carrying Dangerous Goods (EMS)" provides detailed advice and guidance for mitigating incidents involving hazardous materials on board vessels.

RSPA agrees with the Coalition that a hazardous material conforming to the provisions of paragraph (a) of § 176.11, in the course of being shipped from a point of origin outside of the U.S. to a destination outside of the U.S., when transiting U.S. ports, or being transhipped between vessels at a single U.S. port facility, would not be subject to the emergency response telephone number requirement specified in § 172.201(d). Accordingly, a new paragraph (a)(3) is added to § 176.11 to clarify that materials shipped by vessel, solely in accordance, and in full compliance, with the IMDG Code, and not moved on a public highway, are excepted from compliance with the requirements for an emergency response telephone number.

In regard to the Coalition's concerns for providing a 24-hour emergency response telephone number for international shipments imported into the U.S., RSPA has similar concerns regarding the effectiveness of an overseas 24-hour emergency response telephone number contact for foreign shippers, and that there could be some difficulty in obtaining emergency response information for import shipments. However, adoption of alternative approaches, such as requirements that a representative in the U.S. be designated as the 24-hour contact is beyond the scope of this rulemaking. RSPA anticipates addressing this issue in future rulemaking.

IV. Availability of the DOT Emergency Response Guidebook (ERG) and Delay of the Effective Date of the Final Rule Under Docket HM-126C

In the correction final rule published January 10, 1990 (55 FR 870), the effective date of Docket HM-126C was extended from April 2, 1990 to June 4, 1990 to give carriers, who elect to place the DOT Emergency Response Guidebook (ERG) on their vehicles, the necessary time to equip their vehicles with the latest edition of the ERG. Since publication of the correction final rule, RSPA experienced further difficulties in making camera-ready copies of the 1990 ERG available to commercial sources. Subsequently, based on RSPA's anticipation of the unavailability of the 1990 ERG, on May 21, 1990 (55 FR 20796), RSPA again extended the effective date of the final rule from June 4, 1990 to September 17, 1990, to allow additional time for complying with the emergency

response information requirements under Docket HM-126C.

RSPA has received petitions from Yellow Freight System, Inc., and the American Trucking Associations (ATA) requesting a further delay of the effective date for implementation of Docket HM-126C, to assure that all affected carriers will be afforded the necessary lead time to equip their vehicles with the latest edition of the DOT ERG. In their letter, the ATA stated:

> This delay effectively prevented compliance with the regulations by September 17, 1990. For many carriers, a lead time of at least 90 days from the date of public availability will be needed to assure system-wide distribution of the ERG.
>
> The ERG will be the method utilized by these carriers to comply with the regulations. In real-world applications, Less-than-Truckload (LTL) carriers have all but ruled out the use of individual Material Safety Data Sheets (MSDS) or printing the information on each shipping paper as methods of compliance with the final rule. In many cases, the decision to utilize the ERG was not one made merely by choice, but by shipper demand.
>
> Due to the concerns of carriers regarding the availability of the Emergency Response Guidebook and their desire to comply with the final rule, ATA urges RSPA to delay the September 17, 1990, implementation date up to 90 days from the date of public availability of the ERG.

RSPA understands the petitioners' concerns and agrees with the necessity for a delay of the effective date of the final rule. Consequently, RSPA is extending the effective date of the final rule under Docket HM-126C from September 17, 1990 to December 31, 1990. Recently, the Government Printing Office (GPO) notified RSPA that copies of the 1990 ERG and printers negatives can now be purchased from the GPO. For information contact: Government Printing Office, Customer Service, Accounts Representative, North Capitol and H Streets, NW., Washington, DC 20401, Phone: 202-275-8099.

V. Review by Sections

RSPA is amending the October 1, 1989 edition of title 49, Code of Federal Regulations (49 CFR) as amended by the correction final rule published January 10, 1990 (55 FR 870) and republishing all post-October 1, 1989 changes for convenience of users. The following review by sections addresses the revisions resulting from petitions for reconsideration of the January 10, 1990 final rule, and contains several editorial corrections. For a complete review by sections, interested persons should refer to the preamble to Docket HM-126C as published on June 27, 1989 (54 FR 27138) and January 10, 1990 (55 FR 870). Additionally, as an aid to the reader, the following section-by-section review of changes includes references to the appropriate page numbers in the June 27, 1989 and January 10, 1990 final rules affected herein. To facilitate better understanding of all the provisions, the requirements of the final rule entitled "Emergency Response Communication Standards" are republished in their entirety.

Section 172.203. In § 172.203, a correction is made to paragraph (k)(4)(i) to include the word "correctly" between the words "is" and "described," and the shipping name "ORM-E, nos.," which is an alternate name allowed for a material correctly described as "Hazardous substance, liquid or solid, n.o.s.". A revision is made in paragraph (k)(4)(ii) of this section to correct and clarify the exception to the technical name requirement for hazardous wastes. For consistency with the provisions in § 172.101(c)(12) for shipping samples, a new paragraph (k)(4)(iii) is added to provide an exception for inclusion of technical names for materials described by n.o.s. descriptions. Additionally, in § 172.203, paragraph (l) is removed and reserved. The provision specific to IM portable tanks requiring the addition of technical names on shipping papers for hazardous materials using n.o.s. descriptions is no longer necessary. These changes supplement those made to this section on page 55 FR 875 (January 10, 1990).

Section 172.301. In § 172.301, paragraph (d)(3) is revised to amend the dates for the exception to marking technical names of n.o.s. descriptions on non-bulk packages to correspond to the extended effective date (i.e., December 31, 1990 to December 31, 1991) of the final rule. These changes supplement those made to this section on page 55 FR 873 (January 10, 1990).

Section 172.505. In § 172.505, the phrase "shipping paper description" is revised for clarity to read "shipping paper requirements". These changes supplement those made to this section on page 55 FR 873 (January 10, 1990).

Section 172.600. In § 172.600, paragraph (c)(2) is revised to clarify that the general requirements for emergency response information include the emergency response telephone number. These changes supplement those made to this section on page 54 FR 27145 (June 27, 1989).

Section 172.604. In § 172.604, a revision is made to paragraph (a)(1) of this section to clarify that the 24-hour emergency response telephone number applies when the materials are in transportation and must be monitored at all times the material is in transportation, including storage incidental to transportation. These changes supplement those made on page 54 FR 27146 (June 27, 1989).

Section 172.11. In § 176.11, a new paragraph (a)(3) is added to clarify that the requirements for the emergency response telephone number do not apply to the transportation of hazardous materials by vessel, which are shipped solely under IMDG Code requirements and which transit U.S. ports (not operating on a public highway) in the course of being shipped between places outside of the U.S.

VI. Administrative Notices

A. Paperwork Reduction Act

The changes and new requirements for information collection in §§ 172.201, 172.203, 172.602, and 172.604 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-522) under OMB control numbers 2137-0034 and 2137-0580 (expiration date: June 30, 1992).

B. Executive Order 12291

The RSPA has determined that this final rule (1) does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule; (2) is not considered to be a "significant" rule under DOT Regulatory Policies and Procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require a Regulatory Impact Analysis or an Environmental Impact Statement under the National Evironmental Policy Act (42 U.S.C. 4321 et seq.). The changes made in this final rule do not modify or affect the original regulatory evaluation, which is available for review in the Docket.

C. Executive Order 12612

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

D. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected by this final rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities. The changes made to this final rule do not modify or affect the original regulatory

evaluation, which is available for review in the Docket.

E. Regulatory Information Number (RIN)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Definitions, Hazardous waste, Imports, Report and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous wastes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Shipping papers, Markings, and Emergency response information.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Report and recordkeeping requirements.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

Note: The effective dates of this final rule and of the final rules published June 27, 1989 (54 FR 27138) and January 10, 1990 (55 FR 870) (which previously were extended from April 2, 1990 to June 4, 1990, and from June 4, 1990 to September 17, 1990) are changed from September 17, 1990, to December 31, 1990.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 175 and 176 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. App. 1802, 1803, 1804, 1805, 1808; 49 CFR part 1.

2. In § 171.8, the definition of "technical name" is revised to add an "s" to the word "compound" to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Technical name means a recognized chemical name currently used in scientific and technical handbooks, journals, and texts. Generic descriptions are authorized for use as technical names provided they readily identify the general chemical group. Examples of acceptable generic descriptions are organic phosphate compounds, petroleum aliphatic hydrocarbons, and tertiary amines. Except for names which appear in subpart B of part 172 of this subchapter, trade names may not be used as technical names.

* * * * *

3. In § 171.11, paragraph (d)(10) is republished to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

(d) * * *

(10) Shipments of hazardous materials under this section must conform to the requirements for emergency response information as prescribed in subpart G of part 172 of this subchapter.

4. In § 171.12a, paragraph (a)(7) is republished to read as follows:

§ 171.12a Canadian shipments and packagings.

(a) * * *

(7) Shipments of hazardous materials subject to the requirements of this section must conform to the requirements for emergency response information as prescribed in subpart G of part 172 of this subchapter.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

5. The authority citation for part 172 continues to read as follows:

6. In § 172.201, paragraph (d) is republished to read as follows:

§ 172.201 General entries.

* * * * *

(d) *Emergency response telephone number.* A shipping paper must contain an emergency response telephone number, as prescribed in subpart G of part 172 of this subchapter.

7. In § 172.203, paragraph (i)(2) is deleted, paragraph (i)(3) is redesignated in paragraph (i)(2), the introductory text of paragraphs (k) (1), (2), (3), and paragraph (m) are republished, paragraph (k)(4) is revised, and paragraph (l) is removed and reserved to read as follows:

§ 172.203 Additional descriptions requirements.

* * * * *

(k) *Technical names for "n.o.s." and other generic descriptions.* Unless otherwise excepted, if a material is described on a shipping paper by one of the proper shipping names listed in paragraph (k)(3), the technical name of the hazardous material must be entered in parentheses in association with the basic description. For example "Corrosive liquid, n.o.s. (Caprylyl chloride), UN1760" or "Corrosive liquid, n.o.s., UN1760 (contains caprylyl chloride)". The word "contains" may be used in association with the technical name, if appropriate.

(1) In addition to the n.o.s. descriptions listed herein, the requirements of this section apply to all shipping descriptions for poisonous materials which are subject to the requirements of paragraph (m) of this section, and for which the proper shipping name does not specifically identify the poisonous constituent by technical name. For example, "Motor fuel antiknock compound (Tetraethyl lead), Poison B, UN1649" or "Motor fuel antiknock compound, Poison B, UN1649, (Tetraethyl lead)".

(2) If a hazardous material is a mixture or solution of two or more hazardous materials, the technical names of at least two components most predominately contributing to the hazards of the mixture or solution must be entered on the shipping paper as required by paragraph (k) of this section. For example, "Flammable liquid, corrosive, n.o.s., Flammable liquid, UN2924 (contains Methanol, Potassium hydroxide)".

(3) Proper shipping names for which the provisions of this paragraph apply are as follows:

Acid, liquid, n.o.s.
Alcohol, n.o.s.
Alkaline liquid, n.o.s.
Cement, adhesive, n.o.s.
Combustible liquid, n.o.s.
Compressed gas, n.o.s.
Corrosive liquid, n.o.s.
Corrosive liquid, poisonous, n.o.s.
Corrosive solid, n.o.s.
Dispersant gas, n.o.s.
Etching acid, liquid, n.o.s.
Etiologic agent, n.o.s.
Flammable gas, n.o.s.
Flammable liquid, corrosive, n.o.s.
Flammable liquid, n.o.s.
Flammable liquid, poisonous, n.o.s.
Flammable solid, corrosive, n.o.s.
Flammable solid, n.o.s.
Flammable solid, poisonous, n.o.s.
Hazardous substance, liquid or solid, n.o.s.
Hazardous waste, liquid or solid, n.o.s.
Infectious substance, human, n.o.s.
Insecticide, dry, n.o.s.

Insecticide, liquid, n.o.s.
Irritating agent, n.o.s.
Nonflammable gas, n.o.s.
Organic peroxide, solid, n.o.s.
Organic peroxide, liquid or solution, n.o.s.
ORM-A, n.o.s.
ORM-B, n.o.s.
ORM-E, n.o.s.
Oxidizer, corrosive, liquid, n.o.s.
Oxidizer, corrosive, solid, n.o.s.
Oxidizer, n.o.s.
Oxidizer, poisonous, liquid, n.o.s.
Oxidizer, poisonous, solid, n.o.s.
Poisonous liquid or gas, flammable, n.o.s.
Poisonous liquid or gas, n.o.s.
Poisonous liquid, n.o.s.
Poison B liquid, n.o.s.
Poisonous solid, corrosive, n.o.s.
Poisonous solid, n.o.s.
Poison B, solid, n.o.s.
Pyrophoric liquid, n.o.s.
Pyroforic liquid, n.o.s.
Refrigerant gas, n.o.s.
Water reactive solid, n.o.s.

(4) The provisions of this paragraph do not apply—

(i) To a material that is correctly described with the proper shipping name "Hazardous Substance, liquid or solid, n.o.s." or "ORM-E, n.o.s.", provided the material is described in accordance with the provisions of § 172.203(c) of this part;

(ii) To a material that is a hazardous waste and correctly described using the proper shipping name "Hazardous waste, liquid or solid, n.o.s.", classed as an ORM-E, provided the EPA hazardous waste number is included on the shipping paper in association with the basic description, or provided the material is described in accordance with the provisions of § 172.203(c) of this part; or

(iii) To a material for which the hazard class is to be determined by testing under the criteria in § 172.101(c)(12).

(l) [Removed and Reserved].

(m) *Poisonous materials.* Notwithstanding the hazard class to which a material is assigned—

(1) If a liquid or solid material in a package meets the definition of a poison according to this subchapter, and the fact that it is a poison is not disclosed in the shipping name or class entry, the word "Poison" shall be entered on the shipping paper in association with the shipping description.

(2) If the technical name of the compound or principal constituent that causes a material to meet the definition of a poison (according to this subchapter) is not included in the proper shipping name for the material, the technical name shall be entered on the shipping paper in the manner prescribed in paragraph (k) of this section.

(3) If the inhalation toxicity of any material falls within the criteria specified in § 173.3a(b)(2) of this subchapter (subject to definitions and implementation conditions of paragraphs (c) and (d) of the same section), the words "Poison Inhalation Hazard" shall be entered on the shipping paper in association with the shipping description. However, the word "Poison" need not be repeated if it is entered as part of the basic description or in conformance with paragraph (m)(1) of this section. This paragraph does not apply to packagings containing inner receptacles of one liter capacity of less.

8. In § 172.301, paragraph (c) is republished and paragraph (d)(3) is revised to read as follows:

§ 172.301 General marking requirements.

* * * * *

(c) *Technical names.* Each non-bulk packaging containing hazardous materials subject to the provisions of § 172.203(k) of this part must be marked with the technical name in parentheses in association with the proper shipping name, in accordance with the requirements and exceptions specified for display of technical descriptions on shipping papers in § 172.203(k) of this part.

(d) * * *

(3) Display of technical names on non-bulk packagings filled for shipment prior to December 31, 1990 until December 31, 1991.

9. Section 172.302 is removed and republished to read as follows:

§ 172.302 [Removed]

10. Section 172.505 is revised to read as follows:

§ 172.505 Special placarding requirements for certain poisonous materials.

Each transport vehicle and freight container that contains a material subject to the "Poison-Inhalation Hazard" shipping paper requirements of § 172.203(m)(3) must be placarded POISON on each side and each end in addition to the placards required by § 172.504. This requirement also applies to portable tanks. Duplication of POISON placards is not required nor display on UN class numbers at the bottom of additional placards required by this section.

11. In § 172.600, paragraphs (a), (b), (c) introductory text, (c)(1) and (d) are republished, and paragraph (c)(2) is revised to read as follows:

§ 172.600 Applicability and general requirements.

(a) *Scope.* Except as provided in paragraph (d) of this section, this subpart prescribes requirements for providing and maintaining emergency response information during transportation and at facilities where hazardous materials are loaded for transportation, stored incidental to transportation or otherwise handled during any phase of transportation.

(b) *Applicability.* This subpart applies to persons who offer for transportation, accept for transportation, transfer or otherwise handle hazardous materials during transportation.

(c) *General requirements.* No person to whom this subpart applies may offer for transportation, accept for transportation, transfer, store or otherwise handle during transportation a hazardous material unless:

(1) Emergency response information conforming to this subpart is immediately available for use at all times the hazardous material is present; and

(2) Emergency response information, including the emergency response telephone number, required by this subpart is immediately available to any person who, as a representative of a Federal, state or local government agency, responds to an incident involving a hazardous material, or is conducting an investigation which involves a hazardous material.

(d) *Exception.* The requirements of this subpart do not apply to hazardous materials which are excepted from the shipping paper requirements of this subchapter.

12. Section 172.602, is republished to read as follows:

§ 172.602 Emergency response information.

(a) *Information required.* For purposes of this subpart, the term "emergency response information" means information that can be used in the mitigation of an incident involving hazardous materials and, as a minimum, must contain the following information:

(1) The basic description and technical name of the hazardous material as required by §§ 172.202 and 172.203(k), the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations, as appropriate;

(2) Immediate hazards to health;

(3) Risks of fire or explosion;

(4) Immediate precautions to be taken in the event of an accident or incident;

(5) Immediate methods for handling fires;

(6) Initial methods for handling spills or leaks in the absence of fire; and

(7) Preliminary first aid measures.

(b) *Form of information.* The information required for a hazardous material by paragraph (a) of this section must be:

(1) Printed legibly in English;

(2) Available for use away from the package containing the hazardous material; and

(3) Presented—

(i) On a shipping paper;

(ii) In a document, other than a shipping paper, that includes both the basic description and technical name of the hazardous material as required by §§ 172.202 and 172.203(k), the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations, as appropriate, and the emergency response information required (e.g., a material safety data sheet); or

(iii) Related to the information on a shipping paper, a written notification to pilot-in-command, or a dangerous cargo manifest, in a separate document (e.g., an emergency response guidance document), in a manner that cross-references the description of the hazardous material on the shipping paper with the emergency response information contained in the document. Aboard aircraft, the ICAO "Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods" and, aboard vessels, the IMO "Emergency Procedures for Ships Carrying Dangerous Goods," or equivalent documents, may be used to satisfy the requirements of this section for a separate document.

(c) *Maintenance of information.* Emergency response information shall be maintained as follows:

(1) *Carriers.* Each carrier who transports a hazardous material shall maintain the information specified in paragraph (a) of this section in the same manner as prescribed for shipping papers, except that the information must be maintained in the same manner aboard aircraft as the notification to pilot-in-command, and aboard vessels in the same manner as the dangerous cargo manifest. This information must be immediately accessible to train crew personnel, drivers of motor vehicles, flight crew members, and bridge personnel on vessels for use in the event of incidents involving hazardous materials.

(2) *Facility operators.* Each operator of a facility where a hazardous material is received, stored or handled during transportation, shall maintain the information required by paragraph (a) of this section whenever the hazardous material is present. This information must be in a location that is immediately accessible to facility personnel in the event of an incident involving the hazardous material.

13. In § 172.604, paragraphs (a) introductory text, (a)(3), and (b) are republished and paragraphs (a) (1) and (2) are is revised to read as follows:

§ 172.604 Emergency response telephone number.

(a) A person who offers a hazardous material for transportation must provide a 24-hour emergency response telephone number (including the area code or international access code) for use in the event of an emergency involving the hazardous material. The telephone number must be—

(1) Monitored at all times the hazardous material is in transportation, including storage incidental to transportation;

(2) The number of a person who is either knowledgeable of the hazarrds and characteristics of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information; and

(3) Entered on a shipping paper, as follows:

(i) Immediately following the description of the hazardous material required by subpart C of this subchapter; or

(ii) Entered once on the shipping paper in a clearly visible location. This provision may be used only if the telephone number applies to each hazardous material entered on the shipping paper, and if it is indicated that the telephone number is for emergency response information (for example: "EMERGENCY CONTACT: * * *").

(b) The telephone number required by paragraph (a) of this section must be the number of the person offering the hazardous material for transportation or the number of an agency or organization capable of, and accepting responsibility for, providing the detailed information concerning the hazardous material. A person offering a hazardous material for transportation who lists the telephone number of an agency or organization shall ensure that agency or organization has received current information on the material, as required by paragraph (a)(2), before it is offered for transportation.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. In § 173.4, paragraph (a)(1)(iii) is republished to read as follows:

§ 173.4 Exceptions for small quantities.

(a) * * *

(1) * * *

(iii) One (1) gram for authorized materials classed as Poison B or subject to the "Poison-Inhalation Hazard" shipping paper description requirements of § 172.203(m)(3); and

* * * * *

15. In § 173.12, paragraph (f) is republished to read as follows:

§ 173.12 Exceptions for shipment of waste material.

* * * * *

(f) *Technical names for n.o.s. descriptions.* The requirements for the inclusion of technical names for n.o.s. descriptions on shipping papers and package markings, §§ 172.203 and 172.301 of this subchapter, respectively, do no apply to packagings prepared in accordance with the requirements of this section, except as follows:

(1) Packages containing materials meeting the definition of a hazardous substance must be described as required in § 172.203(c) and marked as required in § 172.324 of this subchapter; and

(2) Packages containing hazardous materials subject to the provisions of § 172.203(m) of this subchapter must be described in accordance with § 172.203(m) of this subchapter.

PART 175—CARRIAGE BY AIRCRAFT

16. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR part 1.

17. In § 175.33, paragraph (b) is republished to read as follows:

§ 175.33 Notification of pilot-in-command.

* * * * *

(b) A copy of the written notification to pilot-in-command shall be readily available to the pilot-in-command during flight. Emergency response information required by subpart G of part 172 of this subchapter must be maintained in the same manner as the written notification to pilot-in-command during transport of the hazardous material aboard the aircraft.

PART 176—CARRIAGE BY VESSEL

18. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR part 1.

19. In § 176.11, a new paragraph (a)(3) is added to read as follows:

§ 176.11 Exceptions.

(a) * * *

(3) A hazardous material which conforms to the provisions of paragraph (a) of this section is not subject to the requirement specified in § 172.201(d) of this subchapter, for an emergency response telephone number, when

transportation of the hazardous material originates and terminates outside the United States and the hazardous material—

(i) Is not offloaded from the vessel; or

(ii) Is offloaded between ocean vessels at a U.S. port facility without being transported by public highway.

21. In § 176.30, paragraph (a)(3)(i) is republished to read as follows:

§ 176.30 Dangerous cargo manifest.

(a) * * *

(3) * * *

(i) An emergency response telephone number as prescribed in subpart G of part 172 of this subchapter.

* * * * *

Issued in Washington, DC on August 10, 1990 under the authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 90-19265 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces a modification of the fishing season in the commercial fishery for all salmon species except coho salmon in the exclusive economic zone (EEZ) from Sisters Rocks, Oregon, to Punta Gorda, California. In accordance with the preseason notice of 1990 management measures, this fishery closed at 2400 hours local time, August 6, and was scheduled to reopen at 0001 hours local time, August 15. The Director, Northwest Region, NMFS (Regional Director), has determined that due to low catch rates, this fishery should be reopened at 0001 hours local time, August 8, to provide commercial fishermen additional harvest opportunity. This action is intended to maximize the harvest of chinock salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

DATES: *Effective*: Reopening of the EEZ from Sisters Rocks, Oregon, to Punta Gorda, California, to commercial salmon fishing is efective at 0001 hours local time, August 8, 1990. 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). *Comments:* Public comments are invited until August 28, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731-7415. 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, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that the 1990 commercial fishery for all salmon species in the subarea from Sisters Rock, Oregon, to Punta Gorda, California, will open August 1-6 and August 15-31 subject to a subarea chinook salmon quota, a coho salmon ceiling south of Cascade Head, Oregon, and an overall coho salmon quota south of Cape Falcon, Oregon. Upon attainment of the coho salmon ceiling or quota, the fishery will reopen for all salmon species except coho salmon.

Inseason management actions taken to date which affect the commercial fishery from Sisters Rocks to Punta Gorda are as follows. The coho salmon catch ceiling south of Cascade Head, Oregon, was projected to be reached on July 31, resulting in closure of the commercial fishery for all salmon species from Cascade Head, Oregon, to Horse Mountain, California, effective 2400 hours local time, July 31, and reopening of regularly scheduled commercial fisheries from Cascade Head to Horse Mountain for all salmon species except coho salmon effective 0001 hours local time, August 1. In addition, the chinook salmon quota for the fishery from Sisters Rocks to Punta Gorda was increased from 12,200 to 18,300 fish on August 1, 1990.

Based on the best available information on August 7, the commercial fishery catch in the subarea is not expected to reach the 18,300 chinook salmon quota by the schedued closure date of August 31 if the reopening is delayed until August 15. The Regional Director has determined that commercial fishermen should be provided additional opportunity to fully harvest the quota by modifying the August 15 scheduled opening date and reopening the fishery on August 8. Therefore, the fishery in this subarea is reopened to commercial fishing for all salmon species except coho salmon effective 0001 hours local time, August 8, 1990.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this reopening was given prior to 0001 hours local time, August 8, 1990, 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. NOAA issues this notice of reopening of the commercial salmon fishery in the EEZ from Sisters Rocks, Oregon, to Punta Gorda, California, which is effective 0001 hours local time, August 8, 1990.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding a reopening of the commercial fishery between Sisters Rocks, Oregon, and Punta Gorda, California. The States of Oregon and California will manage the commercial fishery in State waters adjacent to this area 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 28, 1990.

Other Matters

This action is authorized by 50 CFR 661.21 and 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: August 13, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-19335 Filed 8-13-90; 4:38 pm]

BILLING CODE 3510-22-M

50 CFR Parts 672 and 675

[Docket No. 900813-0213]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the groundfish fisheries in the Gulf of Alaska and in the Bering Sea/Aleutian Islands area. First, in the Gulf of Alaska, regulations requiring the closure of the Gulf of Alaska to fixed gear as a result of this gear type reaching its established halibut bycatch limit, has unnecessarily restricted some fixed gear fisheries that have little or no halibut bycatch mortality. In the absence of this emergency rulemaking, these fisheries will incur unjustified economic loss. Further, closure of these fisheries will halt the collection of important halibut bycatch data which would provide the basis for halibut bycatch allocations in the 1991 fixed gear fishery. Finally, closure of the pot gear fishery in the exclusive economic zone would redirect effort from that fishery into State waters causing increased gear conflicts with small trawler vessels. Therefore, the Secretary is implementing by emergency rule certain exceptions to the closure to allow fisheries with minimal halibut bycatch mortality to continue. This action is necessary to limit the effects of the closures to just those fisheries that have significant bycatch mortality of halibut. Second, the closure of the Bering Sea/Aleutian Islands area to fishing for Pacific cod and pollock with bottom trawl gear has been rendered ineffective by a faulty gear definition as a means to reduce halibut bycatch mortality. The Secretary is implementing a new definition to further reduce halibut bycatch in both the Bering Sea and Aleutian Islands area and in the Gulf of Alaska. The intended effect of both of these actions is to promote the fishery management objectives of the Fishery Management Plans For Groundfish of the Gulf of Alaska and for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

EFFECTIVE DATE: August 14, 1990. Comments are invited on this action, and particularly on the environmental assessment, until September 13, 1990.

ADDRESSES: Copies of the environmental assessment may be obtained from Steven Pennoyer, Regional Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Gulf of Alaska (GOA) and in the Bering Sea and Aleutian Islands Area (BSAI) are managed by the Secretary under fishery management plans (FMPs) which were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Magnuson Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fisheries at 50 CFR 611.92 and 611.93 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries are codified at 50 CFR part 620. The FMPs and their implementing regulations are amended as necessary for conservation and management of the GOA and BSAI groundfish fisheries. Normally, such amendments take a year or more to be developed and implemented. When new information or circumstances arise that require more rapid implementation of management measures, emergency interim rules may be implemented under authority of section 305(e) of the Magnuson Act. This emergency rule (1) exempts certain fisheries in the GOA from the general closure to fishing with fixed gear, and (2) implements a new definition of a pelagic trawl to limit certain trawling in the BSAI and the GOA.

Gulf of Alaska Gear and Fishery Exemptions to Current Fishery Closures

The groundfish fisheries in the GOA result in annual harvests between 116,000 metric tons (mt) and 800,000 mt. Gear types used in these fisheries include pots, hook-and-line, and trawls. NOAA considers jigs, which include rod-and-reel gear, troll gear, and jigging machines (mechanical devices supporting jigs) to be hook-and-line gear.

Pacific halibut, which are commercially important to other U.S. fishermen, are caught as bycatch in the groundfish fisheries. To control the amount of Pacific halibut bycatch mortality, regulations implementing the FMP have established prohibited species catch mortality limits (PSC limits) for halibut that apply to trawl gear and fixed gear (hook-and-line and pot gear). For the 1990 fishing year, the GOA FMP and its implementing regulations established a 750-mt PSC limit for fixed gear (54 FR 50386, December 6, 1989). These regulations require closure of the Gulf of Alaska to further fishing by fixed gear for the remainder of the fishing year when the aggregate halibut bycatch mortality by this gear type reaches 750 mt.

An emergency rule was published February 21, 1990 that addressed halibut bycatch mortality (55 FR 5994). In part, it assigned all of the 750 mt halibut PSC limit to hook-and-line gear and exempted pot gear from PSC limit restrictions and closures. It also apportioned amounts of the halibut PSC allocated to hook-and-line gear on the basis of calendar quarters so that halibut bycatch was limited to 150 mt the first quarter, 450 mt the second quarter, and 150 mt the third quarter. The emergency rule was extended from May 16, 1990, through August 13, 1990, under section 305(e)(3)(B) of the Magnuson Act (55 FR 20465, May 17, 1990). On May 29, 1990, the PSC limit assigned to hook-and-line gear was reached, and further fishing with hook-and-line gear was prohibited for the remainder of the year (55 FR 22794, June 4, 1990 and 55 FR 26693, June 29, 1990). When the extended emergency rule expires, pre-existing regulations come into effect that will continue the closure of the GOA to groundfish fishing with hook-and-line gear. Without further action, groundfish fishing with pot gear will also be prohibited beginning August 14, 1990, through the remainder of the year.

Depending on the gear type being used, or the fishery being conducted, halibut bycatch and mortality can be significant in the groundfish fisheries. Conversely, certain gear types and fisheries result in insignificant amounts of halibut bycatch mortality. With respect to the latter, the industry petitioned the Council, during its June 25-30, 1990 meeting, to recommend that fishing for groundfish with pot gear be allowed when the current emergency rule expires. The industry also petitioned the Council to make two exceptions to the general closure to hook-and-line gear as well. These two exceptions would allow fishing for (1) groundfish, primarily Pacific cod, by means of jigs (including rod-and-reel,

and troll gear), and (2) demersal shelf rockfish in the Southeast Outside District of the Eastern Regulatory Area in the Gulf of Alaska. The Council considered information from the industry as well as from NMFS and the Alaska Department of Fish and Game (ADF&G) concerning these exceptions.

Because halibut that gain entry into a pot injure fish that might already be in a pot, reduce the catching capacity of the pot, and increase sorting and discard fishing costs, fishermen take active measures to reduce halibut bycatch. Most fishermen in the Gulf of Alaska fishery are configuring their pots so that the tunnel openings are no more than 9 inches wide and 9 inches high. The purpose of the narrow opening is to reduce entry by halibut.

Information from the NMFS Observer Program shows that the halibut bycatch is low in the pot fisheries. Observer data through June 16, 1990, indicate that the bycatch rate is about 0.7 percent. The NMFS estimates approximately 4 metric tons of halibut mortality might result if pots continue fishing for groundfish, primarily Pacific cod, assuming 12 percent mortality and a remaining pot gear harvest of groundfish equalling about 11 percent of the remaining TAC for Pacific cod. Given the above, the Council recommended that pot gear be excluded from the Gulf of Alaska halibut PSC limit restrictions for the remainder of the year after the current emergency rule expires on August 13, 1990. The Council also recommended that pots be modified to include halibut exclusion devices that will result in pot openings no wider or higher than nine inches to reduce halibut bycatch.

In the absence of this rulemaking, it is anticipated that fishermen using pot gear would move from the exclusive economic zone into State waters and increase the incidence of gear conflicts with small trawlers.

Industry testimony indicated that halibut bycatch is low in groundfish fisheries using jigs. Because jigs are not baited with protein bait as are hooks used with hook-and-longline gear and because most fishing occurs about 1 fathom off bottom, few halibut are caught as bycatch. The NMFS has no information to suggest otherwise. In ADF&G experimental fisheries, no halibut were caught when mechanical jigs were used to catch 868 rockfish or when hand-troll gear was used to catch 2,392 rockfish. Given the experimental nature of this gear in the Gulf of Alaska, and information available from the ADF&G, the Council recommended that the use of jigs be separated from hook-and-longline gear, and their use be allowed to continue for the remainder of the fishing year.

With respect to the demersal shelf rockfish fishery, ADF&G staff who have conducted indexing surveys in the Southeast Outside District and who are otherwise familiar with the execution of this fishery cite reasons why halibut mortality is less than that encountered in the other hook-and-line fisheries. First, fishermen who participate in this fishery use snap-on gear, which are hook-and-line assemblies that snap onto the groundline, rather than hook-and-line assemblies that are tied into the groundline. As fishermen retrieve their snap-on gear, they take the time to unsnap the assembly from the groundline before it travels through the pulley wheel. Fishermen reportedly use the additional time to remove the hook from each halibut that is caught and to return it to the sea with a minimum amount of injury. Second, soak time is short because the market for demersal shelf rockfish demands a high-quality product that is satisfied by fish in a non-mutilated condition. Fish that are soaked too long are often attacked by sand fleas or other predators, which mutilate the fish and render them less desirable for the market. Third, fishermen bring demersal shelf rockfish slowly to the surface to minimize physical distortions resulting from embolisms. Therefore, each halibut reportedly undergoes less stress as it is brought to the surface where it is then released to the sea.

Fishermen usually commence fishing in the demersal shelf rockfish fishery late in the fishing year (e.g., in October). Because an FMP amendment could not be implemented in time to exempt the demersal shelf rockfish fishery, the Council recommended that the Secretary accomplish the exemption by emergency rule.

Action by the Secretary of Commerce

Upon reviewing the Council's recommendation and available information, the Secretary concurs that an emergency exists with respect to unnecessary economic loss that would be incurred by fishermen participating in the pot and jig fisheries or in the demersal shelf rockfish fishery.

The Secretary has also noted that observer data to date represents bycatch rates for only a limited time. No observer data would be obtained from the pot fishery if pot gear were prohibited after August 13, 1990. Loss of observer data will confound future decision making by the Council. Part of the Council's Amendment 21 to the FMP, which is being reviewed by the Secretary, includes authority to establish a PSC limit on pot gear for the 1991 fishing year. The Council had intended that the NMFS Observer Program would furnish necessary data on which to make recommendations on this PSC limit. An entire year of data is necessary to account for seasonal variation of halibut movements that affect bycatch rates in pot gear. To date, most data were collected in the summer and include data from pots that do not have halibut-exclusion devices; therefore, no data are available to determine bycatch rates during several months at the end of the year when all pots would be equipped with halibut-exclusion devices. The Secretary is concerned that the Council will have access to imcomplete and unsatisfactory information when making recommendations for PSC allocations among gear types for the 1991 fishing year. Because the Council's recommendations will result in millions of dollars of redistributed revenue within the industry, the Council must have the best available information. The Secretary also notes that continued fishing for cod with pot gear, with its low halibut bycatch rate, promotes achieving the optimum yield. This results from halibut saved to support fishing for other species categories by other gear types to the extent that pot gear harvests part of that TAC which otherwise would be harvested by trawl gear at a higher halibut bycatch rate. The Secretary notes that excessive gear conflict would occur between fishermen using pots and trawl gear in State waters if pot gear fishing is prohibited in the exclusive economic zone for the remainder of the year. Therefore, the Secretary implements the Council recommendations.

Upon the effective date of this emergency rule, pots used in the directed groundfish fishery that have rigid tunnel openings must be equipped with openings no wider or higher than 9 inches (Figure 1). Those pots that have soft tunnel openings must be equipped with openings no wider than 9 inches in diameter (Figure 2). These maximum dimensions in the pot openings will reduce halibut bycatch in the directed groundfish fisheries.

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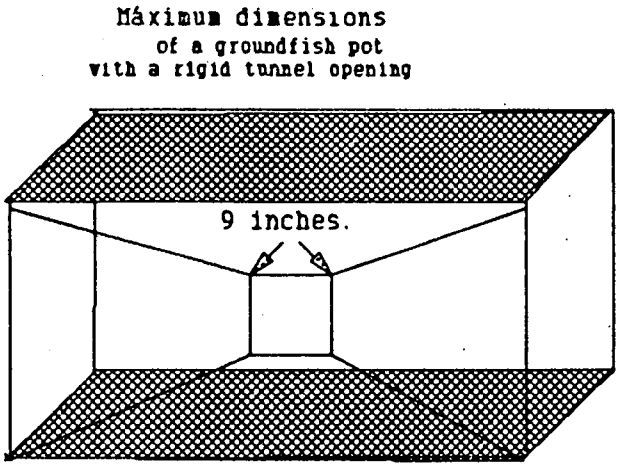

Figure 1. Maximum openings of a groundfish pot with rigid tunnel openings.

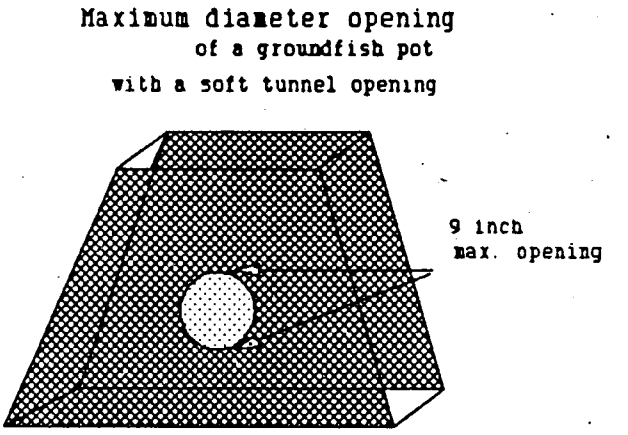

Figure 2. Maximum opening of a of a groundfish pot with a soft tunnel opening.

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New Definition of Pelagic Trawl Gear and Its Application to the Current BSAI Closure of the "DAP Other Fisheries"

On June 30, 1990 (55 FR 27643, July 5, 1990), the Secretary closed the BSAI to further direct fishing for pollock and Pacific cod in the aggregate with bottom trawl gear. The closure was required by regulations at 50 CFR 675.21(c)(2)(iv) because U.S. fishermen participating in the "DAP other fishery" had reached their secondary halibut PSC allowance of 3,966 mt. The closure was intended to restrict the bycatch of halibut in the "DAP other fishery" to the PSC allowance.

In response to industry inquiries concerning the closure, the Regional Director has become aware of an enforcement loophole in the regulations implementing the closure, a loophole resulting from the definition of a bottom trawl. A bottom trawl is defined in § 675.2 as a trawl in which the ground rope of the net is equipped with bobbins or roller gear. It is used while trawling on the seabed for Pacific cod and pollock, as well as other groundfish species categories. Bobbins and rollers raise the trawl slightly off bottom, allow more efficient trawling, and reduce amounts of fuel needed.

Attainment of the secondary PSC allowance for Pacific halibut under § 675.21(c)(2)(iv) has triggered a prohibition of the use of bottom trawl gear when fishing for Pacific cod and pollock for the rest of 1990. The intent of this prohibition is to reduce halibut bycatches that result from bottom trawling once the halibut bycatch allowance established for the "DAP other fishery" has been reached. However, by simply removing the bobbins or rollers, a fisherman can modify trawl gear so that it is no longer a bottom trawl by definition. A fisherman can still keep the trawl on the bottom by attaching chains to the foot rope, operating the trawl in direct contact with the bottom instead of being lifted 12–18 inches by the radius of the bobbins and rollers. Although a vessel operator would likely fish less efficiently, he might still accrue a profit in terms of additional Pacific cod and pollock harvested. A bottom trawl with bobbins and rollers removed conceivably could catch even more halibut than when it had bobbins and rollers attached. With bobbins and rollers attached, some smaller halibut probably escape capture by swimming between the bobbins and rollers, thence under the footrope and away from the bottom trawl.

Industry sources report that fishermen are actually removing bobbins and rollers, attaching chains, and then continuing to trawl on the sea bed. The Regional Director has received many phone calls inquiring about possible enforcement action if a trawl were so configured. These fishermen have been told correctly that by removing the bobbins and rollers, they would be able to continue to fish with the reconfigured trawl.

Substantial amounts of pollock and cod still remain unharvested. Although bottom trawl fishermen are only able to retain aggregate amounts of pollock and cod up to 20 percent of other groundfish retained on board during a week, the amounts of pollock and cod that could be retained as measured against total amounts of unharvested groundfish could be substantial. While conducting such trawl operations on the seabed with reconfigured bottom trawl gear, substantial halibut bycatches could occur. Additional halibut bycatches by reconfigured bottom trawls thwart the intent of the closure to reduce halibut bycatch in trawl operations.

At its June 25–30, 1990 meeting, the Council adopted a proposed regulation redefining a pelagic trawl as part of Amendments 16 and 21 to the BSAI and GOA FMPs, respectively. The current definition is inconsistent with how most pelagic trawls used in the BSAI are configured and with the way they are fished. The new definition specifies a large mesh size, one meter or more in width, or parallel lines one meter apart just behind the footrope. Most halibut, as well as crab, are believed to escape capture by such a pelagic trawl if it is fished in contact with the seabed, because halibut and crab that pass over the footrope into the trawl then escape through the large openings created by the mesh dimensions or spacing of the parallel lines. Specifically, the proposed definition as adopted by the Council reads as follows:

Pelagic trawl means a trawl which has stretched mesh size openings of at least 1 meter, or parallel lines with spaces of at least 1 meter, starting at the fishing line and extending aft for a distance of at least 10 meshes and going around the entire circumference of the trawl, and which is tied to the fishing line with no less than 0.3 meter (12 inches) between knots around the circumference of the net, and which does not have plastic discs, bobbins, rollers, or other chafe-protection gear attached to the foot rope.

The current definition is different from that proposed by the Council, because it does not specify minimum dimensions for trawl meshes or parallel line spacings. The current definition does prohibit the use of bobbins or roller gear. It also prohibits any part of the net or trawl doors from coming into contact with the seabed, but such a prohibition is not enforceable. If fishermen deploy a pelagic trawl as it is currently defined in regulations, they are essentially deploying a reconfigured bottom trawl. Industry sources state that pelagic gear is normally fished on the bottom in areas where protection afforded by bobbins and rollers is not necessary. Recognizing the failings of the current pelagic trawl definition as being unenforceable and unable to reduce bycatches of halibut or crab, the Council adopted the new definition.

Under the current schedule for implementing Amendment 16 to the BSAI FMP, the new definition would not become effective until January 1, 1991. Recognizing that fishermen are continuing to use reconfigured bottom trawl gear to fish for Pacific cod and pollock, some industry trawl representatives have recommended to the Regional Director that further fishing for these species be restricted during 1990 to the new pelagic trawl definition adopted by the Council under BSAI Amendment 16. The industry expressed its concerns to the Council about the potential impact on halibut as a result of the regulatory loophole that allows continued fishing with modified bottom trawl gear.

Action by the Secretary of Commerce

The Secretary has reviewed the existing closure of the BSAI to the "DAP other fishery." In considering the extent of the loophole explained above, he has decided to implement the Council's recommended new definition of a pelagic trawl with one exception by emergency rule at this time. In reviewing the definition, the Secretary has determined that prohibiting the use of plastic discs, bobbins, and rollers on the foot rope is not necessary. Fishermen do not use these devices with large-meshed pelagic trawls, because such devices tangle with the trawl when it is taken up with the reel on the vessel.

Pelagic trawls must have one meter meshes (stretched dimension) for a distance of ten meshes in back of the fishing line (Figure 3) or parallel lines spaced one meter apart for a distance of ten meters in back of the fishing line (Figure 4).

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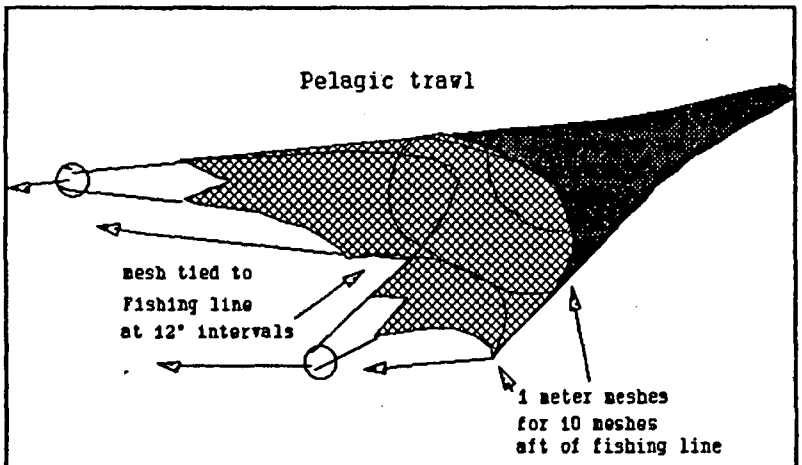

Figure 3. Pelagic trawl with 1 meter meshes aft of the fishing line.

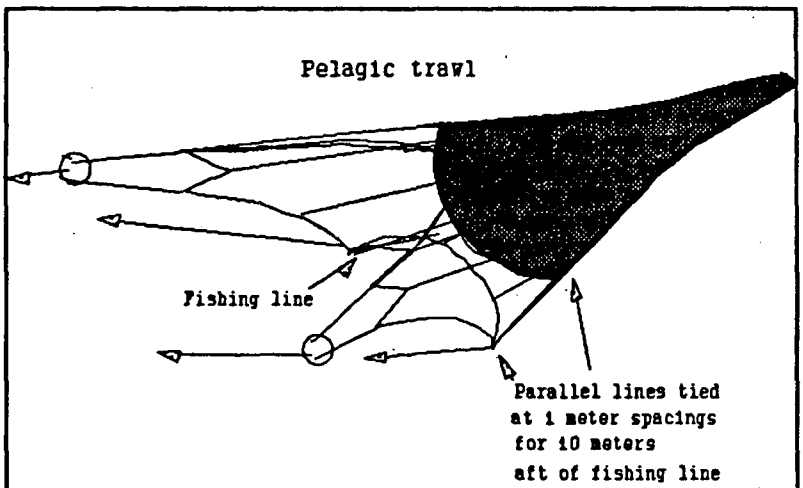

Figure 4. Pelagic trawl having parallel lines with 1 meter spacing for 10 meters aft of the fishing line.

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Further, because many fishermen fish in both the BSAI and the GOA, and because reaching the halibut bycatch allowance in the GOA is likely before year's end, which would create a similar loophole problem in the GOA, the Secretary is also making the amended definition of pelagic trawl applicable to the GOA at this time. Consistency in gear definitions between these areas will minimize confusion and facilitate enforcement. The Secretary's action does not prejudge his decision to approve, disapprove, or partially disapprove this part of Amendment 16 under his review and decision authority provided by section 304 of the Magnuson Act.

To make use of the new definition to resolve the management problem described above, the Secretary is also amending by emergency rule the current regulation at § 675.21(c)(2)(iv) closing the "DAP other fishery" by prohibiting the directed fishery for Pacific cod and pollock, in the aggregate, with other than pelagic trawls, rather than prohibiting the use of bottom trawls in the directed fishery. Implementation of the new pelagic trawl definition may promote harvests of pollock, which can be harvested on- as well as off-bottom. This amendment prohibits for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with trawl gear other than pelagic trawls in Zones 1 and 2H and also in the BSAI by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

By this action, the Secretary is also amending the closure notices of the "DAP other fishery" when the secondary halibut PSC was reached on May 30, 1990 (55 FR 22919, June 5, 1990), and when the primary halibut PSC was reached on June 30, 1990 (55 FR 27643, July 5, 1990), respectively.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that reasons summarized above justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act. In addition, to the extent that this emergency interim rule relieves a restriction by exempting certain gear types, a 30-day delay in effective date is not required.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why following the usual procedures of that order is not possible.

The Assistant Administrator prepared an EA for this rule and concluded that no significant impact on the human environment will occur. A copy of the EA is available from the Regional Director of the above address.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it is not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Because notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and because no other law requires that notice and opportunity for comment be given for this emergency rule, no initial of final regulatory flexibility analysis has been prepared under sections 603(a) and 604(a) of the Regulatory Flexibility Act.

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

List of Subjects in 50 CFR Parts 672 and 675

Fisheries.

Dated: August 13, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the definitions of *fishing line, foot rope, hook-and-line, jig,* and *pot-and-line* are temporarily added from August 14, 1990 through November 10, 1990 and the definition of a *pelagic trawl* is revised from August 14, 1990 through November 10, 1990 as follows:

§ 672.2 Definitions.

* * * * *

Fishing line means a length of chain or wire in the bottom front end of a trawl to which the footrope is attached.

Foot rope means a chain or wire rope attached to the bottom front end of a trawl and is attached to the fishing line.

* * * * *

Hook-and-line means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device.

* * * * *

Jig means rod-and-reel gear, troll gear, or jigging machines with a single non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device.

* * * * *

Pelagic trawl means (1) a trawl which has stretched mesh size openings of at least 1 meter, as measured diagonally from knot to knot when opposite sides of the mesh are brought together, starting at the fishing line and extending aft for a distance of at least 10 meshes and going around the entire circumference of the trawl, and which webbing is tied to the fishing line with no less than 0.3 meter (12 inches) between knots around the circumference of the net; or (2) a trawl with parallel lines with spaces of at least 1 meter, starting at the fishing line and extending aft for a distance of at least 10 meters and going around the entire circumference of the trawl.

* * * * *

Pot-and-line means a stationary, buoyed, and anchored line with pots attached, or the taking of fish by means of such a device.

* * * * *

3. In § 672.20, paragraphs (f)(1)(ii) and (f)(3)(ii) are temporarily suspended from August 13, 1990 until November 10, 1990, and new paragraphs (f)(1)(iii) and (f)(3)(iv) are temporarily added from August 13, 1990 through November 10, 1990 to read as follows:

§ 672.20 General limitations.

(f) * * *

(1) * * *

(iii) *Hook-and-line gear.* If during the year, the Regional Director determines that the catch of halibut by vessels using

hook-and-line gear in directed fisheries for groundfish, other than directed fisheries for demersal shelf rockfish in the Southeast District, will result in mortality of 750 mt of halibut provided by paragraph (f)(3) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting directed fishing for groundfish, other than demersal shelf rockfish in the Southeast Outside District, with hook-and-line gear for the remainder of the year in the Gulf of Alaska.

* * * * *

(3) * * *

(iv) A PSC mortality limit of 750 m.t. of Pacific halibut for hook-and-line gear is established.

* * * * *

4. Section 672.24 Gear limitations is temporarily changed from August 14, 1990 through November 10, 1990, by redesignating paragraph (c) as paragraph (d), by redesignating paragraph (b) as (c) and retitling it to read *Gear allocations*, and adding a new paragraph (b) to read as follows:

§ 672.24 Gear limitations.

* * * * *

(b) *Gear restrictions.* All pots used in directed fishing for groundfish must have rigid tunnel openings that are no wider than 9 inches and no higher than 9 inches, or soft tunnel openings that are no wider than 9 inches in diameter.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS

5. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 675.2, the definitions of *fishing line* and *foot rope* are temporarily added from August 14, 1990 through November 10, 1990, and the definition of a *pelagic trawl* is revised from August 14, 1990 through November 10, 1990, as follows:

§ 675.2 Definitions.

* * * * *

Fishing line means a length of chain or wire in the bottom front end of a trawl to which the footrope is attached.

Foot rope means a chain or wire rope attached to the bottom front end of a trawl and is attached to the fishing line.

* * * * *

Pelagic trawl means (a) a trawl which has stretched mesh size openings of at least 1 meter, as measured diagonally from knot to knot when opposite sides of the mesh are brought together, starting at the fishing line and extending aft for a distance of at least 10 meshes and going around the entire circumference of the trawl, and which webbing is tied to the fishing line with no less than 0.3 meter (12 inches) between knots around the circumference of the net; or (b) a trawl with parallel lines with spaces of at least 1 meter, starting at the fishing line and extending aft for a distance of at least 10 meters and going around the entire circumference of the trawl.

* * * * *

7. In § 675.21, paragraph (c)(2) is suspended from August 14, 1990 until November 10, 1990, and a new paragraph (c)(5) is added from August 14, 1990 until November 10, 1990 to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(c) * * *

(5) By the "DAP other fisheries."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with trawl gear other than pelagic trawls in Zone 1 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with trawls other than pelagic trawls in Zone 2 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with trawls other than pelagic trawls in Zones 1 and 2H by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with trawls other than pelagic trawls in the entire Bering Sea and Aleutian Islands Management Area by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

[FR Doc. 90-19354 Filed 8-14-90; 8:45 am]
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50 CFR Part 674

[Docket No. 900790-0190]

High Seas Salmon Fishery off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing for 10 days the U.S. Exclusive Economic Zone off Southeast Alaska to commercial fishing for all salmon species. This action is necessary to stop the harvest of coho salmon by the troll fishery and is intended to ensure that the coho salmon stocks are not overharvested and the various groups of fishermen share the harvest equitably.

DATES: *Effective:* This notice is effective at 0001 hours Alaska Daylight Time (ADT), Monday, August 13, 1990, and will expire at 2400 hours ADT, Wednesday, August 22, 1990. *Comments:* Public comments are invited until September 13, 1990.

ADDRESSES: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection from 0800 through 1630 hours ADT Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Anderson (Fishery Management Biologist, NMFS) 907-586-7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the U.S. Exclusive Economic Zone (EEZ) off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA

through regulations appearing at 50 CFR part 674.

The FMP also implements provisions of the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C. 3631 *et seq.*). Article III of the Treaty requires that each Party conduct its fisheries to prevent overfishing of the salmon stocks subject to the Treaty. The coho stocks being protected by this action are stocks subject to the Treaty (Article I (6) and 1988 Amendment of Annex IV, Chapter 5).

The troll fishery in the EEZ off Alaska and in Alaskan outside coastal waters is the first fishery to intercept the returning coho salmon. As of August 4, this fishery has harvested 824,000 coho; a number 216 percent above the 1971–1980 average harvest of 261,000 by this date. In contrast, except for the Prince of Wales drift gillnet fishery, the harvests by all other fisheries in the internal waters of Southeast Alaska are well behind those observed for the troll fishery. Coho harvests by the Lynn Canal gillnet fishery are roughly equal to the 1971–1980 average, the Taku-Snettisham drift gillnet fishery is 47 percent below the average, the Tree Point drift gillnet fishery is 18 percent below the average, and the Juneau recreational fishery is 66 percent below the average. Few coho have entered spawning streams at this date.

In 1980, the Council amended the FMP, section 8.3.1.4, to provide for a closure of the entire troll fishery for 10 days to stabilize or reduce coastal and offshore fishing effort on coho salmon unless an evaluation of the coho runs and harvests indicated a "well above average magnitude and good movement inshore." The Council took this action in cooperation with the Alaska Board of Fisheries (Board) so that the troll fishery in the EEZ and in State waters would be managed consistently. The Council intended that if the State issued a closure for coho, a similar closure should be instituted for the EEZ, under the procedures outlined in section 8.3.1.5. of the FMP and specified in § 674.23 of the regulations. Further, regulations at 50 CFR 674.23(a) implementing the FMP also provide that the Secretary of Commerce (Secretary) may modify the fishing times and areas whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area;

(2) The catch per unit of effort and the rate of harvest;

(3) The relative abundance of salmon stocks within the management area;

(4) The condition of salmon stocks throughout their ranges;

(5) Any other factors relevant to the conservation of salmon.

Alaska has similar criteria for the fisheries in its waters. In the spring of 1989, the Board established the following historical percentages as guidelines for the coho harvest by each type of commercial gear in Southeast Alaska: Troll (61), purse seine (19), draft gill net (13), set gill net (7). The Board stated that its intention was that these allocation guidelines be met as closely as possible over the long term, and authorized the Alaska Department of Fish and Game to adjust fishing times and areas to attempt to achieve these long-term allocation guidelines.

Based on the harvests to date by the various commercial and recreational fisheries, the Alaska Department of Fish and Game is closing the troll fishery in State waters for 10 days beginning at 0001 hours on August 13 to ensure adequate migration of coho from coastal waters to internal waters and the spawning streams and to address allocation of coho salmon between the offshore troll fishery and the troll, net, and recreational fisheries of the internal water of Alaska.

The Secretary, having reviewed the evidence of the coho harvests and being aware of Alaska's proposed action, has determined that the effect of overall fishing effort, the catch per unit of effort, and the well-above-average rate of harvest by the outside troll fleet requires a closure of the troll fishery in the EEZ.

On Friday, August 10, 1990, the Alaska Department of Fish and Game and the National Marine Fisheries Service issued a joint announcement that the commercial troll fishery would close for 10 days, beginning at 0001 hours ADT on August 13, 1990, and the Secretary is implementing the 10-day closure prescribed by this action. The closure will become effective after this notice has been filed for public inspection with the Office of the Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stocks harvested in Southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (d). However, 50 CFR 674.23(b)(3) requires the Secretary to accept and consider public comments for 30 days after the effective date of this notice. The aggregated data upon which this closure is based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity of this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

This action is authorized by 50 CFR part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: August 13, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–19355 Filed 8–14–90; 10:02 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 160
Friday, August 17, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-90-76]

Drawbridge Operation Regulations; St. Johns River, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the State of Florida, the Coast Guard is considering a change to the regulations governing three bridges across the St. Johns River at Jacksonville, Florida, the Main Street (US17) Bridge, mile 24.7, the Acosta (SR13) Bridge, mile 24.9 and the Fuller Warren (I10–I95) Bridge, mile 25.4, in order to improve the flow of peak morning commuter traffic. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 1, 1990.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Ave., Miami, FL 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, Room 406, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 am and 4 pm, Monday through Friday except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Gary D. Pruitt, (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended change to, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Gary D. Pruitt, project officer, and LCDR D. G. Dickman, project attorney.

Discussion of Proposed Regulations

The existing regulations for the Main Street, Acosta and Fuller Warren Bridges, require that the draws for each bridge open on signal except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Saturday except federal holidays, the draw need not be opended for the passage of vessels. The draws shall open at any time for vessels in an emergency involving life or property. The State of Florida has advised that a change is necessary in order to accommodate peak morning commuter traffic, which is reported to be taking place earlier along these routes in the City of Jacksonville. The Coast Guard has determined that a shift of the existing morning regulated period one-half hour earlier at all three bridges will accommodate this change in morning automobile traffic. The problem with the change in peak traffic has been accentuated by revised travel patterns caused by the detour route in place due to the construction of the new Acosta Bridge. All other aspects of the existing regulations would remain in full force and effect.

Federalism

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 have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

The proposed 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 of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposed rule will not change the total amount of time these bridges are allowed to be maintained in the closed position. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, 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).

2. Section 117.325(a) is revised to read as follows:

§ 117.325 St. Johns River.

(a) The draws of the Main Street (US17) Bridge, mile 24.7, the Acosta (SR13) Bridge, mile 24.9 and the Fuller Warren (I10–I95) Bridge, mile 25.4, all at Jacksonville, shall open on signal except that, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m., Monday through Saturday except federal holidays, the draw need not be opened for the passage of vessels. The draws shall open at any time for vessels in an emergency involving life or property.

* * * * *

Dated: August 8, 1990.

Robert E. Kramek,

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

[FR Doc. 90–19343 Filed 8–16–90; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD13 90–13]

Drawbridge Operation Regulations; Duwamish Waterway, Washington

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Seattle Engineering Department (SED), the Coast Guard is considering a change to the regulations governing the First Avenue South highway bridge across the Duwamish Waterway, mile 2.5, at Seattle, Washington, by lengthening the morning and evening periods during which the bridge need not open for the passage of vessels (closed periods). This proposal is being made to relieve vehicular traffic congestion caused by bridge openings immediately prior to or after the present morning and evening closed periods. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before October 1, 1990.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in the notice will be available for inspection and copying at 915 Second Avenue, room 3410. Normal office hours are between 7:45 a.m. and 4:14 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of the Proposed Regulations

Existing operating regulations require the draw to open on signal at all times; except it need not open from 6:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m. Monday through Friday except federal holidays. In addition, the draws of the First Avenue South Bridge shall open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel of 5,000 gross tons and over, and a vessel proceeding to pick up a vessel of 5,000 gross tons or over for towing. Over the years, morning and evening periods of peak vehicular traffic have spread out, or lengthened, to the point that they can no longer be contained within the existing closed periods. Bridge openings just before or after the existing closed periods tend to create large traffic jams which are slow to dissipate. If approved, the proposed change would provide that the draws need not open from 6 a.m. to 9 a.m. and 3 p.m. to 6 p.m. Vehicular traffic flow data and bridge opening records submitted by SED indicate that this change should better accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

Federalism

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 have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed 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 of the proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Extending the morning and evening closed periods by one hour each would not impose undue hardship on waterway users. Since the economic 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.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations 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).

2. Section 117.1041 (a)(1) is revised to read as follows:

§ 117.1041 Duwamish Waterway.

(a) * * *

(1) From Monday through Friday, except Federal holidays, the draws of the Spokane Street Bridge, mile 0.3, and the First Avenue South Bridge, mile 2.5 need not be opened for the passage of vessels as follows: Spokane Street Bridge—from 6:30 a.m. to 8:30 a.m. and from 3:45 p.m. to 5:45 p.m.; First Avenue South Bridge—fron 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., except as follows:

* * * * *

Dated: August 6, 1990.

Rudy K. Peschel,

Captain, U.S. Coast Guard Commander, 13th Coast Guard District, Acting.

[FR Doc. 90-19390 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AD33

Loan Guaranty: Approval and Withdrawal of Automatic Processing Privileges

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing amendments to its loan guaranty regulations to set forth the requirements that lenders must satisfy to process VA guaranteed home loans on the automatic basis. The VA is also proposing amendments to prescribe the standards and procedures for withdrawal of automatic processing authority.

DATES: Comments must be received on or before September 17, 1990. Comments received will be available for public inspection until September 26, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132,

Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Schneider, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, (202) 233-3042.

SUPPLEMENTARY INFORMATION: Under chapter 37 of title 38, United States Code, the VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

VA guaranteed home loans are processed by lenders in one of two possible ways. Loans which are processed on the prior approval basis are forwarded by the lender to the VA for approval of the loan prior to closing. VA underwrites the loan by reviewing the income and credit of the prospective borrower and advises the lender if VA will guarantee the loan. Loans which are processed on the automatic basis are underwritten by the lender and reported to VA after they are closed.

Section 1802(d) of title 38, U.S. Code provides that housing loans may be automatically guaranteed by VA only if made (1) by any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union, or mortgage and loan company, that is subject to examination and supervision by an agency of the United States or of any State, or (2) by any State, or (3) by any lender approved by the Secretary of Veterans Affairs, pursuant to standards established by the Secretary.

Lenders recognized for automatic processing under paragraphs (d)(1) and (d)(2) of 38 U.S.C. 1802 are referred to as supervised lenders, because they are subject to examination and supervision by Federal or State agencies. The standards for approval of nonsupervised lenders for automatic processing privileges under 38 U.S.C. 1802(d)(3) are presently set forth in DVB Circular 26-88-11, Application for Authority to Close Loans on an Automatic Basis. Nonsupervised Lenders (38 U.S.C. 1810) copies of which have been provided to VA program participants. Nonsupervised lenders must satisfy requirements in the areas of experience, working capital, minimum assets, lines of credit, secondary market investors, and qualified underwriters. They must also implement a written quality control system which ensures compliance with VA requirements. It is proposed to incorporate these standards into VA Regulations at 38 CFR § 36.4225 for the manufactured home loan program and 38 CFR 36.4348 for loans for conventionally built homes.

VA is at this time proposing no change to existing requirements that automatic processing lenders maintain a minimum of $50,000 working capital. However, comment is being requested on using the concept of a net worth requirement instead of a working capital requirement. Such a requirement would be consistent with that used in the Federal Housing Administration (FHA) and Government National Mortgage Association programs. Currently the requirement for FHA direct endorsement lenders is the maintenance of $250,000 in net worth.

The automatic processing privileges of a lender may be withdrawn by VA under the authority of 38 U.S.C. 1802(e). That section provides that the Secretary of Veterans Affairs may at any time upon thirty days' notice require housing loans to be made by any lender or class of lenders to be submitted to the Secretary for prior approval.

The predecessor of the present section 1802(e) was enacted by Public Law 550, 82nd Congress, and became subsection 501(f) of the Serviceman's Readjustment Act. Section 501(f) authorized the Secretary to withdraw a lender's automatic authority "at any time upon 30 days notice." House Report No. 802 contains the only legislative history on this provision. The committee observed, at page 13.

> In addition, the new subsection would grant a specific authority which would allow the Secretary to terminate nonprior approval loan originations by a particular lender who may have indulged in practices which are imprudent from a loan standpoint or which are prejudicial to the interests of veterans or the Government but not to a degree that would warrant complete suspension of such lender from participation in the program.

This is clear indication of Congress' awareness that automatic processing privileges carry a special status, which is properly forfeited for lesser improprieties than would justify outright suspension from the Loan Guaranty program.

A VA guaranteed home loan constitutes a contingent liability of the U.S. Government, in that VA may be required, in the event the veteran defaults on the loan, to reimburse the lender for a portion of its loss. The automatic lender has the authority to place public funds at risk for a private purpose, in effect, a blank check on the Treasury. There is no "right" to continued status as an automatic lender in the VA home loan program; i.e., no right to a formal hearing for termination of automatic authority. Lenders whose automatic authority has been withdrawn retain the authority to process VA loans on the prior approval basis. Even so, the regulations do provide the lender with an opportunity to contest the withdrawal and provide for an informal hearing if there are disputed material facts. The regulations for withdrawal of automatic processing authority would be located at § 36.4226 for the manufactured home loan program and at § 36.4349 for conventionally built homes.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexiblity Act, 5 U.S.C. 601-612. These proposed regulations simply incorporate into VA regulations the standards which the VA uses under its statutory authority in granting automatic processing privileges. The proposed regulations also formalize VA standards and procedures for withdrawing automatic processing privileges. However, these proposed regulations do not impose any signficant new administrative or paperwork burdens on small entities, and certain procedural protections are added for lenders. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The proposed regulatory amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other 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.

(Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.)

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan programs-housing and community

development, Manufactured Homes, Veterans.

These amendments are promulgated under authority granted the Secretary by sections 210(c), 1802(d), 1803(c)(1) and 1812(g) of title 38 United States Code.

Approved: March 30, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 36, Loan Guaranty is proposed to be amended as follows:

PART 36—[AMENDED]

1. The authority citation for part 36 is revised to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 210, 1812.

2. Sections 36.4225, 36.4226, 36.4348 and 36.4349 are added to read as follows:

§ 36.4225 Authority to close manufactured home loans on the automatic basis.

(a) Supervised lenders of the classes described in section 1802(d) (1) and (2) of title 38, U.S. Code are authorized by statute to process VA guaranteed manufactured home loans on the automatic basis. This category of lenders includes any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union or mortgage and loan company that is subject to examination and supervision by an agency of the United States or of any State or by any State.

(b) Nonsupervised lenders of the class described in section 1802(d)(3) of title 38, U.S. Code must apply to the Secretary for authority to process manufactured home loans on the automatic basis. The following minimum requirements must be met:

(1) *Minimum Assets.* A minimum of $50,000 of working capital must be maintained. Working capital is defined as the excess of current assets over current liabilities. Current assets are defined as cash or other assets that could readily be converted into cash within 1 year on the normal accounting or business cycle. Current liabilities are defined as obligations that would be paid within a year on a normal accounting or business cycle. The lender's latest financial statements (profit and loss statements and balance sheets), audited and certified by a CPA (certified public accountant), must accompany the application. If the date of the financial statement precedes that of the application by more than 6 months, the lender-applicant must also attach a copy of its latest internal quarterly report. In addition, the lender-applicant must agree that if the application is approved, the applicant will provide within 120 days following the end of each of its fiscal years an audited financial statement to the Director, Loan Guaranty Service for review.

(2) *Experience.* The firm must have been actively engaged in originating manufactured home loans for at least the last 2 years. Alternately, each principal officer of the firm who is actively involved in managing origination functions must have a minimum of 2 recent years' total experience in the field of VA manufactured home mortgages in managerial functions in either the present company of employment or in companies other than that of his or her present employment. In either case, every principal officer (president and vice president) must submit a resume of his or her expertise in the mortgage lending field. Should the secretary and/or treasurer participate in the management of origination functions, they too must submit a resume and meet the minimum requirement if the company does not meet the experience requirement. Should the lender or any of its directors or officers ever have been suspended by any Federal Agency or Department or any of its directors or officers have been a director or officer of any other lender or corporation that was so suspended, or if the lender-applicant ever had a servicing contract with an investor terminated for cause, a statement of the facts must also be submitted. Lender-applicants will submit individual requests for each branch office they wish to have approved. The parent organization must agree to accept full responsibility for the actions of branch offices.

(3) *Underwriter.* If it is proposed that all loans to be made by the lender will be submitted to its home office for approval or rejection, the lender must have at least one full-time designated underwriter in its home office. If the loans will be approved or rejected by branch managers, the lender must have at least one full-time designated underwriter in each branch. In either event, the designated underwriters must be identified and a resume on each submitted to VA. The underwriters should have at least 3 years of experience in consumer installment finance. If changes in underwriting personnel occur, the lender must notify the VA.

(4) *Lines of Credit.* The identity of the source(s) of warehouse lines of credit must be revealed to VA and the applicant must agree that VA may contact the named source(s) for the purpose of verifying the information.

(5) *Secondary Market.* If the lender-applicant customarily sells the manufactured home loans it originates, it must provide a listing of all permanent investors to whom the loans are sold, including the investor's address, telephone number and names of persons to contact.

(6) *Liaison.* The lender-applicant must designate one employee to act as liaison on its behalf with the VA. If possible, the lender-applicant should select employees other than VA approved underwriters to act as liaison. Officers from branch or regional offices should also be appointed to act as liaison with local VA offices. The lender must notify VA of any changes in liaison personnel.

(7) *Courtesy Closing.* The lender-applicant must certify to VA that it will not close loans on an automatic basis as a courtesy or accommodation for other mortgage lenders whether or not such lenders are themselves approved to close on an automatic basis. The lender must agree that the processing of forms other than the initial credit application will not be delegated to the dealer or developer.

(8) *Subsidiaries/Affiliates.* A lender approved for automatic processing may not close manufactured home loans on the automatic basis involving any dealership or manufacturer in which it has a financial interest or which it owns, is owned by, or with which it is affiliated. This restriction may be eliminated for lenders that can provide documentation which demonstrates to VA's satisfaction that (i) the lender and the manufacturer and/or dealer are separate entities that operate independently of each other, and (ii) the percentage of all VA manufactured home loans originated by the lender during at least a 1-year period on which payments are past due 90 days or more is no higher than the national average for the same period for all mortgage loans.

(9) *Lender Agents.* A lender using an agent to perform a portion of the work involved in originating and closing a VA guaranteed loan on an automatic basis must take full responsibility by certification or corporate resolution for all acts, errors and omissions of the agent and its employees. Any such acts, errors or omissions will be treated as those of the lender and appropriate sanctions may be imposed against the lender and its agent.

(1) *Minimum Use of Automatic Authority.* If approved, lenders must use their automatic authority to the maximum extent possible. Any lender with automatic authority who submits a loan on the prior approval basis will be

required to submit an explanation from the designated underwriter as to why the loan was not closed automatically. Such a statement will not be needed for loans that must be processed on the prior approval basis; e.g., joint loans.

(11) *Probation.* Lender-applicants meeting the requirements of this section will be approved to close loans on an automatic basis for a 1-year probationary period. Poor underwriting and/or consistently careless processing by the lender during the probationary period will be a basis for withdrawal of automatic authority.

(12) *Quality Control System.* In order to be approved as a nonsupervised lender for automatic processing authority, the lender must implement a written quality control system which ensures compliance with VA requirements. The lender must agree to furnish findings under its system to VA on demand. The elements of the quality control system must include the following:

(i) *Underwriting Policies.* Each office of the lender shall maintain copies of VA Credit Standards and all available VA underwriting guidelines.

(ii) *Corrective Measures.* The system should ensure that effective corrective measures are taken promptly when deficiencies in loan originations are identified by either the lender or VA. Any cases involving major discrepancies which are discovered under the system must be reported to VA.

(iii) *System Integrity.* The quality control system should be independent of the loan production function.

(iv) *Scope.* The review of underwriting decisions and certifications must include compliance with VA underwriting requirements, sufficiency of documentation and soundness of underwriting judgments.

(c) A lender approved to close loans on the automatic basis who subsequently fails to meet the requirements of this section must report the circumstances surrounding the deficiency and the remedial action to be taken to cure it to VA.

(Authority: 38 U.S.C. 20(c), 1803(c)(1), and 1812(g))

§ 36.4226 Withdrawal of authority to close manufactured home loans on the automatic basis.

(a)(1) As provided in section 1802(e) of title 38, U.S. Code, the authority of any lender to close manufactured home loans on the automatic basis may be withdrawn by the Secretary at any time upon thirty (30) days notice. The automatic processing authority of both supervised and nonsupervised lenders may be withdrawn for engaging in practices which are imprudent from a lending standpoint or which are prejudicial to the interests of veterans or the Government but are of a lesser degree than would warrant complete suspension of the lender from participation in the program.

(2) Automatic processing authority may be withdrawn for failure to meet basic qualifying criteria. For non-supervised lenders, this includes lack of a designated underwriter, failure to maintain $50,000 working capital and/or failure to file required financial statements. For supervised lenders this includes loss of status as an entity subject to examination and supervision by a Federal or State supervisory agency as required by 38 U.S.C. 1802(d). During the 1 year probationary period for newly approved automatic lenders, automatic authority may be withdrawn based upon poor underwriting or consistently careless processing by the lender, as determined by VA

(3) Automatic processing authority may also be withdrawn based on any of the causes for debarment set forth at § 44.305 of this title.

(b) Authority to close manufactured home loans on the automatic basis may also be temporarily withdrawn for a period of time under the following schedule.

(1) Withdrawal for 60 days:

(i) Automatic loan submissions show deficiencies in credit underwriting, such as use of unstable sources of income to qualify the borrower, ignoring significant adverse credit items affecting the applicant's creditworthiness, etc., after such deficiencies have been repeatedly called to the lender's attention.

(ii) Allowing employment or deposit verifications to be handcarried by applicants or otherwise improperly permitting such forms to pass through the hands of a third party;

(iii) Automatic loan submissions are consistently incomplete after such deficiencies have been repeatedly called to the lender's attention by VA.

(iv) Continued instances of disregard of VA requirements after they have been called to the lender's attention.

(2) Withdrawal for 180 days:

(i) Loans are closed automatically which conflict with VA credit standards and which would not have been made by a lender acting prudently.

(ii) Failure to disclose to VA significant obligations or other information so material to the veteran's ability to repay the loan that undue risk to the Government results;

(iii) Employment or deposit verifications are allowed to be handcarried by applicant or otherwise mishandled, resulting in the submission of significant misinformation to VA;

(iv) Substantiated complaints are received that the lender misrepresented VA requirements to veterans to the detriment of their interests (e.g., veteran was dissuaded from seeking a lower interest rate based on lender's incorrect advice that such options were precluded by VA requirements);

(v) Closing documentation shows instances of improper charges to the veteran after the impropriety of such charges has been called to the lender's attention by VA, or refusal to refund such charges after notification by VA.

(vi) Other instances of lender actions which are prejudicial to the interests of veterans, such as deliberate delays in scheduling loan closings.

(3) Withdrawal for a period of from one year to three years:

(i) Failure to properly disburse loans (e.g., loan disbursement checks returned due to insufficient funds);

(ii) Involvement by the lender in the improper use of a veteran's entitlement (e.g., knowingly permitting the veteran to violate occupancy requirements, lender involvement in sale of veteran's entitlement).

(4) A continuation of actions that have led to previous withdrawal of automatic authority justifies withdrawal of automatic authority for the next longer period of time.

(5) Withdrawal of automatic processing authority does not prevent a lender from processing VA guaranteed manufactured home loans on the prior approval basis.

(6) Action by VA to remove a lender's automatic authority does not prevent VA from also taking debarment or suspension action based on the same conduct by the lender.

(7) VBA field stations are authorized to withdraw automatic privileges for 60 days, based on any of the violations set forth in subparagraphs (1) through (3) above, for nonsupervised lenders without operations in other stations' jurisdictions. All determinations regarding withdrawal of automatic authority for longer periods of time or multi-jurisdictional lenders must be made in Central Office.

(c) VA will provide 30 days notice of withdrawal of automatic authority in order to enable the lender to either close or obtain prior approval for a loan on which processing has begun. There is no right to a formal hearing to contest the withdrawal of automatic processing privileges. However, if within 15 days after receiving notice the lender requests an opportunity to contest the

withdrawal the lender may submit, in person, in writing or through a representative, information and argument in opposition to the withdrawal.

(d) If the lender's submission in opposition raises a dispute over facts material to the withdrawal of automatic authority the lender will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witnesses the Veterans Benefits Administration presents. The Chief Benefits Director will appoint a hearing officer or panel to conduct the hearing.

(e) A transcribed record of the proceedings shall be made available at cost to the lender, upon request, unless the requirement for a transcript is waived by mutual agreement.

(f) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Chief Benefits Director shall make a decision on the basis of all the information in the administrative record, including any submission made by the lender.

(g) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact will be prepared by the hearing officer or panel. The Chief Benefits Director shall base the decision on the facts as found, together with any information and argument submitted by the lender and any other information in the administrative record.

(Authority: 38 U.S.C. 210(c), 1803(c)(1), and 1812(g))

§ 36.4348 Authority to close loans on the automatic basis.

(a) Supervised lenders of the classes described in section 1802(d) (1) and (2) of title 38, U.S. Code are authorized by statute to process VA guaranteed home loans on the automatic basis. This category of lenders includes any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union or mortgage and loan company that is subject to examination and supervision by an agency of the United States or of any State or by any State.

(b) Nonsupervised lenders of the class described in section 1802(d)(3) of title 38, U.S. Code must apply to the Secretary for authority to process loans on the automatic basis. The following minimum requirements must be met:

(1) *Minimum Assets.* A minimum of $50,000 of working capital must be maintained. Working capital is defined as the excess of current assets over current liabilities. Current assets are defined as cash or other assets that could readily be converted into cash within 1 year on the normal accounting or business cycle. Current liabilities are defined as obligations that would be paid within a year on a normal accounting or business cycle. The lender's latest financial statements (profit and loss statements and balance sheets), audited and certified by a CPA (certified public accountant), must accompany the application. If the date of the financial statement precedes that of the application by more than 6 months, the lender-applicant must also attach a copy of its latest internal quarterly report. In addition, the lender-applicant must agree that if the application is approved, the applicant will provide within 120 days following the end of its fiscal year an audited financial statement to the Director, Loan Guaranty Service for review.

(2) *Experience.* The firm must have been actively engaged in originating VA mortgages for at least 3 recent years. Alternately, each principal officer of the firm who is actively involved in managing origination functions must have a minimum of 3 recent years' total experience in the field of VA mortgages in managerial functions in either the present company of employment or in companies other than that of his or her present employment. In either case, every principal officer (president and vice presidents) must submit a resume of his or her experience in the mortgage lending field. Should the secretary and/or treasurer participate in the management of origination functions, they too must submit a resume and meet the minimum experience requirement if the company does not meet the experience requirement. Should the lender or any of its directors or officers ever have been suspended by any Federal Agency or Department or any of its directors or officers have been a director or officer of any other lender or corporation that was so suspended, or if the lender-applicant ever had a servicing contract with an investor terminated for cause, a statement of the facts must also be submitted.

(3) *Underwriter.* The senior officer of the firm must nominate and recommend a full-time qualified employee(s) to act in the firm's behalf as underwriter(s) to personally review and make underwriting decisions associated with the submission of laons to the VA which will be closed on the automatic basis. Nominees for underwriter must have a minimum of 3 years' experience in mortgage lending in reviewing credit and making underwriting decisions, with at least 2 recent years in connection with loans submitted to the VA for guaranty. This experience must have been with an institutional investor originating for its own portfolio or purchasing this type of loan, or with an originator selling this type of loan to investors.

(4) *Lines of Credit.* The lender-applicant must have one or more lines of credit aggregating at least $1 million. The identity of the source(s) of warehouse lines of credit must be revealed to VA and the applicant must agree that VA may contact the named source(s) for the purpose of verifying the information.

(5) *Secondary Market.* If the lender-applicant customarily sells loans it originates, it must have a minimum of two permanent investors. These may consist of the Government National Mortgage Association (GNMA) and other Government agencies, including State housing agencies, and the Federal National Mortgage Association (FNMA).

(6) *Lender Processing.* The lender-applicant must agree that all prospective VA loans will be reviewed at its home or main office prior to closing and the decision to make or reject the loan will be made at that office by an approved underwriter, unless VA authorizes that company to operate through regional underwriting offices.

(7) *Liaison.* The lender-applicant must designate one employee and an alternate to act as liaison on its behalf with VA. If possible, the lender-applicant should select employees other than VA approved underwriters to act as liaison with VA.

(8) *Courtesy Closing.* The lender-applicant must certify to VA that it will not close loans on an automatic basis as a courtesy or accommodation for other mortgage lenders, whether or not such lenders are themselves approved to close on an automatic basis, without the express approval of VA. However, a lender with automatic authority may close loans for which information and supporting credit data have been developed on its behalf by a duly authorized agent.

(9) *Lender Agents.* A lender using an agent to perform a portion of the work involved in originating and closing a VA guaranteed loan on an automatic basis must take full responsibility by certification or corporate resolution for all acts, errors and omissions of the agent and its employees. Any such acts, errors or omissions will be treated as those of the lender and appropriate sanctions may be imposed against the lender and its agent.

(10) *Subsidiaries/Affiliates.* A lender approved for automatic processing may not close loans on the automatic basis

for any builder, real estate broker, or other entity in which it has a financial interest or which it owns, is owned by, or with which it is affiliated. However, when the only relationship that exists between a lender and a builder is a construction loan, the lender may close the permanent mortgage on an automatic basis. This restriction may be eliminated for lenders that can provide documentation which demonstrates to VA's satisfaction that (i) the lender and builder or other affiliate are separate entities that operate independently of each other, and (ii) the percentage of all VA loans based on the affiliate's production originated by the lender during at least a 1-year period on which payments are past due 90 days or more is no higher than the national average for the same period for all mortgage loans.

(11) *Minimum Use of Automatic Authority.* If approved, lenders should use their automatic authority to the maximum extent possible. Any lender with automatic authority who submits a loan on the prior approval basis will be required to submit an explanation from VA approved underwriter as to why the loan was not closed automatically. Such a statement will not be needed for loans that must be processed on the prior approval basis; e.g., joint loans.

(12) *Probation.* Lender-applicants meeting the requirements of this section will be approved to close loans on an automatic basis for a 1-year probationary period. Poor underwriting and/or consistently careless processing by the lender during the probationary period will be a basis for withdrawal of automatic authority

(13) *Quality Control System.* In order to be approved as a non-supervised lender for automatic processing authority, the lender must implement a written quality control system which ensures compliance with VA requirements. The lender must agree to furnish findings under its system to VA on demand. The elements of the quality control system must include the following:

(i) *Underwriting Policies.* Each office of the mortgagee shall maintain copies of VA Credit Standards and all available VA underwriting guidelines.

(ii) *Corrective Measures.* The system should ensure that effective corrective measures are taken promptly when deficiencies in loan originations are identified by either the lender or VA. Any cases involving major discrepancies which are discovered under the system must be reported to VA.

(iii) *System Integrity.* The quality control system should be independent of the mortgage loan production function.

(iv) *Scope.* The review of underwriting decisions and certifications must include compliance with VA underwriting requirements, sufficiency of documentation and soundness of underwriting judgments.

(v) *Appraisal Quality.* For lenders approved for the Lender Appraisal Processing Program (LAPP), the quality control system must specifically contain provisions concerning the adequacy and quality of real property appraisals. While the lender's quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques so that they can select appropriate cases for review if discretionary sampling is used, and prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction.

(c) A lender approved to close loans on the automatic basis who subsequently fails to meet the requirements of this section must report the circumstances surrounding the deficiency and the remedial action to be taken to cure it to VA.

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

§ 36.4349 Withdrawal of authority to close loans on the automatic basis.

(a)(1) As provided in section 1802(e) of title 38, U.S. Code, the authority of any lender to close loans on the automatic basis may be withdrawn by the Secretary at any time upon thirty (30) days notice. The automatic processing authority of both supervised and nonsupervised lenders may be withdrawn for engaging in practices which are imprudent from a lending standpoint or which are prejudicial to the interests of veterans of the Government but are of a lesser degree than would warrant complete suspension of the lender from participation in the program.

(2) Automatic processing authority may be withdrawn for failure to meet basic qualifying criteria. For non-supervised lenders, this includes lack of an approved underwriter, failure to maintain $50,000 working capital, and/or failure to file required financial statements. For supervised lenders this includes loss of status as an entity subject to examination and supervision by a Federal or State supervisory agency as required by 38 U.S.C. 1802(c). During the 1 year probationary period for newly-approved nonsupervised automatic lenders, automatic authority may be withdrawn based upon poor underwriting or consistently careless processing by the lender, as determined by VA.

(3) Automatic processing authority may also be withdrawn for any of the causes for debarment set forth at § 44.305 of this title.

(b) Authority to close loans on the automatic basis may also be temporarily withdrawn for a period of time under the following schedule.

(1) Withdrawal for 60 days:

(i) Automatic loan submissions show deficiencies in credit underwriting, such as use of unstable sources of income to qualify the borrower, ignoring significant adverse credit items affecting the applicant's creditworthiness, etc., after such deficiencies have been repeatedly called to the lender's attention.

(ii) Allowing employment or deposit verifications to be handcarried by applicants or otherwise improperly permitting such forms to pass through the hands of a third party:

(iii) Automatic loan submissions are consistently incomplete after such deficiencies have been repeatedly called to the lender's attention by VA.

(iv) Continued instances of disregard of VA requirements after they have been called to the lender's attention.

(2) Withdrawal for 180 days:

(i) Loans are closed automatically which conflict with VA credit standards and which would not have been made by a lender acting prudently.

(ii) Failure to disclose to VA significant obligations or other information so material to the veteran's ability to repay the loan that undue risk to the Government results;

(iii) Employment or deposit verifications are allowed to be handcarried by applicant or otherwise mishandled, resulting in the submission of significant misinformation to VA;

(iv) Substantiated complaints are received that the lender misrepresented VA requirements to veterans to the detriment of their interests (e.g., veteran was dissuade from seeking a lower interest rate based on lenders's incorrect advice that such options were precluded by VA requirements);

(v) Closing documentation shows instances of improper charges to the veteran after the impropriety of such charges has been called to the lender's attention by VA, or refusal to refund such charges after notification by VA.

(vi) Other instances of lender actions which prejudicial to the interests of

veterans such as deliberate delays in scheduling loan closings.

(3) Withdrawal for a period of from one year to three years.

(i) Failure to properly disburse loans (e.g., loan disbursement checks returned due to insufficient funds);

(ii) Involvement by the lender in the improper use of a veteran's entitlement (e.g., knowingly permitting the veteran to violate occupancy requirements, lender involvement in sale of veteran's entitlement, etc.).

(4) A continuation of actions that have led to previous withdrawal of automatic authority justifies withdrawal of automatic authority for the next longer period of time.

(5) Withdrawal of automatic processing authority does not prevent a lender from processing VA guaranteed loans on the prior approval basis.

(6) Action by VA to remove a lender's automatic authority does not prevent VA from also taking debarment or suspension action based on the same conduct by the lender.

(7) VA field stations are authorized to withdraw automatic privileges for 60 days, based on any of the violations set forth in subparagraphs (1) through (3) above, for nonsupervised lenders without operations in other stations' jurisdictions. All determinations regarding withdrawal of automatic authority for longer periods of time or multi-jurisdictional lenders must be made in Central Office.

(c) VA will provide 30 days notice of a withdrawal of automatic authority in order to enable the lender to either close or obtain prior approval for a loan on which processing has begun. There is no right to a formal hearing to contest the withdrawal of automatic processing privileges. However, if within 15 days after receiving notice the lender requests an opportunity to contest the withdrawal the lender may submit, in person, in writing or through a representative, information and argument in opposition to the withdrawal.

(d) If the lender's submission in opposition raises a dispute over facts material to the withdrawal of automatic authority the lender will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witnesses the Veterans Benefits Administration presents. The Chief Benefits Director will appoint a hearing officer or panel to conduct the hearing.

(e) A transcribed record of the proceedings shall be made available at cost to the lender, upon request, unless the requirement for a transcript is waived by mutual agreement.

(f) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Chief Benefits Director shall make a decision on the basis of all the information in the administrative record, including any submission made by the lender.

(g) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact will be prepared by the hearing officer or panel. The Chief Benefits Director shall base the decision on the facts as found, together with any information and argument submitted by the lender and any other information in the administrative record.

Authority: (38 U.S.C. 210(c), 1803(c)(1))

[FR Doc. 90-19222 Filed 8-16-90; 8:45 am]
BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-366, RM-7221]

Radio Broadcasting Services; Lynchburg, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lynchburg Independent Broadcasters, Inc., proposing the substitution of Channel 261C3 for Channel 261A at Lynchburg, Virginia, and the modification of its license for Station WKZZ(FM) at Lynchburg to specify operation on the higher powered channel. Channel 261C3 can be allotted to Lynchburg in compliance with Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) northeast of the city. The coordinates for this proposed allotment are 37-28-00 and 79-06-00.

DATES: Comments must be filed on or before October 4, 1990, and reply comments on or before October 19, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey W. Malickson, P.O. Box 32488, Charlotte, North Carolina 28232 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-366, adopted July 31, 1990, and released August 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-19435 Filed 8-16-90; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 950, 952 and 970

Acquisition Regulation; Nuclear Hazard Indemnity Clauses

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes to revise the Department to Energy Acquisition Regulation (DEAR) to implement the provisions of the Price-Anderson Amendments Act of 1988 as those amendments affect the nuclear hazards indemnity clauses currently in the DEAR.

The PAAA also provides the DOE the authority to assess civil penalties on its contractors, with certain named

exceptions that are indemnified under the statute, and their subcontractors and suppliers, for violation of DOE nuclear safety rules, regulations, or orders. The PAAA also subjects officials of these contractors, with no exceptions, to criminal liability for specified violations of the Atomic Energy Act of 1954, as amended, and DOE nuclear safety rules, regulations, or orders.

DATES: Written comments must be received by October 1, 1990.

ADDRESSES: Comments should be addressed to: Robert M. Webb, Procurement Policy Division (PR–12), U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, Procurement Policy Division (PR–12), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8264 or FTS 896–8264.

Susan Kuznick, Office of the Assistant General Counsel for Nuclear Affairs (GC–31), U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585, (202) 586–6975 or FTS 896–8264.

SUPPLEMENTARY INFORMATION:

I. Background
A. Discussion
B. Section-by-Section Analysis
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 12612
III. Public Comments

I. Background

A. Discussion

Congress has enacted and the President has signed into law the Price-Anderson Amendments Act of 1988 (PAAA), the effect of which is to substantially broaden and refine the Price-Anderson Act (Act) provisions.

The PAAA also provides the DOE the authority to assess civil penalties on its contractors, with certain named exceptions that are indemnified under the statute, and their subcontractors and suppliers, for violation of DOE nuclear safety rules, regulations, or orders. The PAAA also subjects officials of these contractors, with no exceptions, to criminal liability for specified violations of the Atomic Energy Act of 1954, as amended, and DOE nulear safety rules, regulations, or orders.

B. Section-By-Section Analysis

Summary and Explanation of Generic Changes to the Nuclear Hazards Indemnification Clauses

Within the proposed clauses at 950.250–70 and 950.250–72, there are incorporated several general and recurring revisions. For example, the PAAA defines a new term, "precautionary evacuation," and adds coverage for such events, so this term has been incorporated into the clauses in several places. Also, it is clear that the DOE can no longer limit Price-Anderson indemnity coverage to those contracts involving risk of a substantial nuclear incident. The new test is whether the contract involves a risk of public liability resulting from a nuclear incident as those terms are defined in the Act.

A number of editorial revisions have been made. For example, headings have been added for ease of reference. Also, in the Nuclear Hazards Indemnity (NHI) clause, certain definitions have been relocated to the particular segments of the clause where they specifically apply. In such cases, the definitions are for terms that are not used throughout the clause, but rather only in the applicable segments.

Revisions to the Nuclear Hazards Indemnity Clause (950.250–70)

At paragraph (c) of the proposed clause, to be titled Financial Protection, the issue of whether the DOE should require financial protection of its contractors had not been addressed, although it has been noted that this issue was of significant concern to several legislators and others during hearings related to the PAAA. It is adequate for this clause to preserve the DOE's right to require such protection. Therefore, this area of the clause will not be revised unless, and until, the DOE decides it should require such financial protection as a matter of course.

The language of the paragraph (d) of the proposed clause, to be titled Indemnification, has been revised to reflect the changes made by the PAAA regarding legal costs. Further, the language has been revised to delete the $500 million limitation on indemnity and reflect the new level of aggregate liability set forth in the PAAA. Because of the way such liability is stated in the PAAA, the amount may be increased by actions beyond the control of the DOE and, therefore, the clause can no longer specify an exact dollar amount. In the definition of "public liability," we have deleted a list of activities that had previously been given as part of the definition. This deletion is not intended to imply that liability for a nuclear incident arising from these situations is not "public liability," but rather reflects that public liability is not limited to such occurrences. The PAAA was clearly intended and written to cover a broader set of circumstances, and the listing of such circumstances—even as illustrations—might be interpreted too narrowly.

Paragraph (e) of the proposed clause, to be titled Waiver of Defenses, has been rearranged to reflect the different waivers required under different types of events. A waiver of charitable or governmental immunity is now required in the event of a nuclear incident arising out of nuclear waste activities. For all other activities, waivers are required for extraordinary nuclear occurrences. The reference to punitive or exemplary damages has been deleted in its entirety, because it is the Department of Energy's interpretation that the PAAA prohibits the award of punitive damages in any action with respect to a nuclear incident or precautionary evacuation covered by a DOE granted Price-Anderson indemnity. As required by the PAAA, language was added to provide that the waiver of defenses applies to extraordinary nuclear occurrences resulting from nuclear waste activities. Also, we have revised the statute of limitations language to reflect the revisions to the Price-Anderson Act by the PAAA. The period for bringing claims under the Act is no longer limited to 20 years after the date of a nuclear incident.

In paragraph (f) of the proposed clause, to be titled Notification and Litigation of Claims, the current provision regarding overlap with activities performed at NRC–licensed facilities has been deleted because the PAAA states the DOE indemnity shall be the exclusive means of indemnification for DOE contractor activities. However, if a DOE contractor is already covered under the NRC-administered Price-Anderson system for the activity involved in the DOE contract, the DOE may not indemnify that contractor. This is also reflected in the proposed revision to the prefatory language for use of the clause in DEAR subpart 950.70 and in the requirements for subcontract flowdown, as discussed below.

In paragraph (g) of the proposed clause, to be titled Continuity of DOE Obligations, the current provision allowing amendment of the clause by mutual agreement has been deleted as unnecessary.

Paragraph (h) of the proposed clause, to be titled Effect of Other Clauses, has been amended to delete the list of clauses that have effect on the NHI clause. The reason for the deletion is that such a list requires constant updating. The language has been revised to have the same effect without the inclusion of a specific list of clauses.

Paragraphs (i) and (j) of the proposed clause, to be titled Civil Penalties and Criminal Penalties, respectively, have been added to reflect the statutory application of these two types of penalties to contractors that receive the nuclear hazards indemnity provided by the Price-Anderson Act, as amended by the PAAA. The proposed Note I provides that paragraph (i) shall not be included in the NHI clause in contracts with any of the seven listed contractors operating the named DOE facilities. In such cases, pursuant to the terms of the PAAA, those operations are not subject to the assessment of civil penalties under section 234A.

A paragraph (k) of the proposed clause, to be titled Inclusion in Subcontracts, has been added to require flowdown of the NHI clause to subcontracts. This flowdown is based upon DOE's interpretation that the PAAA requires the DOE to indemnify "any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability * * *." That interpretation is substantiated by the fact that Section 17 of the PAAA provides the DOE the authority to assess civil penalties against a prime contractor and any of its subcontractors or suppliers who violate the DOE's nuclear safety rules or regulations. Therefore, subcontractors working on DOE nuclear projects who are not covered by the NRC Price-Anderson system must now receive the DOE indemnity rather than merely a representation that the prime contract is covered by Price-Anderson. This will be accomplished by flowdown of the NHI clause.

The clause has been amended to add an effective date provision to clarify the effective date of the new indemnity levels. Section 20 of the PAAA provides that the amendments affecting the indemnification clauses became effective on August 20, 1988. For contracts entered into after that date, the proposed NHI clause will be effective upon contract award. However, for contracts awarded before the expiration of the Act, containing the current NHI clause, the effective date of the new NHI clause will be August 20, 1988. For those few contracts awarded after the expiration of the Act, but before August 20, 1988, that contained a Public Law 85–804 indemnification, the proposed clause will be effective from the date the Public Law 85–804 indemnification was replaced by an interim NHI clause. See Note II to the clause.

A Note III has been provided to be included in any contracts covered by the NHI clause that also contain, or are to contain, a "general authority indemnity" pursuant to the regulations at 950.7101, as that regulation is proposed to be redesignated by this proposed rule.

Revisions to the Indemnity Assurance Clause

The title of the clause, currently referred to as I.A.C. (950.250–72), has been revised to eliminate reference to production or utilization facility, substituting instead the term "nuclear facility," because the coverage cannot be limited to production and utilization facilities and must include, for example, nuclear waste facilities. A similar revision has been made in paragraph (c), to be titled Purpose.

An authority paragraph (a) has been added for clarity.

In two places in paragraph (e) of the proposed clause, to be titled Agreement to Indemnify Contractor, the language has been revised to eliminate reference to a "substantial nuclear incident," reflecting revisions required by the PAAA. The reference is revised to encompass any situation involving the risk of public liability for a nuclear incident.

The paragraph that had set forth the dollar limit of liability from the Act has been deleted, because it would be redundant with earlier paragraphs of the revised clause at 950.250–70.

A paragraph (f) of the proposed clause, to be titled Inclusion in Subcontracts, has been added to provide for inclusion of a similar clause in appropriate subcontracts, for the reasons cited in the discussion of the NHI clause, above.

Other Regulatory Revisions

We are proposing other revisions to the DEAR in addition to those set forth in the Nuclear Hazards Indemnity and Indemnity Assurance clauses above. There is no longer a need for the subcontractor representation set forth in DEAR 950.7008 and 970.2870, because the prime contractor will now be required to flowdown the NHI clause to subcontractors. Thus, we propose deleting these provisions from the DEAR. Further, we propose to significantly revise the definitions and prescriptive lanugage in DEAR subpart 950.70, in order to reflect the changes set forth in the PAAA. Rather than repeat the definitions of the Act, as amended, we would state that the definitions are those of the Act. However, we have set forth the statutory definitions of "nuclear incident" and "public liability" because we believe they are necessary as an aid to those involved in the contracting process.

Much of 950.7004 and all of 950.7005 are deleted, due to the elimination of references of a "substantial nuclear incident" by the PAAA.

In proposing these changes to reflect the effect of the PAAA, we also have found it necessary to redesignate and relocate portions of the General Contract Authority Indemnity in part 950.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive Order, entitled "Federal Regulations," requires that a regulatory impact analysis be prepared prior to the promulgation of a "major rule." The DOE has concluded that this action is not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

Other regulations are subject to review by the Office of Management and Budget (OMB); however, OMB Bulletin 85–7 exempts all but specified types of procurement regulations from that review. This proposed rule does not involve any of the topics that remain subject to such review.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. The DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed

by this proposed rulemaking. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under the National Environmental Policy Act

The DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. *et seq.* (1976)), or the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements. However, the DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "**ADDRESSES**" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Indpendence Avenue, SW., Washington, DC 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by (the date indicated in the "**DATES**" section of this notice) will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any information you consider to be confidential must be so identified and submitted in writing, one copy only. The DOE reserves the right to determine the confidential status of the information and to treat it according to our determinations.

The DOE has concluded that this proposed rule does not involve a substantial issue of fact or law, and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 48 CFR Chapter 9

Government contracts, Government procurement, Indemnification of contractors, Management and operating contractors.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, on August 10, 1990.

Berton J. Roth,

Acting Director, Office of Procurement and Assistance Management.

The authority citation for parts 950, 952 and 970 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

1. The title of subpart 950.70 is revised as set forth below:

Subpart 950.70—Nuclear Indemnification of DOE Contractors

950.7000 [Amended]

2. Section 950.7000 is amended by removing "(a)" as it appears in the sentence, substituting a period for the coma after "activity," and removing the remainder of the sentence.

3. Section 950.7001 is revised to read as follows:

950.7001 Applicability.

The policies and procedures of this subpart shall govern the DOE's entering into agreements of indemnification with recipients of a contract whose work under the contract entails the risk of public liability for a nuclear incident.

950.7002 [Amended]

4. Section 950.7002 is amended, as follows:

a. By removing the term and definition of "Construction contractor."

b. By revising the definition of "Nuclear incident" to read as follows:

Nuclear incident means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material. The term includes any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States.

c. By revising the definition of "Person indemnified" to read as follows:

Person indemnified means:

(1) With respect to a nuclear incident occurring within the United States or outside the United States as the term is defined above and with respect to any nuclear incident in connection with the design development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability; or

(2) With respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 170d. of the Atomic Energy Act of 1954, as amended, has been extended or under any subcontract, purchase order, or other agreement, of any tier under any such contract or project.

d. By removing the term and definition of "Nuclear reactor."

e. By removing the term and definition of "Production facility."

f. By revising the definition of "Public liability" to read as follows:

Public liability means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except: Claims under State and Federal workmen's compensation acts of employees of persons indemnified who are employed at a site of and in

connection with activity where the nuclear incident occurs; claims arising out of an act of war; and whenever used in subsections a., c., and k. of section 170 of the Atomic Energy Act of 1954, as amended, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: *Provided,* that such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

g. By removing the term and definition of "Utilization facility."

5. Section 950.7003 is revised to read as follows:

950.7003 Nuclear hazards indemnity.

(a) Section 170d. of the Atomic Energy Act, as amended, requires DOE "to enter into agreements of indemnification with any person who may conduct activities under a contract with [DOE] that involve the risk of public liability * * *." However, DOE contractors whose activities are already subject to indemnification by the Nuclear Regulatory Commission are not eligible for such statutory indemnity. See 950.7006 of this part.

(b) Heads of Contracting Activities shall assure that contracts subject to this requirement contain the appropriate nuclear hazards indemnity provisions.

950.7004 and 950.7005 [Removed and reserved]

6. Sections 950.7004 and 950.7005 are removed and reserved.

7. Section 950.7006 is revised to read as follows:

950.7006 Statutory nuclear hazards indemnity agreement.

The contract clause contained in 952.250–70 shall be incorporated in all contracts in which the contractor is under risk of public liability for a nuclear incident or precautionary evacuation arising out of or in connection with the contract work, including such events caused by a product delivered to a DOE-owned facility for use by the DOE or its contractors. However, this clause shall not be included in contracts in which the contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under section 170 c or k or the Act for activities to be performed under the contract.

8. Section 950.7007 is revised to read as follows:

950.7007 Contractual assurance.

The clause at 952.250–72 shall be included in contracts with architech-engineer contractors for the design of a DOE facility, the construction or operation of which may involve the risk of public liability for a nuclear incident or a precautionary evacuation. That clause contains an assurance that DOE will enter into a statutory nuclear hazards indemnity agreement with any contractor that will construct or operate the facility.

950.7008 [Removed and reserved]

9. Section 950.7008 is removed and reserved.

950.7009 [Amended]

10. Section 950.7009 is amended by inserting "nuclear hazards" after "statutory" as it appears in the paragraph.

11. Section 950.7010 is revised to read as follows:

950.7010 Financial protection requirements.

DOE contractors with whom statutory nuclear hazards indemnity agreements under the authority of section 170d. of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents. However, if authorized by the DOE Headquarters office having responsibility for contractor casualty insurance programs, DOE contractors may be permitted to furnish financial protection to themselves or permitted to continue to carry such insurance at cost to the Government if they currently maintain insurance for such liability.

Subpart 950.71—General Contract Authority Indemnity

950.7011 [Redesignated as 950.7101]

13. Section 950.7011 is redesignated as 950.7101 and retitled as "Applicability." A new subpart heading 950.71 is added to read as set forth above preceding the redesignated 950.7101.

PART 952—SOLICITATION PROVISIONS CONTRACT CLAUSES

14. Section 952.250–70 is revised to read as follows:

952.250–70 Nuclear hazards indemnity agreement.

Insert the following clause in accordance with 950.7006.

Nuclear Hazards Indemnity Agreement (———)

Authority

(a) This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereafter called the Act.)

Definitions

(b) The definitions set out in the Act shall apply to this clause.

Financial Protection

(c) Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) of this clause. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.

Indemnification

(d)(1) To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $100 million in the aggregate for each nuclear incident or precautionary evacuation occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in paragraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, incuding transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

Waiver of Defenses

(e)(1) In the event of a nuclear incident, as defined in the Act arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any isue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;

2. Contributory negligence;

3. Assumption of risk; or

4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term "extraordinary nuclear occurrence" means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840, as amended by the Price-Anderson Amendments Act of 1988.

(vi) For the purposes of 10 CFR part 840, the term "contract location" means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under: (1) The limit of liability provisions under subsection 170e of the Act, and (2) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

Notification and Litigation of Claims

(f) The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2) of this clause. Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement of defense of any section or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder, and (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

Continuity of DOE obligations

(g) The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.

Effect of Other Clauses

(h) The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, Official Not To Benefit, and Examination of Records by the Comptroller General, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in agreements of this type.

Civil Penalties

(i) The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders,

Criminal Penalties

(j) Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

Inclusion in Subcontracts

(k) The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) of this clause. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under section 170c or k of the Act for the activities under the subcontract.

Effective Date

( ) See Note II of this clause for instructions related to this section on Effective Date.

Relationship to General Indemnity

( ) See Note III of this clause for instructions related to this section on Relationship to General Indemnity. (End of clause)

Note I

Paragraph (i) of the clause will be replaced with "RESERVED" in contracts specifically exempted from civil penalties by section 234 of the Act. That subsection provides that the following DOE contractors are not subject to the assessment of civil penalties:

(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;

(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory (End of note)

Note II

Contracts with an effective date after the date of (date to be that of the Final Rule resulting from the proposed rule herein), do not require the effective date provision in this clause. Delete the title.

Use the EFFECTIVE DATE title and the following language, for those contracts:

"( ) This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after _____."

(1) Those that contained an indemnity pursuant to Public Law 85–804 prior to August 20, 1988, include the effective date provision above, inserting the effective date of the contract modification that replaced the Public Law 85–80 indemnity with an interim Price-Anderson based indemnity. Pursuant to the Price-Anderson Admendment Act, this substitution must have taken place by February 20, 1989.

(2) Those that contained, and continue to contain, either of the previous Nuclear Hazards Indemnity clauses, include the effective date provision above, inserting "August 20, 1988."

(3) Those with an effective date between August 20, 1988, and the date of the Final Rule, that (a) had "interim coverage" or (b) did not not have "interim coverage" but have now been determined to be covered under the PAAA, include the effective date provision above, inserting the contract effective date.

Note III

The following alternate will be added to the above Nuclear Hazards Indemnity Agreement clause for all contracts that contain a general authority indemnity pursuant to 950.7101. CAUTION: Be aware that for contracts that will have this provision added which do not contain an effective date provision, this paragraph shall be marked (l). In the event an EFFECTIVE DATE provision has been included, it shall be marked (m).

"( ) To the extent that the contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to § 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply." (End of note)

952.250–71 [Removed and reserved]

15. Section 952.250–71 is removed and reserved.

952.250–72 [Amended]

16. Section 952.250–72 is revised to read as follows:

952.250–72 Indemnity assurance to architect-engineer or supplier prior to operation of a nuclear facility.

Insert the following clause in accordance with 950.7007.

Indemnity Assurance to Architect-Engineer or Supplier Prior to Operation of a Nuclear Facility (_____)

Authority

(a) This clause is incorporated into this contract pursuant to the authority contained in subsection 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).

Definitions

(b) The definitions set out in the Act shall apply to this clause.

Purpose

(c) The services or supplies furnished under this contract are intended to be used in connection with the construction and/or operation of a facility wherein activities will be conducted that involve the risk of public liability, as defined in the Act.

Indemnity Agreement With Facility Operator

(d) DOE will use its best efforts to include in any contract for the operation of such facility, an agreement based on the then current approved form of indemnity agreement under section 170d of the Act, whereby DOE will indemnify all persons indemnified, including this contractor, against public liability for nuclear incidents or precautionary evacuations arising out of or in connection with contractual activities under the contract for the operation of said facility in accordance with the authority provided in subsection 170d of the Act.

Agreement To Indemnify Contractor

(e)(1) DOE agrees to enter into an indemnity agreement in accordance with the authority provided in section 170d of the Act with this contractor, without further consideration, at any time all of the following circumstances are present:

(i) The services or supplies furnished under this contract are being used in connection with any acitivity or situation which involves a risk of public liability; and

(ii) There is not in effect an indemnity agreement as described in subparagraph (d) of this clause; and

(iii) DOE's authority to enter into agreements of indemnification under section 170d of the Act has not expired or been so amended as to deprive DOE of authority to enter into such an agreement.

(2) In that agreement, DOE will indemnify the contractor and other persons indemnified against public liability arising out of, or in connection with, the contractual activity of this contract.

(3) Such agreement will be based on the then current, approved form of section 170d indemnity agreement used in contracts between DOE and its contractors, and shall further include an obligation to indemnify the contractor and other persons indemnified against such public liability arising out of, or resulting from, nuclear incidents or precautionary evacuations occurring between the time when the services or supplies furnished under this contract are used in connection with any activity or situation which involves risk of public liablity and the time when such agreement is executed.

Inclusion in Subcontracts

(f) The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under section 170c or k of the Act for the activities under the subcontract. (End of clause)

17. Section 970.2870 is revised to read as follows:

970.2870 Indemnification.

(a) Section 170d. of the Atomic Energy Act of 1954, as amended, requires DOE to enter into agreements of indemnity with contractors whose work involves the risk of public liability for the occurrence of a nuclear incident.

(b) Details of such indemnification are discussed in more detail at subpart 950.70.

(c) The clause at 970.5204–6 shall be included in all management and operating contracts in which the contractor is under risk of public liability for the occurrence of a nuclear incident or precautionary evacuation arising out of or in connection with the contract work, including such events caused by a product delivered to a DOE-owned facility for use by DOE or its contractors. However, this clause shall not be included in contracts in which the contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under section 170c or k of the Act for activities to be performend under the contract.

(d) The clause at 970.5204–8 shall be included in any management and operating contract for the design of a DOE facility, the construction or operation of which may involve the risk of public liability for a nuclear incident or a precautionary evacuation arising out of or in connection with the contractor work. That provision is an assurance that DOE will enter into a statutory indemnity agreement with any contractor that will construct or operate the facility.

(e) DOE contractors with whom statutory nuclear hazards indemnity agreements under the authority of section 170d. of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents. However, if authorized by the DOE Headquarters office having responsibility for

contractor casualty insurance programs, DOE contractors may be permitted to furnish financial protection to themselves or permitted to continue to carry such insurance at cost to the Government if they currently maintain insurance for such liability.

970.5204-7 [Removed and reserved]

18. Section 970.5204-7 is removed and reserved.

970.5204-8 [Amended]

19. Section 970.5204-8 is amended by replacing the phrase "production or utilization" in the title with "nuclear."

[FR Doc. 90-19370 Filed 8-16-90; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Florida Salt Marsh Vole

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period is reopened on its proposal to determine endangered status for the Florida salt marsh vole, a rodent native to Levy County, Florida. The land trustee of the only known site where this subspecies occurs was unable to provide comments during the original comment period and has requested additional time to prepare comments.

DATES: Comments must be received by September 14, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (904/791-2580; FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The Florida salt marsh vole (*Microtus pennsylvanicus dukecampbelli*) is a small rodent known only from one site near Cedar Key, Levy County, Florida. It is a subspecies of the widespread meadow vole ((*Microtus pennsylvanicus*), fossils of which show a wider distribution in Florida in the Pleistocene. The Florida salt marsh vole appears to represent a relict population of *Microtus pennsylvanicus* that is very limited in distribution and numbers, and is in danger of extinction from natural storm events.

On April 11, 1990, (55 FR 13576), the Service proposed to list the Florida salt marsh vole as a endangered species, pursuant to the Endangered Species Act of 1973, as amended. The comment period for that proposal expired on June 11, 1990. On June 8, 1990, the Service received a letter from the trustee of the land where the Florida salt marsh vole occurs, indicating that he had been out of town during most of the comment period and had therefore been unable to provide comments on the proposal. Since the trustee believes he has information relevant to the listing of this subspecies, the Service is reopening the comment period to allow him, and other interested parties, additional time to respond to the proposal rule. The Service therefore solicits additional information on the status of the Florida salt marsh vole, especially with regard to its conservation status.

Author

This notice was prepared by Dr. Michael M. Bentzien (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1543).

List of Subjects 50 CFR Part 17

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

Dated: August 10, 1990.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 90-19362 Filed 8-16-90; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

Foreign Fishing; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of amendments to fishery management plans and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 19 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, and Amendment 14 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area for Secretarial review and is requesting comments from the public. Copies of the amendments, the environmental assessment (ER), and the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) may be obtained from the address below.

DATES: Comments on the amendments should be submitted on or before October 24, 1990.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668. Copies of the proposed amendments, the EA and the RIR/IRFA may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (907) 271-2809.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, Alaska Region, National Marine Fisheries Service, (907) 586-7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson 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. The Magnuson Act also requires that the Secretary, on receiving a plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments received during the

comment period in determining whether to approve Amendments 19 and 14.

If approved, rules implementing Amendments 19 and 14 would regulate the practice of (1) stripping roe (eggs) from female pollock and (2) discarding female and male pollock carcasses without further processing in commercial fisheries for groundfish in the U.S. exclusive economic zone adjacent to Alaska.

Regulations proposed by the Council to implement these amendments are scheduled to be published within 15 days.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Parts 672 and 675

Fisheries, General prohibitions, General limitations, Reporting and recordkeeping.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 13, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-19334 Filed 8-13-90; 4:38 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 160
Friday, August 17, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Posting of Stockyards; Houston County Livestock Auction, Inc., Crockett, TX; Correction

On July 31, 1990, a notice was published in the **Federal Register** (55 FR 147) giving notice of the posting for certain stockyards listing their facility number, name and location.

This notice is to correct the facility number assigned to Houston County Livestock Auction, Inc., Crockett, Texas.

TX-338 Houston County Livestock Auction, Inc., October 27, 1989 Crockett, Texas

Done at Washington, DC, this 14th day of August, 1990.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 90-19407 Filed 8-16-90; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Office of Inspector General.

Title: Applicant for Funding Assistance.

Form Number: OMB Control Number 0605-0001.

Type of Request: Extension of the expiration date.

Burden: 960 responses; 240 reporting hours. Average time per response is 15 minutes.

Needs and Uses: The information is used to establish the "good character" of individuals applying for financial assistance through loans, or loan guarantee programs or grants.

Affected Public: Individuals or firms applying for financial assistance.

Frequency: On occasion.

Respondent's Obligation: Required for Benefit.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 14, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-19445 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Institutional Remittances to Foreign Countries (BE-40).

Form Number: Agency-BE-40; OMB-0608-0002.

Type of Request: Renewal of a currently approved collection.

Burden: 450 respondents; 1,080 reporting hours.

Average Hours per Response: 1.5 hours.

Needs and Uses: The survey is required in order to obtain comprehensive initial data concerning the transfer (gifts, grants, donations, etc.) by private nonprofit U.S. institutions to foreign countries. The data are needed primarily to compile the U.S. international accounts.

Affected Public: Nonprofit institutions.

Frequency: Quarterly for institutions transferring $1 million or more each year, annually for all others.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Officer Building, Washington, DC 20503.

Dated: August 14, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-19441 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Foreign Personal Remittances (BE-579).

Form Number: Agency-BE-579; OMB—0608-0003.

Type of Request: Renewal of a currently approved collection.

Burden: 8 respondents; 144 reporting hours.

Average Hours per Response: 3 hours.

Needs and Uses: The survey is required in order to obtain sample data on personal remittances (noncommercial) to foreign individuals (except business). The information is required to compile the U.S. international accounts.

Affected Public: Banks

Frequency: Quarterly reports are received from 6 respondents. Two respondents elected to report monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by

calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Officer Building, Washington, DC 20503.

Dated: August 14, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-19442 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 90-00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the California Kiwifruit Commission ("CKC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Kiwifruit, fresh and processed.

Export Trade Facilitation Services (As They Relate to the Export of Products)

All export-related services, including, but not limited to, international market research, marketing, advertising, sales promotion, brokering, handling, transportation, common marking and identification, communication and processing of foreign orders to and for Members, financing, export licensing and other trade documentation, warehousing, shipping, legal assistance, foreign exchange and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (Within the Meaning of § 325.2(1) of the Regulations)

Alkop Farms, Inc.; Bartell Marketing, Inc.; Blue Anchor, Inc.; Davis Kiwi Gardens, Inc.; Cal-Harvest Marketing, Inc.; Calavo Growers of California; Chase National Kiwi Farms, Inc.; Kings Canyon Fruit Sales Corp.; Kiwi Blossom Packing; Pandol Bros., Inc.; Richland Sales Co.; Riverbend International; Sun Fresh Marketing; Sunny Cal Farms; Universal Produce Corp.; Venida Packing Inc.; Visalia Produce Sales; Wes-Pak Sales, Inc.; and Wil-Ker-Son Kiwifruit Ranch.

Export Trade Activities and Methods of Operation

In connection with the export of Products through CKC, CKC and/or any Member may:

1. Engage in joint negotiations, joint offerings, or other joint selling arrangements for the sale of Products in Export Markets;

2. Establish prices, specifications and terms and conditions for sale of Products in Export Markets;

3. Allocate sales in Export Markets among Members on the basis of each Member's independent commitment of Products;

4. Refuse to quote prices or to sell Products to overseas buyers, their agents, representatives or in Export Markets;

5. Solicit non-Member suppliers to sell their Products and/or offer their Export Trade Facilitation Services through the certified activities of CKC and/or its Members; provided, however, that CKC and/or one or more of its Members shall make such solicitations or offers to non-Member suppliers on a transaction-by-transaction basis only and then only when the Members have not independently committed to a total quantity of Product sufficient to cover such transaction and CKC and/or the Member(s) does not pay non-Member domestic suppliers more than the price to be received by CKC and/or its Member(s) pursuant to the transaction; provided further that CKC and/or such Member may exchange only such information with such non-Member suppliers as is reasonably required by such transaction;

6. Cooperate in responding to any unfair trade practice by overseas buyers of Products or by importing countries, including seeking appropriate action from the Federal Government, including its Executive, Legislative and Judicial Branches, and from the appropriate governmental agencies and courts of the importing country;

7. Meet and exchange information on export prices, export terms, product quality and quantity, product source, shipping arrangements, delivery dates, and other areas within the scope of this Certificate, including marketing strategies for Export Markets and economic and business conditions in Export Markets;

8. Agree that any information obtained by CKC and Members pursuant to this Certificate from another Member shall not be provided to any non-Member; and

9. Provide, within the scope of the Certificate, Export Trade Facilitation Services.

10. With respect to rights of Members, the following conditions apply:

A. Each Member is entitled to one vote, and the approval of two-thirds of the Members is sufficient for CKC to conduct the activities and provide the services authorized under the scope of this Certificate.

B. Members may be added to the Certificate, if the action is

(1) Approved by two-thirds of the Members, and

(2) Approved by the Secretary of Commerce, with the concurrence of the Attorney General, pursuant to an appropriately filed application to amend the Certificate.

C. A Member may withdraw from participation in any of the Export Trade Activities and Methods of Operations upon thirty (30) days written notice to CKC and all other Members; however, the withdrawing Member shall remain responsible for commitments made by it to CKC and other Members regarding the sales of Products in specific export

transactions, prior to the effective date of the withdrawal.

11. Each Member, independently, will determine the quantity of Products that it may make available from time to time for sale in the Export Markets. CKC may not require any Member to export any minimum quantity of Products. Neither CKC nor any Member shall intentionally disclose, directly or indirectly, to any other Member the amount of Products that any Member or group of Members have agreed to make available for export through CKC.

Definitions

1. "Supplier" means a person who produces, provides, or sells Products or Export Trade Facilitation Services, whether a Member or non-Member.

2. "Non-Member" means a person other than CKC and Members.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: August 10, 1990.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 90-19336 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology

International Laboratory Accreditation Conference (ILAC) 1990

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Invitation to participation in ILAC 90 Conference and announcement of public meeting.

DATES: Eleventh ILAC meeting, Turin, Italy, October 8-12, 1990, open Pre-Conference Meeting, National Institute of Standards and Technology, Gaithersburg, Maryland, September 25, 1990. Closing date for participant appointment, August 31, 1990.

SUMMARY: The Eleventh International Laboratory Accreditation Conference (ILAC) will be held in Turin, Italy, October 8-12, 1990. ILAC is an informal organization of participants from as many as 49 nations and 12 international organizations whose overall purpose is to promote: (1) The development of national programs for accrediting testing laboratories, (2) the employment of harmonized accreditation criteria, and (3) arrangements which would encourage importers to accept the results of tests and data made by laboratories that have been accredited under a laboratory accreditation program in exporting nations.

Conferences in support of ILAC's stated purpose have been held since 1977, to develop information about laboratory accreditation systems, to provide a forum for discussing differences among such systems, to describe basic principles and criteria for operating such systems, and to develop arrangements which would establish international recognition of such systems or of test reports issued by laboratories accredited under such systems. These arrangements are intended to minimize technical barriers to trade.

The National Institute of Standards and Technology (NIST) is organizing a group of U.S. participants at the conference through its Office of Standards Services. Anyone interested in attending this meeting in Turin as a member of the group of U.S. participants being organized by NIST, using his or her own financial resources for registration fees, hotel accommodations, food, and travel expenses is invited to submit a request by August 31, 1990, to Mr. John L. Donaldson, Chief, Office of Standards Code and Information, Office of Standards Sevices, National Institute of Standards and Technology, Admin. A629, Gaithersburg, MD 20899. Such persons should have a background in standards development, laboratory accreditation, product testing or product certification activities.

Notice is also given that the NIST will hold an open Pre-Conference Meeting at 10:00 a.m. on Tuesday, September 25, 1990, in Dining Room A of the Administration Building at the National Institute of Standards and Technology, Gaithersburg, Maryland, to prepare for the conference. The meeting attendees and participants will: (1) Review ILAC Task Force and Committee reports, (2) consider the position that the U.S. participants should take in response to those reports, (3) prepare any proposed resolution for introduction at ILAC 90, and (4) consider any additional matters of interest. The Pre-Conference Meeting will be chaired by Mr. Donaldson.

Anyone wishing to attend this meeting, which is open to the public, or provide information on proposals for consideration by the U.S. participants, should notify Mr. John Donaldson, National Institute of Standards and Technology, Admin. A629, Gaithersburg, MD 20899, telephone: 301-975-4029, by August 31, 1990.

Dated: August 10, 1990.

John W. Lyons,

Director.

[FR Doc. 90-19372 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Kinston Smith From an Objection by the State of North Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On April 16, 1990, the Secretary of Commerce received a notice of appeal from Kinston Smith (Appallant) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of North Carolina (State) to Appellant's consistency certification for a U.S. Army Corps of Engineers permit to fill in wetlands adjacent to the Meherrin River to establish an access road for residential development east of Murfreesboro, Hertford County, North Carolina.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objections" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

Appellant requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in section 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweight its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a

manner consistent with North Carolina's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication of this notice and should be sent to Margo Jackson, Acting Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Roger Schecter, Director, Division of Coastal Management, State of North Carolina, 512 North Salisbury Street, Raleigh, NC 27611.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State of North Carolina and the office of the Assistant General Counsel for Ocean Services, NOAA.

FOR FURTHER INFORMATION CONTACT: Margo Jackson, Acting Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Dated: July 30, 1990.

Thomas A. Campbell,

General Counsel.

[FR Doc. 90-19402 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-08-M

Endangered Species: Applications Withdrawn; U.S. Fish and Wildlife Service (P45E/F)

On May 8, 1990, notice was published in the Federal Register (55 FR 19096) that an application had been filed by the U.S. Fish and Wildlife Service, Fisheries Assistance Office, Red Bluff, CA 96030, and the U.S. Fish and Wildlife Service, Fisheries Assistance Office, Stockton, CA 95205, for a scientific purposes permit under the Endangered Species Act of 1973, to conduct scientific studies on winter-run chinook salmon (*Oncorhynchus tshawytscha*).

Notice is hereby given that on August 13, 1990 the applicants withdrew the applications. A new application encompassing a broader scope of activities will be prepared and resubmitted for National Marine Fisheries Service consideration.

Docments submitted in connection with the above applications are available for review by interested persons in the following Offices:

By appointment: Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East West Highway, suite 7324, Silver Spring, Maryland 20910, (301/427-2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7514.

Dated: August 13, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-19333 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-22-M

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Extension of comment period concerning the proposed changes to the current List of Fisheries to be effective this year, and annual request for comments and information on the proposed revised List of Fisheries for 1991.

SUMMARY: NMFS will extend the comment period only on the proposed changes to the current List of Fisheries to be effective this year, and annual request for comments and information on the proposed revised List of Fisheries for 1991. The first notice was published in the Federal Register on July 17, 1990 (55 FR 29078). The extension was requested by organizations interested in submitting comments on the revised list for 1991.

DATES: Comments and information should be received by August 31, 1990.

ADDRESSES: Send comments to Dr. Nancy Foster, Director, Office of Protected Resources, F/PR2, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Herbert W. Kaufman, Office of Protected Resources, 301-427-2319; John Sease, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, 907-586-7233; Brent Norberg, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115, 206-526-6110; James Lecky, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415, 213-514-6664; Douglas Beach, Northeast Region National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, 508-281-9254; or, Jeffrey Brown, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702, 813-893-3366.

Dated: August 13, 1990.

William W. Fox Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 90-19360 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Modification of Permit; New York Aquarium

Modification No. 1 to Permit No. 595

Notice is hereby given that pursuant to the provisions of sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 595 issued to the New York Aquarium, West Eighth Street and Surf Avenue, Brooklyn, New York 11224, on June 15, 1987 (52 FR 23331) is modified in the following manner:

Section B.5 is deleted and replaced by:

5. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through December 31, 1990. The terms and conditions of this Permit (sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective upon publication in the Federal Register.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, Maryland, 20910 (301/427-2289); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200).

Dated: August 13, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-19329 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Singapore Zoological Gardens (P354A)

Notice is hereby given that an Applicant has applied in due form for a

Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Singapore Zoological Gardens, 80 Mandai Lake Road, Singapore 2572.

2. *Type of Permit:* Public display.

3. *Name and Number of Animals:* California sea lion (*Zalophus californianus*) 10.

4. *Type of Take:* Captive born.

5. *Location of Activity:* San Diego Zoo and/or Sea World, Inc., San Diego, California.

6. *Period of Activity:* 1 year.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. A certification from such appropriate government agency verifying the information set forth in the application;

ii. A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. A statemnt that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statmeents of the Head, Veterinary Regulatory Branch, Veterinary Division, City Veterinary Centre, Primary Production Department, Singapore, have been found appropriate and sufficient to allow consideration of the permit application.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, 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 application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application 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 by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731 (213/514–6196).

Dated: August 13, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–19330 Filed 8–16–90; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service, Marine Mammals; Application for Permit; Dr. Gerald L. Kooyman (P17K)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Dr. Gerald L. Kooyman, Scripps Institution of Oceanography, Physiological Research Laboratory, Scholander Hall A–004, La Jolla, CA 92093–0204.

2. *Type of Permit:* Scientific research.

3. *Name and Number of Marine Mammals:* leopard seals (*Hydrurga leptonyx*) 10.

4. *Type of Take:* This research primarily is incidental to ongoing studies of emperor penguins at Cape Washington. The applicant proposes to take by tagging up to 10 leopard seals using hair dye to mark seals. This proposal is to determine the resident time and individual level of predation on emperor penguins.

5. *Location and Duration of Activity:* Cape Washington, Antarctica.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries, Service, U.S. Department of Commerce, 1335 East West Hwy., room 7234, 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 application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application 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 by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., suite 7324, Silver Spring, Maryland 20910;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731–7415.

Dated: August 13, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–19331 Filed 8–16–90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Modification; Deborah Glockner-Ferrari, Mark Ferrari (P171A)

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50

CFR part 216) and § 222.25 of the regulations governing endangered species permits (50 CFR part 222), Scientific Research Permit No. 583 issued to Ms. Deborah A. Glockner-Ferrari and Mr. Mark J. Ferrari on January 14, 1986 (51 FR 3093) is further modified in the following manner:

Section A.1 is changed and A.2 is added:

1. Up to 1500 humpback whales (*Megaptera novaeangliae*) may be taken annually by harassment during the course of scientific studies. Animals may be encountered and photographed more than once during the period; although during any single encounter no more than three attempts may be made to approach a single individual or discrete group of animals within 100 yards.

2. Up to 200 bottlenose dolphins (*Tursiops truncatus*), 300 spinner dolphins (*Stenella longirostris*), 300 spotted dolphins (*Stenella attenuata*), 300 killer whales (*Orcinus orca*), 100 false killer whales (*Pseudorca crassidens*), 100 pilot whales (*Globicephela macrorhynchus*), 50 killer whales (*Orcinus orca*), 50 harbor porpoise (*Phocoena phocoena*), and 50 Dall's porpoise (*Phocoenoides dalli*), may be taken by harassment, on an opportunistic basis while conducting scientific studies on humpback whales.

3. Animals may be encountered and photographed more than once during the permit period; although during any single encounter no more than three attempts may be made to approach a single individual or discrete group of animals within 100 yards. During any single encounter, approaches of animals at distances less than 100 yards shall be counted as a take against the authorized number.

Section B.6.a and B.11 are changed to read:

6. Reports

a. The Holder shall submit a report within 30 days of the completion of each year's research. The report shall include: the number of days of the water, when, where, how, and how many individuals and groups of whales were approached; how individuals and groups responded to approach; whether and how response varied by time, location, nature of approach, etc.; the action distances from the animals required to obtain clear observations and photographs; measures taken to minimize disturbance and apparent effectiveness thereof; what steps have been and will be taken to coordinate with other researchers so as to minimize disturbance and avoid possible duplicative research; and plans for publication of study results. All reports shall be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1335 East West Highway, suite 7324, Silver Spring, MD 20910.

11. The Permit is valid with respect to the taking authorized herein until December 31, 1991.

The Permit and modification are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115; Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Coordinator, Pacific Area Office, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822-2396.

Dated: August 13, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-19332 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Entry of Certain Textile Products Exported From Tanzania

August 13, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying entry of certain textile products.

EFFECTIVE DATE: August 18, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended (42 FR 1453); Executive Order 12475 of May 9, 1984 (49 FR 19955); section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 18, 1990 a notice was published in the **Federal Register** (55 FR 29259) which announced the intention of the Committee for the Implementation of Textile Agreements (CITA) to deny entry for consumption and withdrawal from warehouse for consumption of some or all textile and apparel products exported from Tanzania until the United States Government has determined that textile and apparel products exported from Tanzania are not being transshipped to circumvention of textile agreements.

The purpose of this notice is to advise the public that, under the terms of the Act, the Chairman of CITA, in the letter published below, directs the Commissioner of Customs to deny entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340, 341, 347, 348, 640 and 641 which are exported from Tanzania, with Tanzania identified as the country of origin, and presented for entry on and after August 18, 1990, regardless of the date of export.

Interested persons should be advised that CITA intends, under the terms of this Act, to establish a limit of 5,800 dozen for cotton textile products in Category 340, produced in and exported from Tanzania and presented for entry during calendar year 1991, regardless of the date of export.

CITA also reserves its authority, under section 204 of the Act, to extend denial of entry to some or all categories beginning 30 days from the date of publication of this notice should it be necessary to prevent circumvention of existing bilateral textile agreements.

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 54 FR 50797, published on December 11, 1989).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 13, 1990.

Commissioner of Customs,
Department of Treasury, Washington, D.C. 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on August 18, 1990, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340, 351, 347, 348, 640 and 641, which are exported from Tanzania identifiied as the country of origin, and presented for entry on an after August 18, 1990, regardless of the date of export.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception 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. 90-19374 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Export Visa Arrangement for Certain Cotton Textile Products Produced or Manufactured in the Union of Soviet Socialist Republics

August 13, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa requirements.

EFFECTIVE DATE: September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Union of Soviet Socialist Republics agreed to establish an export visa arrangement for certain cotton textile products, produced or manufactured in the Union of Soviet Socialist Republics and exported on and after September 1, 1990.

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 54 FR 50797, published on December 11, 1989).

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in the Union of Soviet Socialist Republics, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, that are exported from the Union of Soviet Socialist Republics on and after September 1, 1990 will meet the stated visa requirements.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 13, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Export Visa Arrangement of July 2, 1990 between the Governments of the United States and the Union of Soviet Socialist Republics; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 1, 1990, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 313, 314, 315, 317 and 326, including part categories and merged categories, produced or manufactured in the Union of Soviet Socialist Republics and exported on and after September 1, 1990 for which the Government of the Union of Soviet Socialist Republics has not issued an appropriate visa fully described below. Should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category or categories shall automatically be included in the coverage of this visa arrangement.

Each shipment of textiles or textile products, produced or manufactured in the Union of Soviet Socialist Republics, in the foregoing categories must be accompanied by a valid visa issued by the Government of the Union of Soviet Socialist Republics.

The visa is a circular stamped marking in blue ink which will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original of the invoice with an original visa stamp shall be required to enter the shipment into the United States. Duplicates of the invoice or visa may not be used for this purpose.

The visa will include the following information:

1. The visa number. The visa number shall be the standard nine-digit/letter format beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the Code for the Soviet Union is "SU"), and six-digit numerical serial number identifying the shipment (e.g., OSU123456).

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part-category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce CORRELATION and in the Harmonized Tariff Schedule of the United States (e.g., "Cat. 313-510 M2").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Decimal or fractional quantities equal or greater than one-half unit shall be rounded up. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct merged category visa corresponding to the actual shipment, e.g., Category 313/315 may be visaed as "Cat. 313/315," or if the shipment consists solely of Category 313 merchandise, the shipment may be visaed as "Cat. 313," but not as "Cat. 315." Category 315 must be visaed as "Category 315" (not Categories 313/315).

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the U.S. Customs Service determines that the visa is not acceptable, then the importer must obtain a new visa from the Government of the Union of Soviet Socialist Republics or the Government of the Union of Soviet Socialist Republics must request that the U.S. Department of Commerce issue a visa waiver. Either the new visa or the visa waiver must be presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. If does not waive any applicable quota requirement.

If the visa is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visa or visa waiver.

Any shipment which requires a visa, but which is not accompanied by a valid and correct visa in accordance with the foregoing provisions shall be denied entry by U.S. Customs Service unless the Government of the Union of Soviet Socialist Republics authorizes the entry and any changes to the agreement levels through the visa waiver process.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less, do not require a visa for entry and shall not be charged to the agreement levels.

The actions taken with respect to the

Government of the Union of Soviet Socialist Republics with respect to imports of cotton textile products in Categories 313, 314, 315, 317 and 326 are determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commisisoner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the Federal Register.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-19373 Filed 8-16-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION ON AGRICULTURAL WORKERS

Hearing

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of hearing.

SUMMARY: The Commission on Agricultural Workers will hold the first of three hearings in California on August 23-24 in Visalia, California.

The Commission, established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304 is charged with evaluating the Special Agricultural Worker (SAW) provisions of IRCA and with reviewing several specific aspects relating to the demand for and supply of agricultural labor. The Commission is interested in hearing testimony on these issues with specific reference to the San Joaquin and Sacramento Valleys and Ventura County. The following agricultural counties will be the special focus of this hearing: Butte, Glenn, Mariposa, San Joaquin, Tehama, Yuba, Calaveras, Kern, Merced, Shasta, Tulare, Colusa, Kings, Sacramento, Stanislaus, Ventura, Fresno, Lake, San Benito, Sutter, and Yolo. The hearing will be open to the public.

DATES: 9:30 am August 23, 1990 and 10 am August 24, 1990.

ADDRESSES: Oak Room—Holiday Inn Plaza Park—Visalia, 9000 West Airport Drive, Visalia, California 93277.

FOR FURTHER INFORMATION CONTACT: Richard R. Peterson, Telephone: (202) 673-5348.

Dated: August 13, 1990.

Richard R. Peterson,

Acting Executive Director.

[FR Doc. 90-19439 Filed 8-16-90; 8:45 am]

BILLING CODE 6820-62-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 17, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Bandage, Gauze, Compressed, Camouflaged, 6510-00-200-3185.

Mask, Surgical, 6515-00-982-7493.

Cap, Disposable, 8415-00-NSH-0052, (Requirements of the Naval Supply Center, Bremerton, WA).

Coveralls, Disposable, 8415-00-NSH-0049, (Requirements of the Naval Supply Center, Bremerton, WA).

Hood, Disposable, 8415-00-NSH-0051, (Requirements of the Naval Supply Center, Bremerton, WA).

Sleeves, Disposable, 8415-00-NSH-0050, (Requirement of the Naval Supply Center, Bremerton, WA).

Shoe Cover, Disposable, 8415-00-NSH-0055, (Requirement of the Naval Supply Center, Bremerton, WA).

Service

Janitorial/Custodial U.S. Army Reserve Center, Los Alamitos, California.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 90-19396 Filed 8-16-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 17, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 29, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 26738) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1990:

Commodity

Hood, Operating, Surgical, 6532-00-197-8201.

Services

Ground Maintenance, Waco Distribution Center, 1801 Exchange Drive, Waco, Texas.

Janitorial/Custodial, Federal Building, and U.S. Post Office, 522 North Central Avenue, Phoenix, Arizona.

Janitorial/Custodial, Veterinary Services Building 401, Hill Air Force Base, Utah.

Microfilm/Microfiche Reproduction, Newark Air Force Station, Ohio.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 90-19395 Filed 8-16-90; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in (1) Deutsche mark/British pound currency cross-rate futures, (2) Japanese yen/British pound currency cross-rate futures, (3) Swiss franc/British pound currency cross-rate futures, (4) Japanese yen/Deutsche mark currency cross-rate futures, (5) Japanese yen/Swiss franc currency cross-rate futures, and (6) Swiss franc/Deutsche mark currency cross-rate futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 17, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to any or all of the six CME currency cross-rate futures contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254-7227.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CBT in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington DC 20581, by the specified date.

Issued in Washington, DC on August 14, 1990.

Steven Manaster,

Director.

[FR Doc. 90-19392 Filed 8-16-90; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange Proposed Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contacts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in (1) Options on Deutsche Mark/British pound currency cross-rate futures, (2) options on Japanese yen/British pound currency cross-rate futures, (3) options on Swiss franc/British pound currency cross-rate futures, (4) options on Japanese yen/Deutsche mark currency cross-rate futures, (5) options on Japanese Yen/Swiss franc currency cross-rate futures, and (6) options on Swiss franc/Deutsche mark currency cross-rate futures. For each of the proposed futures option contracts, the CME's application also contains a petition for an exemption from the volume requirement for the underlying futures contact specified in the Commission's rules. The CME's applications for contract market designation in each of the underlying futures contracts are also currently under review at the Commission. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposed option contracts for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 17, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to any or all of the CME options on each of the six currency cross-rate futures.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, at (202) 254-7227.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed option contracts, the Division also is requesting comment on the merits of petitions filed by the CME pursuant to § 33.11 of the Commission's rules. The petitions request exemptive relief from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the Exchange demonstrate that:

* * * the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application * * *.

The Division notes that each of the six CME currency cross-rate futures contracts which will underlie the respective proposed option contracts have not been designated by the Commission.[1] Therefore, the futures trading volume requirement has not been met for any of the six proposed option contracts.

As discussed in more detail in previous **Federal Register** notices (see, for example, 52 F.R. 41755, October 30, 1987), the Commission has stated that it believes that, at the minimum, a petition for exemption from the trading volume tests may be granted only if the underlying cash market for the commodity exhibits a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission stated its belief that there should exist an accurate and widely available price series that would be representative of values of the commodity underlying the futures.[2]

In requesting comment on each of the CME proposed options on currency cross-rate futures, the Division is seeking specific comment on whether it should grant the CME request for exemptions from the requirements of § 33.4(a)(5)(iii) for the proposed contracts. Commenters are requested to consider the issues noted above. Also, commenters are requested to address whether, if the petitions were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CME for any or all of the proposed contracts.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained throught he Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contracts or the related petitions, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, 20581, by the specified date.

Issued in Washington, DC on August 14, 1990.

Steven Manaster,

Director.

[FR Doc. 90-19393 Field 8-16-90;8:45am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in options on broiler chickens futures. For the proposed futures option contract, the CME's application also contains a petition for an exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 17, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME option on broiler chickens futures.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, at (202) 254-7303.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed option contract, the Division also is requesting comment of the merits of a petition filed by the CME pursuant to § 33.11 of the Commission's rules. The petition requests exemptive relief from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures

[1] In a submission dated July 16, 1990, the CME applied to trade futures contracts on each of the following currency cross rates: Deutsche mark/British pound, Japanese yen/British pound, Swiss franc/British pound, Japanese yen/Deutsche mark, Japanese Yen/Swiss franc, and Swiss franc/Deutsche mark. These six proposed futures contracts are currently under review at the Commission.

[2] The Division notes that, in those cases where the underlying futures contract fails to develop a sufficient level of trading vloume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract falls below an average weekly volume of 1,000 contracts for all months listed for the six-month period following designation of the option contract, no new option contract months may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

contracts, that the Exchange demonstrate that:

* * * the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application * * *.

The Division notes that the CME's broiler chickens futures contract which will underlie the proposed option contract currently is dormant within the meaning of Commission Regulation 5.2.[1] Therefore, the futures trading volume requirement has not been met for the proposed option contract.

As discussed in more detail in previous **Federal Register** notices (see, for example, 52 FR 41755, October 30, 1987), the Commission has stated that it believes that, at the minimum, a petition for exemption from the trading volume tests may be granted only if the underlying cash market for the commodity exhibits a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission stated its belief that there should exist an accurate and widely available price series that would be representative of values of the commodity underlying the futures.[2]

In requesting comment on the CME's proposed option on broiler chickens futures, the Division is seeking specific comment on whether it should grant the CME's request for an exemption from the requirements of § 33.4(a)(5)(iii) for the proposed contract. Commenters are requested to consider the issues noted above. Also, commenters are requested to address whether, if the petition were granted, aditional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CME for the proposed contract.

Copies of the terms and condition of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations threrunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract or the related petition, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington DC 20581, by the specified date.

Issued in Washington, DC on August 13, 1990.

Steven Manaster,

Director.

[FR Doc. 90-19397 Filed 8-16-90; 8:45 am]

BILLING CODE 6351-01-M

[1] The CME has submitted a proposal, under Commission Regulation 5.2, to reactivate trading in the broiler chickens futures contract. That CME proposal also contains substantive revisions to the broiler chickens futures contract to make the contract cash settled rather than provide for physical delivery. These proposals currently are under review at the Commission and comment on the proposals has been requested in a separate **Federal Register** notice.

[2] The Division notes that, in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract falls below an average weekly volume of 1,000 contracts for all months listed for the six-month period following designation of the option contract, no new option contract months may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

DEPARTMENT OF DEFENSE

Department of the Army

Availability of a Draft Environmental Impact Statement for the Presidio of San Francisco, CA, Base Closure

AGENCY: U.S. Army, DOD.

SUMMARY: The Presidio of San Francisco, to include Letterman Army Medical Center, was recommended for closure by the Defense Secretary's Commission on Base Realignment and Closure. The Commission specifically recommended: the relocation of Headquarters, Sixth Army to Fort Carson, CO; the Letterman Army Institute of Research to Fort Detrick, MD; and redistribution of the medical assets of Letterman Army Medical Center throughout the Army medical force structure. This document focuses upon the environmental and socioeconomic impacts and mitigations associated with the planned closure of the Presidio of San Francisco and realignment activities at Fort Bragg, NC; Fort Carson, CO; Fort Detrick, MD; Fort Gordon, GA; Fort Lewis, WA; Fort Ord, CA; Fort Shafter, HI; Letterkenny Army Depot, PA; Oakland Army Base, CA; Walter Reed Army Medical Center, Washington, D.C.; Fitzsimons Army Medical Center, CO; Fort Benning, GA; Fort Bliss TX; Fort Campbell, KY; Fort Sam Houston, TX; Fort Irwin, CA; Fort Jackson, SC; Fort Knox, KY; and Fort Leonard Wood, MO.

These are two long-term adverse impacts expected as a result of the implementation of the realignment activities. The increased costs to retirees in the Bay Area for health care due to the closure of Letterman Army Medical Center cannot be fully mitigated. CHAMPUS and MEDICARE will meet about three-quarters of the cost of health care to retirees who were receiving free health care at LAMC. The exposure of personnel to possible injury and additional property to possible damage from major earthquakes at Oakland Army Base cannot be migitated. Use of special structural designs for facilities based on the nature of the bay mud substrate can reduce the risk of damage from earthquakes but cannot eliminate the risk.

The public is encouraged to comment on the Draft EIS. Public notices requesting input and comments will be issued, and a public hearing will be held in the community adjacent to the Presidio of San Francisco in about one month. A copy of the Draft EIS may be obtained by contacting Mr. Harvey Don Jones, (916) 551–2254, or by writing to: Commander, U.S. Army Corps of Engineers, Sacramento District, 650 Capitol Mall, Sacramento, California 95814–2147.

Michael W. Owen,

Acting Assistant Secretary of the Army (Installations, Logistics & Environment).

[FR Doc. 90–19367 Filed 8–16–90; 8:45 am]

BILLING CODE 3710–03–M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Operational Deployment of a Marine Mammal System to the Naval Submarine Base; Bangor, WA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1550–1580), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for a proposal to deploy up to sixteen Atlantic bottlenose dolphins from Naval Ocean Systems Center, San Diego, California, to Naval Submarine Base, Bangor, Washington. An Environmental Assessment (EA) was completed resulting in a Finding of No Significant Impact (FONSI) concerning potential environmental impacts associated with facilities development in support of the proposed project. This EIS will address the effect of the deployment to Bangor on the dolphins. Environmental impacts of the proposed action and its alternatives will be determined in the EIS.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on September 5, 1990, beginning at 7 p.m. at Silverdale on the Bay Resort Hotel, 3073 Bucklin Hill Road, Silverdale, Washington, 98383–9130, telephone (206) 698–1000. This meeting will be advertised in local news media.

A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than 30 days from date of this publication to Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command, 3505 Anderson Hill Road NW., Silverdale, Washington 98383–9130 (Attention: Mr. Peter W. Havens, Code 09EP, telephone (206) 476–1091).

Dated: August 10, 1990.

Jane M. Virga,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90–19303 Filed 8–16–90; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Prepare an Environmental Impact Statement for Proposed Homeporting of Four Fast Combat Support Ships on the East Coast of the United States

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of proposed homeporting of four Fast Combat Support (AOE–6 class) ships on the east coast of the United States.

The Navy is acquiring new design, auxiliary ships which will replace various existing supply and fuel type ships over the next 5 to 10 years. These new AOE–6 class ships will provide fuel, ordance, and dry and refrigerated stores to operational forces of the U.S. Atlantic fleet. The proposed action is to homeport these new ships at existing Department of Defense installations to support fleet requirements. The proposed action also includes dredging and shore facility construction at some locations in order to support AOE–6 homeporting requirements.

Candidate homeport sites for detailed study in the EIS are:

Naval Weapons Station, Charleston, South Carolina;

Craney Island (Army Corps of Engineers Dredge Material Disposal Area), Portsmouth, Virginia;

Naval Weapons Station, Yorktown, Virginia; Naval Weapons Station Earle, Colts Neck, New Jersey.

Homeporting at these locations would potentially involve construction of family housing on WPNSTA Earle, WPNSTA Yorktown, and/or WPNSTA Charleston; dredging and modification of naval support facilities on the waterfront at Naval Weapons Station Charleston, Naval Weapons Station Yorktown, and/or Naval Weapons Station Earle; and dredging and construction of waterfront facilities at the Craney Island Dredge Material Diposal area.

The EIS will address the following issues, including but not limited to: characterization of sediments to be dredged; sediment disposal analysis; impacts to the aquatic environment resulting from dredging and AOE–6 ship movement operations; estuarine impacts resulting from in-water construction in addition to dredging; socioeconomic impacts, including increased student population in school districts associated with the homeporting action; and changes to the terrestrial environment resulting from shore facilities construction and operations.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed in the EIS. The Navy will host public scoping meetings on:

September 6, 1990, from 2:00 pm to 6:00 pm, and beginning again at 7:00 pm, at the Pollack Auditorium, Monmouth College, West Long Branch, New Jersey;

September 11, 1990, beginning at 7:00 pm, at the North Charleston City Hall, 4900 LaCross Road, North Charleston, South Carolina;

September 12, 1990, beginning at 7:00 pm, at the York High School Auditorium, 9300 George Washington Highway, Yorktown, Virginia;

September 13, 1990, beginning at 7:00 pm, at Willett Hall, 3701 Willett Drive, Portsmouth, Virginia.

These meetings will be advertised in area newspapers prior to the meeting dates.

A brief prsentation will precede the request for public comments. Navy representatives will be present at these meetings to receive comments on issues of public concern. Federal, state, and local agencies and interested individuals are invited to take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the

interest of available time, each speaker will be asked to limit oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than September 28, 1990, to:

for Charleston—Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 10068, Charleston, SC 29411-0068 (Attn: Mr. L. Pitts (code 202), telephone (803) 743-0893);
for Yorktown and Craney Island—Commander, Atlantic Division, Naval Facilities Engineering Command, Norfolk, VA 23511-6287 (Attn: Ms. D. Kreske, Code 203, telephone (804) 445-2338);
for Earle—Commanding Officer, Northern Divison, Naval Facilities Engineering Command, U.S. Naval Base, Philadelphia, PA 19112-5000 (Attn: Mr. R. Ostermueller, Code 202, telephone (215) 897-6262).

Dated: August 15, 1990.

Jane M. Virga,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90-19509 Filed 8-16-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Intent To Repay to the California State Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the California State Department of Education, the State educational agency (SEA), $547,228 of the $813,353 recovered by the U.S. Department of Education (Department) as a result of final audit determinations. The amount requested by the SEA is roughly 67 percent of the amount recovered. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before September 17, 1990.

ADDRESSES: All comments should be addressed to Mr. William Stormer, Director, Division of Program Operations, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2145, MS-6134) Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mr. William Stormer. Telephone: (202) 401-0742.

SUPPLEMENTARY INFORMATION:

A. Background

The Department recovered $813,353 plus accured interest, from the California Department of Education, the State educational agency (SEA), in satisfaction of claims arising from four audits covering fiscal years (FYs) 1980 through 1984. The claims involved the SEA's administration of the State's Migrant Education Program (MEP), authorized by chapter 1 of the Education Consolidation Act of 1981 (ECIA) and title I of the Elementary and Secondary Education Act of 1965 (title I) as amended by the Education Amendments of 1981 (Pub. L. No. 95-561). The MEP provides financial assistance to SEAs to operate directly, or through subgrants to operating agencies, projects to meet the special educational needs of children of migratory agricultural workers and fishers.

In one case, the U.S. Court of Appeals for the Ninth Circuit entered an order in October of 1987 affirming the SEA's responsibility to return $165,053 of title I MEP funds that had been improperly spent by the Santa Clara County Office of Education subgrantee through (a) inadequate procurement procedures; (b) improper procedures in project administration; (c) payment of unallowable conference costs; and (d) payment of excessive consultant costs to a translator.

In another case, the U.S. Court of Appeals for the Ninth Circuit in February 1988, upheld a decision of the Secretary that found that the SEA, through its subgrantee, the Butte County Office of Education, had improperly spent $410,872 of MEP funds to (a) provide training for individuals enrolled in its Counselor Training Program component of the State's Mini-Corps Program; and (b) pay a flat fee of $50 per month in lieu of travel expenses to all student Mini-Corps aids in violation of Federal regulations requiring reimbursement for reasonable and necessary costs. The Court denied California's petition for review in January of 1989.

In a third case, a decision of the Department's Education Appeal Board, which became final in August 1987, found that the SEA had reimbursed several of its subgrantees for indirect costs in an amount that in total, exceeded, by $221,928, the maximum amount that those subgrantees were allowed to receive under applicable restricted indirect cost rates.

In the fourth case, based on the results of the Financial and Compliance Single Audit Report for the State of California, the Department and California agreed in August of 1988 to a settlement of $15,500 for MEP funds that (1) had been used to reimburse an employee's out-of-service training costs without prior approval, and (2) had been charged to the MEP while the employee actually worked for the State's Vocational Education Program.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination and amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $547,228 and has submitted a plan on its behalf for use of the grantback funds to meet the special educational needs of migrant children participating in migrant

education programs administered under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 2701 *et seq.* The final audit determinations against the SEA resulted from improper expenditures of MEP funds the SEA received between fiscal years 1980 and 1984 under title I of the ESEA and chapter 1 of the ECIA.

The SEA's proposal reflects the requirements in chapter 1 of the ESEA, as amended, that currently govern the use of MEP funds for programs that are designed to serve the eligible migratory children of migratory agricultural workers and fishers.

The SEA's plan proposes to provide financial assistance by subgranting funds to three operating agencies for projects addressing program improvement, substance abuse, and a home-school project for pre-school children; and an SEA project to identify research-based strategies for meeting the special educational needs of migratory children.

The program improvement component would implement during program year 1990–91 six program improvement projects in California's Region 1 that address student needs in the areas of dropout prevention, improved self-concept, mastery of basic skills, enhanced motivation, college entrance assistance, and passing of proficiency tests. The SEA would use $123,790 of grantback funds that are attributable to the $165,503 that had been misspent in Region 1. The six projects would serve children ranging from preschool to senior high school.

The drug abuse component would be conducted (through September 30, 1992) by the Mini-Corps, a part of California's Region 2 operating agency, to provide a substance abuse awareness program to inform migrant students and their parents of the dangers of drug and alcohol abuse. Grantback funds totalling $308,154 attributable to the $410,872 misspent by Region II in its earlier administration of the Mini-Corps program, would be used to support this program. Services provided by the Mini-Corps students would be Statewide, and would include visits to migrant camps and areas where summer school projects are being conducted.

The third component, the home preschool project, would be operated during the summer of 1990 by California's Region 3 to develop a model home preschool project for three- and four-year olds and their parents. The SEA would use $104,034 in grantback funds, attributable to the $221,928 previously misspent in Region 3, to fund this project. The project would provide preschool services in the home for migrant children who are not being served by State, public, or private child care provider agencies.

The fourth component, identification of exemplary migrant education projects through research-based strategies, would be operated (through September 30, 1991) by the SEA as part of its effort to identify, develop and disseminate research-based strategies to improve the migrant education program. Grantback funds in the amount of $11,250 attributable to the $15,500 previously misspent at the SEA level would fund this Statewide project. State consultants would identify and develop information on exemplary programs through interviews with migrant directors and appropriate regional and district staff. The strategies identified would then be incorporated into a directory that will be used to prepare applications and service agreements over the next three years.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions of section 456 of GEPA have been met.

This determination is based upon the information available to the Secretary at the present time. If the information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the California SEA under a grantback arrangement. The grantback award would be in the amount of $547,228, which is 67.3 percent of the funds recovered to date by the Department as a result of the audits.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and amendments to that plan approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget approved in advance by the Secretary.

(2) Funds received under the grantback arrangement for Region 3 (home preschool project) must be obligated by September 30, 1990; funds received under the grantback arrangement in the projects in Region 1 (program improvement projects) must be obligated by September 30, 1991; and funds received under the grantback arrangement for Region 2 (Mini-Corps drug abuse project) and for the SEA-level research-based strategies must be obligated by September 30, 1992.

(3) The SEA, will, not later than January 1, 1991, January 1, 1992, and January 1, 1993, submit reports to the Secretary that—

(a) Indicate that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describe the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditure of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.011, Migrant Education—Basic State Formula Grant Program)

Dated: August 11, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–19353 Filed 8–16–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

William R. Trutna; Acceptance of Unsolicited Proposal

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited proposal.

SUMMARY: DOE Idaho Operations Office announces that it intends to award a Cooperative Agreement to William R. Trutna in the amount of $125,000 for cocurrent distillation. This financial assistance award is authorized by the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93–577 as amended). DOE has determined that the unsolicited proposal meets the selection criteria contained in 10 CFR 600.14 (d) and (e). The activity to be funded is an innovative approach

relevant to a public purpose. The cooperative agreement will support research to improve the performance of the cocurrent distillation process at high liquid flow rates, and provide design information and correlations to manufacture and apply the process. During the 18 month project and budget period, Mr. Trutna proposes to (1) conduct laboratory tests on alternative distributor design configurations, (2) determine the number of collector stages, stage heights, and channel orientation as functions of liquid handling ability and pressure drops, and (3) design, construct, and test a six-stage engineering prototype.

Specifically what is unique and innovative about the concept is the device to deentrain liquid from vapor inside a distillation column. There are no recent current or planned solicitations under which this unsolicited proposal would be eligible for consideration.

Mr. Trutna possesses the facilities and techniques necessary to achieve the proposed project objectives and is capable of performing the proposed research and development. The success of the previous work has proven his capability. Mr. Trutna holds the patent for this original and unique idea.

PROCUREMENT REQUEST NUMBER: 90ID13020.

PROJECT OBJECTIVE: The objective of cocurrent distillation is expected to improve the efficiency of a multistage distillation process similtaneously with increasing the capacity of a given size distillation tower. Previously run tests have shown this to be possible, and the currently proposed program is aimed at extending the range of improved performance into higher liquid flow rates. Thus a high probability of success is anticipated.

FOR FURTHER INFORMATION CONTACT: Ginger Sandwina, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402.

Issued in Idaho Falls, Idaho on July 12, 1990.

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 90-19368 Filed 8-16-90; 8:45 am]

BILLING CODE 6450-01-M

Defense Nuclear Facilities Safety Board Recommendation 90-3; Future Monitoring Programs at the Department of Energy's Hanford Reservation, Near Richland, WA; Implementation Plan

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: On May 16, 1990, the Secretary of Energy (the Secretary) responded to Recommendation 90-3 of the Defense Nuclear Facilities Safety Board (the Board), concerning future monitoring programs at the Department of Energy's Hanford Reservation, near Richland, Washington. Because of ongoing investigations, it was impossible to respond in detail to the Board's recommendations. For this reason, the Secretary's response accepted the recommendations and offered to provide additional detail when it was available.

On August 13, pursuant to section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Secretary provided the Board with an implementation plan for the Department's response to Recommendation 90-3, 55 FR 11994-95 (March 30, 1990). Although the statute does not require the Department to publish implementation plans, the Department is doing so in this instance in order to inform the public of the details of the Department's response to Recommendation 90-3. DOE hereby requests public comment on the implementation plan for Recommendation 90-3.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before September 17, 1990.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 600 E Street, NW., Suite 675, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Steven Blush, Director, Office of Nuclear Safety, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: August 13, 1990.

Steven M. Blush,

Director, Office of Nuclear Safety.

August 10, 1990.

The Honorable John T. Conway,
Chairman,
Defense Nuclear Facilities Safety Board, 600 E Street, NW., Suite 675, Washington, DC 20004.

Dear Mr. Chairman: On March 27, 1990, you transmitted four recommendations regarding future programs for monitoring single-shell high-level radioactive waste storage tanks at Hanford. On May 16, 1990, I responded and accepted your recommendations. Enclosed is the implementation plan which describes actions being taken to implement your recommendations, along with our schedule for these activities.

As you know, a number of additional actions are underway to resolve the safety concerns regarding combustible gas generation and accumulation in Hanford tanks, particularly Tank 101-SY. An important near-term effort is to safely sample and analyze the tank contents. This is essential to determining the appropriate actions to resolve and eliminate the concern. We will keep you informed as we proceed.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

Implementation Plan in Response to Defense Nuclear Facilities Safety Board Recommendations of March 27, 1990

Introduction

On March 27, 1990, John T. Conway, Chairman of the Defense Nuclear Facilities Safety Board (DNFSB), submitted a letter to James D. Watkins, Secretary of Energy, concerning the susceptibility of Hanford's old single-shell, high-level waste tanks to an explosion. Included in this letter were four recommendations.

This plan lists the recommendations with a brief narrative discussion and then describes the implementing actions. The schedule for these actions is shown in the attached milestone chart.

DNFSB Recommendation #1

That a study be undertaken of the possible chemical reactions that could be the source of heat generation locally or globally in the single-shell tanks, thereby elevating the temperature to a value where explosive ferrocyanide reactions can take place rapidly.

Discussion: DOT concurs that additional study is needed. There are several chemical in the Hanford tanks that are potentially reactive under certain mixtures and temperatures. The potential for these chemicals to react uncontrollably or explosively has been the subject of several studies. Additional work is in progress to assess the potential chemical reactions between cesium nickle ferrocyanide, sodium nitrate, sodium nitrite, and potential catalysts/initiators; and testing on the radiation stability of ferrocyanide compounds and the energetics of ferricyanide is planned. A broader evaluation of single-shell tank waste stability is also in progress, and areas needing additional study will be identified.

The studies have not yet identified any rapid chemical reactions that are likely to occur under the current and expected tank temperatures and conditions.

Implementation Plan for Recommendation #1 In 1976 and 1977,

the results of experimental tests and studies of the stability of organics and salt cakes in the waste tanks were issued, and in 1984 and 1985, the stability of organic complexants in the waste tanks was investigated and reported. These studies addressed the chemicals in the single-shell tanks considered to be of concern and recommended additional work to assess the potential chemical reactions between cesium nickel ferrocyanide, sodium nitrate, sodium nitrite, and potential catalysts/initiators. This work, begun in 1988, is focussed to identify the minimum temperature for a reaction, the minimum temperature for an explosion, and the sensitivity to shock, friction, or spark. At the completion of the currently planned tests, the results will be made available for independent review, and the need for any additional work to better understand the ferrocyanide-nitrate/nitrite reaction mechanism will be determined. Also, a review for other potential chemical reactions, including potential organic decomposition products or radiation degradation products, will be performed. Additional reaction testing may be identified from this review. (Action 1)

The DNFSB consultants recommended testing the radiation stability of ferrocyanide compounds and the energetics of ferricyanide which will be initiated in FY 1991. (Actions 2 and 3)

A comprehensive single-shell tank characterization program is underway with the analysis of two core samples from each single-shell tank to be completed by September 1998. The characterization of the waste samples includes a thermal analysis to identify the onset of a chemical reaction. If unusual exothermic reactions are identified, further work will be performed to evaluate the potential hazards.

As stated in the discussion, a broader evaluation of single-shell tank waste stability is also in progress. This evaluation will summarize previous studies and current waste tank conditions related to waste stability. Areas needing additional study will be identified. (Action 4)

DNFSB Recommendation #2

That the DOE developed a program for continuous monitoring of those conditions in the single-shell tanks that can serve to indicate development of conditions indicating an onset of instability in their contents. These conditions might include such features as abnormal temperatures in local areas, physical deformation of the surface of the waste, or unusual components (including hydrogen) in the vapor space gas in the tanks.

Discussion: There currently exist numerous continuous monitoring systems on the double-shell tanks and fewer such systems on the single-shell tanks.

The unexpected rise in tank temperature would be the principal indicator of waste instability in single-shell tanks, and temperature measuring improvements will be made first on the tanks of primary concern, those containing ferrocyanide. The accuracy of the currently installed thermocouples will be determined and additional thermocouple trees will be installed in several locations within at least one tank to determine if there are localized hot spots. The need for additional thermocouples in other tanks will be based on these findings. Other devices to detect increased temperature in local areas are also being investigated. With regard to monitoring for tank vapor space gas flammability, continuous hydrogen monitors will be installed on selected tanks, and sampling will be done on all tanks.

Implementation Plan for Recommendation #2: The accuracy of the thermocouples in the ferrocyanide tanks will be determined and a deficiency correction plan prepared. (Action 5)

Additional thermocouple trees will be installed in several locations within at least one tank containing ferrocyanide to determine if there are localized hot spots. The need for additional thermocouples in other tanks will be based on the findings in the first tank. (Action 6)

Thermal modelling and infrared mapping of the waste surface to detect increased temperature in local areas is being investigated. Either periodic or continuous infrared monitoring will be implemented as appropriate. (Action 7)

Additional flammable gas sampling and installation of continuous monitors on selected tanks is planned. This is part of the Safety Improvement Plan for tanks which may have hydrogen. In the interim, requirements have been established to assure that vapor space gas measurements are taken and analyzed before work is initiated in any tank. (Action 8)

DNFSB Recommendation #3

That the instruments used in monitoring the tanks be provided with alarm indicators at a location where decisions can be made and action taken to start a series of measures to neutralize a perceived abnormality.

Discussion: DOE concurs that those conditions which warrant continuous monitoring also warrant alarm indicators at a location where decisions can be made and actions taken to respond to the alarm. Many monitoring actions, such as drywell readings, benchmark surveys of tank dome structures, in-tank photography, manual readings of waste surface levels, etc., are accomplished manually on established frequencies and as such are not well suited for automated alarms. The existing tank surveillance procedures provide for review of the data, criteria for identifying off-normal measurements, and actions to be taken if preestablished limits are approached or exceeded. Following the additional monitoring measures discussed in the response to Recommendation #2 above, the monitoring frequency, need for alarms, and alarm locations will be determined and additional alarms installed as needed.

Implementation Plan for Recommendation #3: Actions to install additional alarms and select the alarm locations will be determined following the additional monitoring measures discussed in the responses to Recommendation #2 above. Instruments that monitor continuously will have alarms. A plan for installation of additional alarms will be completed by the end of January 1991 and furnished to the DNFSB. (Action 9)

DNFSB Recommendation #4

That an action plan be developed for the measures to be taken to neutralize the conditions that may be signaled by alarms.

Discussion: The existing tank surveillance systems specify corrective actions if preestablished limits are approached or exceeded. As additional monitoring measures are put in place, recovery actions necessary to correct an abnormal situation would be developed as well. The current contingency plans for response to an increasing ferrocyanide tank temperature will be reviewed and revised if needed. Action plans responding to other alarms or unusual surveillance readings will also be reviewed for completeness.

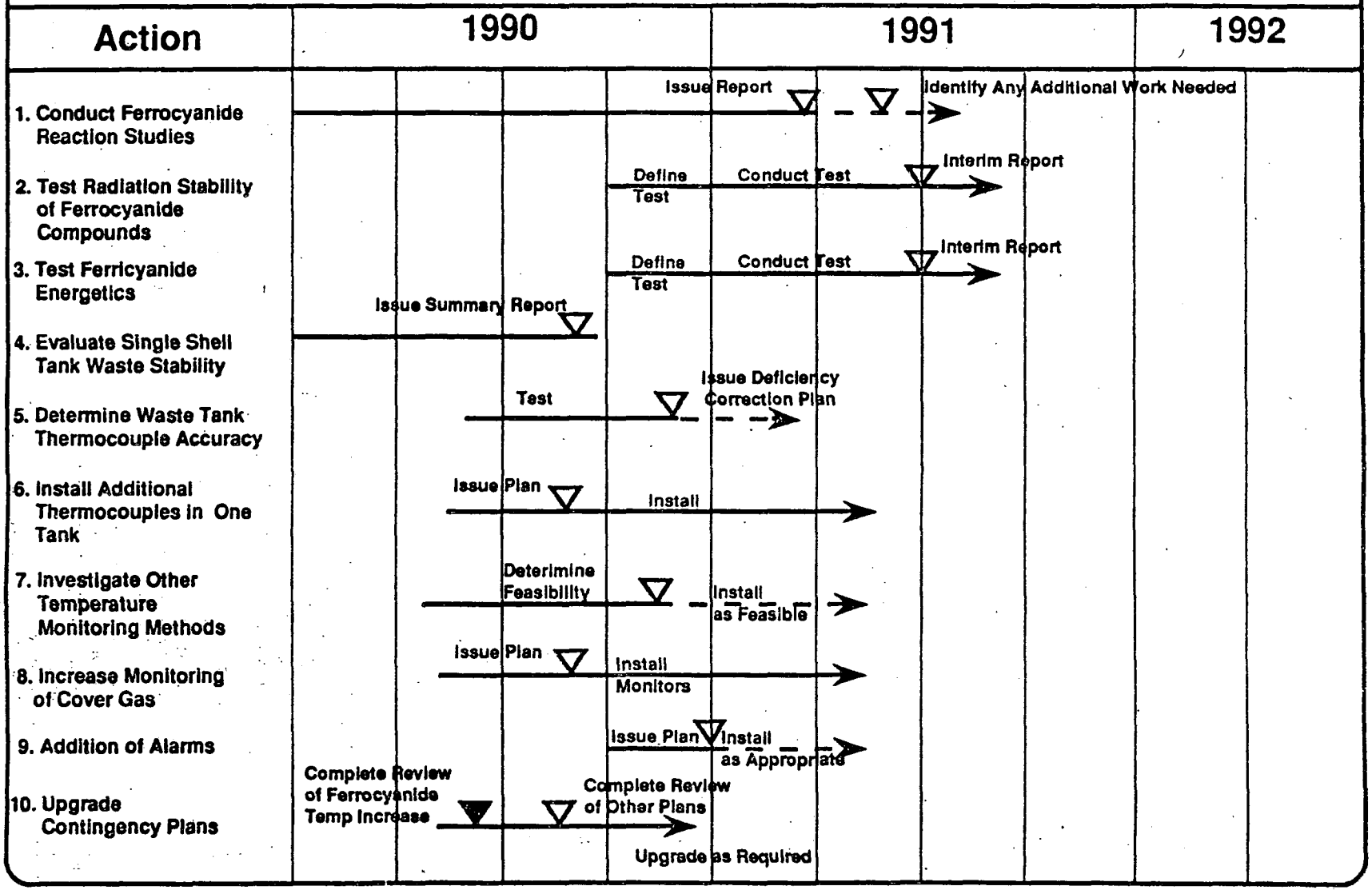
Implementation Plan for Recommendation #4: A review of the current contingency plans for response to an increasing ferrocyanide tank temperature was conducted, and the plan will be revised. Action plans

responding to other alarms or unusual surveillance readings will also be reviewed. As the results of work on chemical stability and flammable gas issues identify other parameters warranting monitoring, then additional action plans will be prepared and forwarded to the DNFSB. (Action 10)

BILLING CODE 6450-01-M

Milestone Chart

(Calendar Year)



[FR Doc. 90-19371 Filed 8-16-90; 8:45 am]

BILLING CODE 6450-01-C

900718.7.MISCddw

Federal Energy Regulatory Commission

[Docket No. TM91-1-91-000]

ANR Storage Co.; Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 10, 1990.

Take notice that ANR Storage Company ("ANR Storage") on August 8, 1990, tendered for filing First Revised Sheet No. 1(a) to its FERC Gas Tariff, Original Volume No. 2.

First Revised Sheet No. 1(a) reflects the new ACA rate to be charged per the Annual Charges Adjustment Clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by ANR Storage is per FERC notice given on July 18, 1990 and is to be effective October 1, 1990.

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 petitions or protests should be filed on or before August 17, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19345 Filed 8-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-66-000]

Superior Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 10, 1990.

Take notice that on August 17, 1990, Superior Offshore Pipeline Company (SOPCO) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

FERC Gas Tariff, Original Volume No. 1

Fifth Revised Sheet No. 5

This revised tariff sheet is being filed to amend SOPCO's initial FERC Annual Charge Adjustment (ACA) related tariff sheet to reflect the change in the FERC ACA Unit Charge. SOPCO has received an Annual Charges Billing from the Commission for the fiscal year 1990 and has already remitted to the Commission SOPCO's portion of the Commission deficit. For the purpose of recovering this payment, SOPCO has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA Unit Charge. As set forth by the Commission on SOPCO's Annual Charges Bill, SOPCO's ACA Unit Charge will change from $0.0016/MMBtu to $0.0018/MMBtu. SOPCO proposed that this change be made effective October 1, 1990.

Any person desiring to be heard or 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 the rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19346 Field 8-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-29-000]

Texas Sea Rim Pipeline, Inc.; Proposed Changes in FERC Gas Tariff

August 10, 1990.

Take notice that on August 8, 1990, Texas Sea Rim Pipeline, Inc. (Texas Sea Rim) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

FERC Gas Tariff, Original Volume No. 1

Second Revised Sheet No. 2A

This revised tariff sheet is being filed to amend Texas Sea Rim's initial FERC Annual Charge Adjustment (ACA) related tariff sheet to reflect the change in the FERC ACA Unit Charge. Texas Sea Rim has received an Annual Charges Billing from the Commission for the fiscal year 1990 and has already remitted to the Commission's Texas Sea Rim's portion of the Commission deficit. For the purpose of recovering this payment, Texas Sea Rim has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA Unit Charge. As set forth by the Commission of Texas Sea Rim's Annual Charges Bill, Texas Sea Rim's ACA Unit Charge will change from $0.0017/MMBtu to $0.0018/MMBtu. Texas Sea Rim proposed that this change be made effective October 1, 1990.

Any person desiring to be heard or 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 the rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19347 Filed 8-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-11-000]

United Gas Pipe Line Co.; Filing Revised Tariff Sheets

August 10, 1990.

Take notice that on August 8, 1990 United Gas Pipe Line Company (United) tendered for filing tariff sheets:

Second Revised Volume 1

Fifth Revised Sheet No. 4
Fifth Revised Sheet No. 4A
Fifth Revised Sheet No. 4B
Fourth Revised Sheet No. 4D
Fifth Revised Sheet No. 4I

The proposed effective date of the above referenced tariff sheets in this docket is October 1, 1990. The above referenced tariff sheets are being filed pursuant to section 154.305 of the Commission's regulations to reflect changes in United's purchased gas cost adjustment as provided in section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

United states that it has filed tariff sheets which implement a $2.2348 per Mcf commodity gas cost rate excluding nongas cost, ACA and GRI. This rate reflects a 10.5¢ per mcf decrease in gas commodity costs, a surcharge of 17.90¢ per mcf, and a waiver of United's 18¢ Settlement Surcharge. The 17.90¢ surchange to be effective on October 1, 1990 and remain in effect through September 30, 1991, is projected to recover approximately $8.9 million in deferred costs.

United further states that, in accordance with its settlement in Docket

No. TA87-1-11-000, et al. and TA87-2-11-000 et al, it will waive collection of the 18¢ Settlement Surcharge for the three month period ending December 31, 1990. United will forego the recovery of those previously incurred gas costs it otherwise would have collected during this three month period.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to 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 Capital Street, NE., Washington, DC 20426, in such accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such petitions of protest should be filed on or before August 30, 1990.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19348 Filed 8-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-401-004]

Citizens Power & Light Corp. Informational Filing

August 10, 1990.

Take notice that on July 31, 1990, Citizens Power & Light Corporation (Citizens) filed certain information as required by Ordering Paragraph (N) of the Commission's August 8, 1989 order in this proceeding. 48 FERC ¶ 61,210 (1989). Copies of Citizen's information filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19344 Filed 8-16-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-07-NG]

Indeck Energy Services of Ilion, Inc.; Amendment to Application for Long-Term Authorization To Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of contract amendments and change in point of entry to requested long-term authorization.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 18, 1990, of an amended application filed by Indeck-Energy Services of Ilion, Inc. (Indeck-Ilion), in FE Docket No. 90-07-NG. Indeck-Ilion reports a reduction in volumes of imported gas from 12,000 Mcf per day to 7,500 Mcf and a change in the point of entry from the Niagara Spur Loop to Grand Island, New York.

The amendment to 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, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., September 17, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9394

Diane 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: On January 22, 1990, Indeck-Ilion filed an application to import 3.0 Bcf of Canadian natural gas over a 15-year term. Under the original precedent agreement, dated November 3, 1989, the volumes of imported Canadian natural gas were to be 12,000 Mcf per day to be transported by National Fuel Gas Supply Corporation (National Fuel) from the border to the facilities of Consolidated Natural Gas Company (CNG) at Marilla, New York. From its interconnection with CNG, Niagara Mohawk—would deliver the natural gas to Indeck-Ilion. The precedent agreement of February 1, 1990, reduces by 4,500 Mcf the volume of imported natural gas to a daily maximum of 7,500 Mcf. Indeck-Ilion states that this was necessary to reflect actual Canadian volumes under contract to be transported. National Fuel will now transport the imported volumes from the international border at Grand Island, New York, to the facilities of CNG at National Fuel's Porterville Station in Elma, New York.

Comments, especially by parties that may oppose this amendment, should be limited to the impact of the change in the proposed import point. Those who filed motions to intervene in response to the previous **Federal Register** notice are not required to file again unless they have additional comments or wish to request additional procedures.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effect of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

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 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 at the above address.

It is intended that a decisional record will be developed on the application 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 procedures 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 questions of fact, law, or policy at issue, showing 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 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 procedures 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 pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Indeck-Ilion's application and amendment are available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC August 8, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-19369 Filed 8-16-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3821-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Information Requirements for Construction Grants Delegation to States (ICR #0909.03).

Abstract: ICR 0909.03 will serve to reinstate OMB clearance of ICR 0909.02, which applied to the information requirements associated with the delegation of the Construction Grants Program to States.

The Construction Grants Program is designed to further waste treatment management plans and practices in accordance with the goals of the Clean Water Act (CWA) through encouraging the construction of revenue-producing waste treatment facilities.

EPA may delegate responsibility for the Construction Grants Program to States if the States provide EPA with sufficient information on their plans and schedules for assuming the Program.

States which have accepted delegated responsibilities for construction grants provide information according to requirements in the Construction Grants Delegation Program Regulation (40 CFR part 35, subpart J.) Specifically, the delegated States provide EPA with five types of information:

—A delegation agreement, which formally documents the transfer of program functions from the Agency to the State,

—A program phaseout strategy, describing the work that remains to be done in managing the construction of grants program to its completion,

—A plan for oversight, negotiated between the State and the Agency, detailing expected work outputs and progress toward their accomplishment,

—Information for review of State decisions, resulting from requests by affected municipalities, and

—Information on nonconventional wastewater treatment systems, for inclusion in the Innovative/Alternative (I/A) Technology Data File.

EPA uses this information for Regional and National management of the Construction Grants Program. The information enables EPA to maintain fiscal accountability over section 205(g) and construction grant funds. It also permits Federal oversight of State project review activities related to fiscal and project integrity, design performance, Federal budget control, and attainment of national goals.

Submission of the information allows effective delegation of the program to States and permits EPA to respond accurately to OMB and congressional requests for information. In addition, the Innovative/Alternative Technology information which the States provide will enable EPA to meet the requirements of section 304(d)(2)(3) of the CWA, which specifies that EPA must periodically publish alternative waste treatment management information.

Burden Statement: The reporting burden imposed on respondents by the delegation of the Construction Grants Program is 505 hours per respondent.

Respondents: States and Territories.

Estimated No. of Respondents: 51.

Estimated Total Annual Burden on Respondents: 25,774 hours.

Fequency of Collection: Weekly, annually, biennially, on occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20400

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dated: August 9, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-19421 Filed 8-16-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3822-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 30, 1990 Through August 03, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-BLM-J02018-MT Rating EC2, Blackleaf Unit Oil and Gas Exploration and Development, Implementation, Great Falls Resource Area, Rocky Mountain Front, Teton County, MT.

Summary: EPA has environmental concerns with this document and additional information is required.

ERP No. D-BLM-K70005-CA Rating EC1, Common Raven (Corvus Corax) Comprehensive Management Plan, Implementation, California Desert Conservation Area, CA.

Summary: EPA expressed environmental concerns due to potential adverse impacts to nontarget wildlife species from use of the avicide Starlicide and from implementation of some of the proposed nonlethal control measures.

ERP No. D-FHW-J40120-CO Rating EC1, I-25/49th Avenue Interchange Closure, I-25 to 58th Avenue Interchange Improvement, Funding, Denver and Adams Counties, CO.

Summary: EPA expressed concern about potential wetland impacts and believes that major changes will be necessary in order to make this aspect of project implementation acceptable.

ERP No. DR-FHW-J40066-ND Rating LO, Washington Street Corridor Improvements, Century Avenue to Bismark Expressway, Burlington Northern Railroad Washington Street Underpass, Funding, Burleigh County, ND.

Summary: EPA has no objections to the action as proposed.

ERP No. DS-AFS-L61182-ID Rating EC2, Valbois Destination Resort Village, Special Use Permit and Land/Resource Management Plan Amendments, Additional Information, Cascade Lake, Boise National Forest, Valley County, ID.

Summary: EPA has environmental concerns that all mitigation measures necessary to insure that there be no increase in phosphorus input to the Cascade Reservoir will be implemented. Additional site specific hydrogeological information and mitigation measures are needed for the proposed land application system for wastewater treatment. The eis also fails to address air quality issues raised by EPA.

ERP No. D1-MMS-L01007-AK Rating EC1, 1991 Norton Sound Outer Continental Shelf (OCS) Lease Sale, Placer Mining Program, Implementation and Lease Offerings, AK.

Summary: EPA has environmental objections based on the draft EIS conclusions that any of the leasing alternatives will result in the exceedence of federal water quality criteria for lead and copper at the edge of the mixing zone.

Final EISs

ERP No. F-AFS-K65125-CA, Black Panther Fire Recovery Project, Implementation, 1987 King-Titus Wildfire, Klamath National Forest, Ukonom Ranger District, Siskiyou County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-FHW-K40167-CA, CA-237 Upgrading to Freeway Standards, Mathilda Avenue to I-880, Funding and 404 Permit, Santa Clara County, CA.

Summary: EPA requested that the Record of Decision contain commitments to protect wetlands, water quality and air quality.

ERP No. F-FRC-F03003-00, Niagara Import Point Project, Natural Gas Pipeline Facilities, Construction and Operation, Licenses, section 10 and 404 Permits, NY, WI, MA, MN, MI, and RI.

Summary: Before the final FERC approval, EPA requests an opportunity for imput to ensure that EPA's requested mitigation requirements are a mandatory component of the project.

ERP No. F-USN-K11033-00, Relocatable Over-the-Horizon Radar (ROTHR)/Electronic Installations in the Western Pacific, Construction an Operation, Tinian, Commonwealth of the Northern Mariana Islands and Guam.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. FA-COE-H34009-IA, Red Rock Dam and Red Rock Operation and Maintenance Project, Implementation, Des Moines River, Marion Country, IA.

Summary: EPA has no objections to the proposed action.

Dated: August 14, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-19444 Filed 8-16-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3820-2]

International Boundary and Water Commission, U.S. Section; Intent To Prepare a Draft Environmental Impact Statement (EIS) for Proposed International Treatment Works for the Tijuana River Valley, San Diego, CA

AGENCIES: Environmental Protection Agency (EPA) Region IX and the International Boundary and Water Commission (IBWC), U.S. Section.

ACTION: Notice of intent to prepare a draft EIS.

PURPOSE: Pursuant to section 510 of the Water Quality Act of 1987 (WQA), EPA has determined that existing and proposed treatment works in Tijuana, Mexico are not sufficient to protect the residents of the City of San Diego, California, and surrounding areas from water pollution originating in Tijuana, Mexico. It is EPA's intention to make grants to the IBWC for construction of treatment works described in section 510(b)(2) after public notice and comment. In accordance with section 511(c) of the Clean Water Act (CWA) and section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA and the IBWC have identified a need to prepare an EIS and therefore issue this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Mr. Enrique Manzanilla, 1235 Mission Street, W-1, San Francisco, California 94103, TEL: (415) 705-2194, or Mr. Manuel Ybarra, International Boundary and Water Commission, U.S. Section, 4171 North Mesa, suite C-310, El Paso, Texas 79902, TEL: (915) 534-6698.

SUMMARY: A Draft EIS will be prepared to evaluate pollution abatement alternatives to address the Tijuana sanitation problem in south San Diego County. The proposed project would be located in the Tijuana River Basin, just north of the U.S.-Mexico border. The proposed project would be designated to alleviate problems associated with wastewater in the Tijuana River flowing from Mexico into the United States.

The EPA and IBWC have convened a task force which includes representatives from the City of San Diego, California's State Water Resources Control Board, and other local, State and Federal agencies to review the problem and develop a recommended solution.

NEED FOR ACTION: The San Diego area continues to be contaminated with raw sewage flowing north from the City of Tijuana through the Tijuana river. Burgeoning sewage flows from Tijuana could destroy the Tijuana estuary, a U.S. National Estuarine Reserve, and produce more extensive public health quarantines of San Diego beaches. Section 510 of the WQA authorizes EPA to make grants to the IBWC for the construction of treatment works in the City of San Diego, California to provide treatment of municipal sewage and industrial waste from Tijuana, Mexico. The Draft EIS will be based upon a facility plan for the proposed treatment and conveyance facilities.

ALTERNATIVES: Alternatives include, but are not necessarily limited to:

(1) The proposed construction of a 25 million gallon per day secondary treatment facility in the vicinity of the Tijuana River with land and ocean outfalls, in conjunction with the City of San Diego and the government of Mexico. Two alternative plant locations

will be considered: (1) The "Dairy Mart Road Site"—an area south of the river bounded by international border, Old Diary Mart Road and the 100-year floodplain, and (2) the "Tia Juana Street Site"—an area north of the river bounded by the river's north levee and the Old Tijuana River bed.

(2) The original defensive works plan, contemplated under section 510(b)(1) of the WQA. Under this plan, wastewater flows would be intercepted and returned via pipelines and pump station, without U.S. treatment, to the Tijuana conveyance and treatment system.

(3) No Action. No U.S. action would result in a continuation of sewage flows in the Tijuana River with no or limited treatment by the government of Mexico.

(4) Additional alternatives may be developed as the study progresses.

Potentially significant issues include impacts to water and air quality, groundwater resources, land use, public health, cultural and biological resources, and endangered species.

SCOPING PROCESS: An extensive mailing list is being developed which includes Federal, State and local agencies and other interested public and private organizations and parties. A scoping meeting and public workshop will be held to obtain community input to insure all concerns are identified and addressed in the Draft EIS. Each entity on the mailing list will receive a copy of the scoping public notice which will have details on the proposed studies and dates of public scoping meetings. Formal coordination with appropriate Federal, State and local agencies will be conducted according to the requirements of the National Environmental Policy Act. The specific date, time and location of the scoping meeting will be posted at local community facilities and published in the local newspaper. Written comments on this Notice should be sent to the persons listed above.

AVAILABILITY OF DRAFT EIS: The Draft EIS is expected to be available to the public in January of 1991.

RESPONSIBLE OFFICIALS: Daniel McGovern, Regional Administrator, U.S. EPA Region IX, and Narendra Gunaji, Commissioner, U.S. Section of the IBWC.

Dated: August 14, 1990.

Narendra N. Gunaji,

Commissioner.

Dated: August 14, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-19446 Filed 8-16-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3822-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5076. Availability of Environmental Impact Statements Filed August 6, 1990 Through August 10, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900299, Final Supplement, AFS, NV, Humboldt National Forest, Land and Resource Management Plan Amendment, Implementation, Elko, Humboldt, Nye, Lincoln and White Pine, NV, Due: September 17, 1990, Contact: John P. Inman (702) 738-5171.

EIS No. 900300, DRAFT EIS, USA, CA, GA, KY, MD, NC, CO, HI, MO, PA, SC, TX, WA, DC, Presidio of San Francisco Army Base, Closure and Relocation to other Facilities, Implementation, Alternates are in CA, CO, GA, HI, KY, MD, MO, NC, PA, SC, TX, WA and DC Due: October 1, 1990, Contact: Bob Verkade (916) 551-2251.

EIS No. 900301, FINAL EIS, FHW, VA, George P. Colemen Bridge Traffic Congestion Alleviation, York River Crossing Study, section 10 and 404 Permits, Coast Guard Permits and Funding, York and Glocester Counties, VA, Due: September 17, 1990, Contact: James M. Tumlin (804) 771-2371.

EIS No. 900302, DRAFT EIS, BIA, CA, AZ, NV, Fort Mojave Indian Reservation Planned Community Development, Lease Approval, Section 404 Permit, Spirit Mountain, Clark County, NV, San Bernardino County, CA and Mojave County, AZ, Due: October 10, 1990, Contact: Amy Heuslein (602) 241-3351.

EIS No. 900303, FINAL EIS, USN, HI, Pearl Harbor Naval Base Development, Access Improvements and Further Development of Ford Island and Construction of Facilities to Implement the Relocation of Battleship and Cruisers, Implementation, Oahu, HI, Due: September 17, 1990 Contact: Gordon Ishikawa (808) 471-3088.

EIS No. 900304, DRAFT EIS, USN, CA, San Francisco Bay Area Candidate Base Closure/Realignment, Naval Air Station and Naval Aviation Depot, Alameda, Naval Supply Center and Naval Hospital, Oakland; Naval Station, Treasure Island and Naval Air Station, Moffett Field, Implementation, San Francisco, Alameda and Santa Clara Counties, CA, Due: October 1, 1990, Contact: W. Van Peeters (415) 244-2521.

EIS No. 900305, FINAL EIS, UAF, CA, Space Launch Complex 7 (SLC-7) Construction and Operation, South Vandenberg Air Force Base, Santa Barbara County, CA, Due: September 17, 1990, Contact: John Edward (213) 643-0934.

Dated: August 14, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-19443 Filed 8-16-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3821-6]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; E.I. DuPont de Nemours and Company, Incorporated, Louisville, KY

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (EPA) that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to E.I. DuPont de Nemours and Company, Incorporated, for its two Class I hazardous waste injection wells located at Louisville, Kentucky. As required at 40 CFR part 148, the company has adequately demonstrated to the satisfaction of EPA by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by E.I. DuPont de Nemours and Company, Incorporated, of the specified restricted hazardous waste, identified in the petition, into the Class I hazardous waste injection wells at the Louisville facility, specifically identified as Waste Well 1 and Waste Well 2, until December 31, 2000. The hazardous waste injection fluid consists of two acidic waste streams derived from the manufacture of Freon 22 and from the scrubber of a RCRA-permitted hazardous waste incinerator that incinerates Neoprene rubber waste. The combined wastes contain trace amounts of metals and fluorocarbons and up to 20 percent by weight hydrochloric acid The waste stream is regulated as a characteristic liquid hazardous waste under 40 CFR § 261.22(a)(1) because it

exhibits the characteristic of corrosivity due to having a pH less than 2.

As required at 40 CFR 124.10, a public notice was issued May 29, 1990. A public hearing was held June 28, 1990. The public comment period closed on July 12, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final EPA action and there is no Administrative appeal process available for this final petition decision.

DATE: This action is effective as of August 2, 1990.

ADDRESS: Copies of the petition and all pertinent information relating thereto, including citizen comments and EPA's response to comments, are on file at the following location: Environmental Protection Agency, Region IV, Water Management Division, Ground-Water Protection Branch, 345 Courtland Street, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanette Maulding, Environmental Scientist, EPA, Region IV, telephone (404) 347-3866.

Dated: August 2, 1990.

W. Ray Cunningham,

Acting Regional Administrator, Region IV

[FR Doc. 90-19420 Filed 8-16-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00105; FRL 3797-5]

Biotechnology Science Advisory Committee Subcommittee on Implementation of Scope Principles; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of a subcommittee of the Biotechnology Science Advisory Committee. The Subcommittee on Implementation of Scope Principles will discuss scientific issues raised by the Environmental Protection Agency's use of the "Principles for Federal Oversight of Biotechnology: Planned Introduction into the Environment of Organisms with Modified Hereditary Traits" to describe organisms which would be subject to review. These principles were published by the Office of Science and Technology Policy in the **Federal Register** of July 31, 1990 (55 FR 31118). The meeting will be open to the public.

DATES: The meeting will held on Friday, September 7, 1990, starting at 8:30 a.m. and ending at approximately 5:30 p.m.

ADDRESSES: The meeting will be held at: The Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The Environmental Assistance Division will provide summaries of the meeting at a later date.

Dated: August 10, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-19482 Filed 8-16-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-36176; FRL 3797-1]

Disclosure of Names of Inert Ingredients in Currently Registered Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is responding to requests under the Freedom of Information Act (FOIA) and to FOIA-based litigation initiated in the U.S. District Court for the District of Columbia for the list of names of chemicals used as inert ingredients in registered pesticide products. EPA has reviewed the list consisting of the chemical names of inerts used in currently registered products and their Chemical Abstract Service (CAS) numbers (the list) and has determined that it is not entitled to confidential treatment. EPA is notifying affected businesses by certified mail that the list of inert ingredients is not entitled to confidential treatment. EPA will make the list available to the public on the 31st day after all affected businesses receive the notification unless the EPA Office of General Counsel has first been notified of the commencement by an affected business of an action in Federal court to obtain judicial review of the determination or to obtain a declaratory judgement under section 10(c) of FIFRA and to obtain preliminary injunctive relief against disclosure.

ADDRESSES: A notice of commencement of litigation should be submitted in writing to: Hale Hawbecker, Office of General Counsel (LE-132G), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202-382-5460).

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lawrence, 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: Rm. 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4447).

SUPPLEMENTARY INFORMATION: EPA announced in PR Notice 87-6 and in the **Federal Register** (52 FR 13305, April 22, 1987) certain policies regarding the regulation of inert ingredients in pesticide formulations. PR Notice 90-1 and a **Federal Register** notice (54 FR 48314, November 22, 1989) outlined revisions to the original policy statement. The Agency assigned all inert ingredients in pesticide products to one of four lists, based on the toxicity of the ingredients as follows:

List 1 Inerts of toxicological concern
List 2 Potentially toxic inerts, with high priority for testing
List 3 Inerts of unknown toxicity
List 4 Inerts of minimal concern

Revised List 1 and List 2 inert ingredients were released to the public as part of the November 22 **Federal Register** notice. The names of inert ingredients used in registered pesticide products will be included in List 3 if they are not a part of Lists 1, 2, or 4. EPA released List 4 and made a partial release of approximately 1,000 List 3 inert ingredients already in the public domain on July 25, 1986. The format of the list of inert ingredient information proposed for release at this time will be identical to the format of the List 1 and List 2 chemicals included in the **Federal Register** notices.

I. Description of Entries to be Released

The inert ingredient information to be released is a list which identifies each inert ingredient in currently registered products by its chemical name and, in most cases, by its assigned Chemical Abstract Service (CAS) Number.

EPA is proposing to disclose only the chemical names and the CAS numbers of the inert ingredients. The list does not associate any particular ingredient with a specific chemical statement of formula, with a registered pesticide product, or with a specific company. The list does not contain any information which would divulge the makeup of a proprietary inert mixture which is sold to registrants without identifying the mixture's substances.

II. Determination that the List is Clearly not Entitled to Confidential Treatment

The FOIA requests are being processed under EPA's FOIA rules, 40 CFR part 2, and section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 7 U.S.C. 136(h). EPA has determined that the list is clearly not entitled to confidential treatment and is taking the actions described by 40 CFR 2.204(d)(2), 2.205(f); and 2.307(e)(3) to make the list available to the public.

III. Basis for the Determination

EPA does not believe that a list of names of chemicals used as pesticide inert ingredients is proprietary information. For EPA to accord confidential treatment to this information, the Agency would have to determine that the list of inert ingredients consists of: (1) Trade secrets, or (2) commercial or financial information obtained from a person and privileged or confidential (5 U.S.C. 552(b)(4)) and FIFRA section 10(a).

The list clearly does not contain "trade secrets." The term has been narrowly defined by the Court of Appeals for the D.C. Circuit as "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the endproduct of either innovation or substantial effort." *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). Because there is no way to connect the identity of an inert on the list with specific statements of formula, the list does not contain protectible "trade secrets."

Although the list contains "commercial information obtained from a person," it is clearly not "privileged or confidential." Release of the list will not impair the government's ability to obtain necessary information in the future or cause substantial harm to a company's competitive position because EPA does not believe that anyone can associate an inert ingredient alone with a specific pesticide formula when EPA does not release any information about proprietary statements of formula. Furthermore, release of this information is not prohibited from disclosure by any statute. While section 10 (d)(1)(C) of FIFRA may require the Agency to protect the identity or percentage quantity of any deliberately added inert ingredient of a specific product formulation, it does not prohibit the disclosure of inert ingredient names which do not associate the inert ingredient with a particular pesticide product. As discussed above, the Agency is proposing to disclose only a list of inert ingredients by chemical names and CAS numbers with no other identifying information.

IV. Notice that the Information will be Disclosed

Because the list of inert ingredients is not entitled to confidential treatment, EPA will make the information available to the public on the 31st day after all affected businesses receive notification by certified mail unless before that date the EPA Office of General Counsel (OGC) has been notified by an affected business of the business's commencement of an action in a Federal court to obtain judicial review or to obtain a declaratory judgment under section 10(c) to FIFRA and to obtain preliminary injunctive relief against disclosure (see 40 CFR 2.205)(f) and 2.307(e)). An affected business may seek an extension of time to commence judicial review but the request must be made to OGC within 30 days of receiving the notification from EPA. If such litigation is timely commenced, EPA may nonetheless make the information available to the public (in the absence of an order by the court to the contrary), once the court has denied a motion for a preliminary injunction in the action or otherwise upheld the EPA determination, or whenever it appears to the EPA Office of General Counsel after reasonable notice to the business, that the business is not taking appropriate measures to obtain a speedy resolution of the action (see 40 CFR 2.205(f) and 2.307(e)).

V. Final Agency Action

This notice constitutes final Agency action concerning any and all business confidentiality claims that may have been or could have been made, or that may be made in the future with regard to any information included on the list of inert ingredients. This final Agency action may be subject to judicial review under chapter 7 of title 5, United States Code, under FIFRA section 10(c), or other law.

Dated: August 13, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-19249 Filed 8-14-90; 10:33 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 90-280; DA 90-1031]

Alabama Region Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Alabama area's (Region 1's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821-824/866-869 MHz spectrum for public safety to begin.

EFFECTIVE DATE: August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

1. On May 9, 1990, Region 1 (Alabama) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region.

2. The Alabama plan was placed on Public Notice for comments on June 1, 1990, 55 FR 22085 (May 31, 1990). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Alabama and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87-122, 3 FCC Rcd 905 (1987) 53 FR 1022, January 15, 1988, and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Alabama.

4. Accordingly, it is ordered that the Public Safety Radio Plan for Alabama is accepted. Furthermore, licensing of the 821-824/866-869 MHz band in Alabama may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 90-19432 Filed 8-16-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 90-24]

Tecmarine Lines, Inc. v. Trans Guyana Express Shipping; Filing of Complaint and Assignment

Notice is given that a complaint filed by Tecmarine Lines, Inc. ("Complainant") against Trans Guyana Express Shipping ("Respondent") was served August 13, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to Complainant's applicable tariff for eight shipments from Florida to Guyana between June 1989 and March 1990.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 13, 1991, and the final decision of the Commission shall be issued by December 11, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 90-19378 Filed 8-16-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fred Abdula; 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 31, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 239 South LaSalle Street, Chicago, Illinois 60690:

1. *Fred Abdula*; to acquire up to 25.06 percent of the voting shares of Northern States Financial Corportation, Waukegan, Illinois, and thereby indirectly acquire Bank of Waukegan, Waukegan, Illinois.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Centra, Inc.*, Warren, Michigan; to acquire up to 24.9 percent of the voting shares of Citizens Banking Corporation, Flint, Michigan, and thereby indirectly acquire Commercial National Bank of Berwyn, Berwyn, Illinois; Citizens Commercial & Savings Bank, Flint, Michigan; Second National Bank of Bay City, Bay City, Michigan; Grayling State Bank, Grayling, Michigan; Second National Bank of Saginaw, Saginaw, Michigan; and State Bank of Standish, Standish, Michigan.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Wanda M. Brown and George L. Brown*, Bixby, Oklahoma; to acquire an additional 5.9 percent of the voting shares of Citizens Security Bancshares, Inc., Bixby, Oklahoma, for a total of 26.8 percent, and thereby indirectly acquire Citizens Security Bank & Trust Company, Bixby, Oklahoma.

2. *Harry Thompson, Jr.*, Limon, Colorado; to acquire an additional 7.8 percent of the voting shares of First Liberty Capital Corporation, Hugo, Colorado, for a total of 18.6 percent, and thereby indirectly acquire First National Bank in Hugo, Hugo, Colorado.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Juliana Hawn Holt*, San Antonio, Texas; to acquire 13.9 percent of the voting shares of American Bank Holding Company, Inc., Corpus Christi, Texas, and thereby indirectly acquire American National Bank-South, Corpus Christi, Texas.

2. *Texarkana National Bancshares Employee Stock Ownership Stock Bonus Plan (ESOP)*, Texarkana, Texas; to acquire 15.1 percent; and Henry Whitmarsh Holman, Trustee of ESOP, Texarkana, Texas, to acquire 0.3 percent of the voting shares of Texarkana National Bancshares, Inc., Texarkana, Texas, and thereby indirectly acquire The Texarkana National Bank, Texarkana, Texas.

E. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *James B. Jaqua and M. Susan Jaqua*; to acquire an additional 3.34 percent of the voting shares of Hemet Bancorp, Riverside, California, for a total of 18.93 percent, and thereby indirectly acquire The Bank of Hemet, Hemet, California.

Board of Governors of the Federal Reserve System, August 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-19357 Filed 8-16-90; 8:45 am]

BILLING CODE 6210-01-M

FNB Newton Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 5, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *FNB Newton Bankshares, Inc.*, Covington, Georgia; to acquire an additional 4.2 percent of the voting

shares of Georgia Central Bancshares, Inc., Social Circle, Georgia, for a total of 9.10 percent, and thereby indirectly acquire Georgia Central Bank, Social Circle, Georgia.

2. *Screven Bancshares, Inc.*, Sylvania, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers and Merchants Bank, Sylvania, Georgia.

3. *7L Corporation*, Tampa, Florida; to acquire an additional 3.17 percent of the voting shares of First Florida Banks, Inc., Tampa, Florida, for a total of 38.36 percent, and thereby indirectly acquire First Florida Bank, N.A., Tampa, Florida.

B. *Federal Reserve Bank of Chicago* (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Citizens Financial Corp.*, Charles City, Iowa; to acquire 100 percent of the voting shares of Osage Bank Services, Inc., Osage, Iowa, and thereby indirectly acquire 87.53 percent of the voting shares of Osage Farmers National Bank, Osage, Iowa.

2. *First Financial Corporation*, Terre Haute, Indiana; to acquire 24.9 percent of the voting shares of First Citizens of Paris, Inc., Paris, Illinois and thereby indirectly acquire Citizens National Bank of Paris, Paris, Illinois.

3. *Monmouth Financial Services, Inc.*, Minneapolis, Minnesota; to acquire 9.4 percent of the voting shares of Texas Financial Bancorporation, Inc., Minneapolis, Minnesota, and First Bancorp, Inc., Denton, Texas, and thereby indirectly acquire First State Bank of Denton, Texas.

4. *Westbank Financial Corporation*, Naperville, Illiniois; to acquire 100 percent of the voting shares of First National Bank of Wheaton, Wheaton, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *CBR Bancshares Corp.*, Rogersville, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Citizens Bank of Rogersville, Rogersville, Missouri.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Anchor Bancorp, Inc.*, Wayzato, Minnesota; to acquire 100 percent of the voting shares of Heritage National Bank, North St. Paul, Minnesota.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *C.S.B. Co.*, Cozad, Nebraska; to acquire 100 percent of the voting shares of Pine Ridge Management Company, Chadron, Nebraska, and thereby indirectly acquire 95 percent of the voting shares of First National Bank of Chadron, Chadron, Nebraska.

2. *Crosby Bancshares, Inc.*, Sheridan, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Lovell, Lovell, Wyoming.

F. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *WNB Bancshares, Inc.*, Odessa, Texas; to acquire 80 percent of the voting shares of Kermit Financial Corporation, Kermit, Texas, and thereby indirectly acquire First National Bank of Kermit, Kermit, Texas.

G. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *Banco Nacional de Mexico, S.N.C.*, Mexico City, Mexico; Banamex Holding Company, Los Angeles, California; and Banamex USA Bancorp, Los Angeles, California; to acquire 100 percent of the voting shares of American National Bank—Post Oak, Houston, Texas.

2. *Bancwest Corporation*, San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the West, San Francisco, California.

Board of Governors of the Federal Reserve System, August 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-19358 Filed 8-16-90; 8:45 am]

BILLING CODE 6210-01-M

Main Street Banks Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 5, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Main Street Banks Incorporated*, Covington, Georgia; to engage *de novo* through its subsidiary, Main Street Savings Bank, F.S.B., Conyers, Georgia, in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will conducted in Conyers, Georgia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Tri-County Bancorp*, Roachdale, Indiana, Bright Financial Services, Inc., Flora, Indiana, North Salem State Bancorporation, North Salem, Indiana, and Cloverdale Bank Corporation, Cloverdale, Indiana; to engage *de novo* in establishing a reinsurance subsidiary, and to act as an underwriter for credit life, accident and health insurance directly related to extensions of credit by the respective subsidiary banks of the four bank holding companies pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of Indiana:

Board of Governors of the Federal Reserve System, August 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-19359 Filed 8-16-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Surveillance of Elevated Blood Lead Levels by State Health Departments; Meeting

NAME: Surveillance of Elevated Blood Lead Levels by State Health Departments.

TIME AND DATE: 9 a.m.-4:30 p.m., September 18-19, 1990.

PLACE: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC 5555 Ridge Avenue, Cincinnati, Ohio 45213.

STATUS: Open to the public, limited only by the space available.

PURPOSE: To develop strategies for the elimination of occupational lead poisoning and to review current surveillance efforts for elevated blood lead levels by State health departments.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Paul J. Seligman, M.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R-21, Cincinnati, Ohio 45226, telephone 513/841-4353 or FTS 684-4353.

Dated: August 13, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-19389 Filed 8-16-90; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Boehringer Ingelheim Animal Health, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: the Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's) held by Boehringer Ingelheim Animal Health, Inc. One NADA provides for the use of an iron dextran injection and the other for the use of lactic acid injection. The firm requested the withdrawal of approval of the NADA's.

EFFECTIVE DATE: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Highway, St. Joseph, MO 64502, is the sponsor of the following NADA's:

NADA 10-955, originally approved April 30, 1957, for the use of FE-100 iron dextran injection in baby pigs for the prevention or treatment of iron deficiency anemia;

NADA 126-455, originally approved August 3, 1983, for the use of Chem-Cast™ (lactic acid) injection to castrate bull calves up to 150 pounds.

By separate letters to September 29, 1989, the sponsor requested the withdrawal of approval of the two NADA's because it is no longer manufacturing or distributing the products.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115, notice is given that approval of NADA's 10-955 and 126-455 and all supplements thereto is hereby withdrawn, effective August 27, 1990.

In the final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 522.1183(f) and removing and reserving 21 CFR 522.1228 to reflect withdrawal of the approvals.

Dated: August 13, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-19376 Filed 8-16-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89D-0368]

Action Levels for Residues of Certain Pesticides in Food and Feed; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; general statement of policy; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice published in the **Federal Register** of April 17, 1990 (55 FR 14359), that explained how the agency will use action levels in regulating residues of certain pesticides for which there are no tolerances but that may unavoidably be present in food or feed. In addition to the corrections appearing in the **Federal Register** of June 18, 1990 (55 FR 24646) and July 27, 1990 (55 FR 30796), FDA is correcting two errors that were made in the action level for commodities.

FOR FURTHER INFORMATION CONTACT: Robin F. Thomas, Office of Regulatory Affairs (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 90-8825, appearing at page 14359 of the **Federal Register** of Tuesday, April 17, 1990, the following corrections are made: On page 14361, in the second column, under *"B. Benzene Hexachloride (BHC)"*, "Brassica (cole) leafy vegetables (except broccoli, raab, rape greens)" appearing under the heading "Commodity", is corrected to read "Brassica (cole) leafy vegetables (except broccoli, raab, rape greens)"; and on page 14362, in the second column, under *"I. Heptachlor and Heptachlor Epoxide"*, "Nongrass animals" appearing under the heading "Commodity", is corrected to read "Nongrass animal feeds".

Dated: August 10, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-19377 Filed 8-16-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0265]

Drug Export; Epoprostenol Sodium Bulk Drug Substance

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Upjohn Co. has filed an application requesting approval for the export of the human drug epoprostenol sodium bulk drug substance to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the

export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, has filed an application requesting approval for the export of the drug epoprostenol sodium bulk drug substance, to the United Kingdom. This drug product is indicated as an alternative to Heparin during renal dialysis, especially when a high rate of bleeding problems due to Heparin exists. The application was received and filed in the Center for Drug Evaluation and Research on July 16, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 27, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 8, 1990.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90–19305 Filed 8–16–90; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Center for Nursing Research; Meeting: National Advisory Council for Nursing Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research, September 12–13, 1990, Building 1, Wilson Hall (third floor), National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on September 12 from 9 a.m. to recess and on September 13 from approximately 11 a.m. to adjournment. Agenda items to be discussed will include the Report of the Director, the National Nursing Research Agenda, and the International Congress of Nurses/National Center for Nursing Research (INC/NCNR) Nursing Research Task Force.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d)) of Public Law 92–463, the meeting will be closed to the public on September 13 from 8:30 a.m. to approximately 11 a.m. for completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. John Chah, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, Room 5B19, Bethesda, Maryland 20892, (301) 496–0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: August 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–19412 Filed 8–16–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, October 1 and 2, 1990, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 10 a.m. on Monday, October 1 until approximately 4 p.m. and will again be open to the public from 9 a.m. on Tuesday, October 2 until 3 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on October 1 from 4 p.m. until recess, and again on October 2 from 3 p.m. until adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institute on Aging, NIH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, room 5C02, National Institutes of Health, Bethesda, Maryland 20892 (telephone: 301/496–9322) will provide a summary of the meeting and a roster of committee members. Dr. George R. Martin, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.886, Aging Research, National Institutes of Health)

Dated: August 3, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–19328 Filed 8–16–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meetings of National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; and Microbiology and Infectious Diseases Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 23–25, 1990 at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20892.

The meeting of the NAAIDC Acquired Immunodeficiency Syndrome

Subcommittee will be open to the public on September 23 from approximately 1 p.m. to recess, and on September 24, from 8:30 a.m. until 1:30 p.m. The meeting of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public on September 24 from approximately 10:30 a.m. to recess. On September 25 the meeting will be open to the public from 10 a.m. until adjournment for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a report on the Division of Intramural Research; a Report on the Mechanism of Interaction of Government and Industry; and, a report from each of the Council subcommittees.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be closed to the public from 1:30 p.m. until recess for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 1:30 p.m. until recess on September 24, in conference room 4. The meeting of the NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public on Spetember 24 from 8:45 a.m. to 10:30 a.m. in conference rooms 7 and 8 respectively, for review, evaluation, and discussion of individual grant applications. The meeting of the full Council will be closed from approximately 8:30 a.m. to 10 a.m. on September 25 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301-496-7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: August 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-19413 Filed 8-16-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Kidney and Urologic Diseases Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on September 10, 1990. The Board meeting will begin at 8 a.m. to approximately 3:30 p.m. at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting which will be open to the public, is being held to discuss the Board's activities and the development of the long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 596-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 13, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-19414 Filed 8-16-90; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute (NEI); Meeting of the National Advisory Eye Council (NAEC)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the NAEC, NEI, September 12-13, 1990, Building 31C, Conference room 8, National Institutes of Health, Bethesda, Maryland.

The NAEC will be open to the public from 8:30 a.m. until approximately 5 p.m. on Wednesday, September 12, 1990, for presentations by the Vision Research Program Planning Subcommittee regarding program planning. The meeting will be open to the public from 8:30 a.m. until approximately 11 a.m. on Thursday, September 13, 1990. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public at the open sessions will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting of the NAEC will be closed to the public from approximately 11 a.m. until adjournment on September 13 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, room 6A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9110, will provide a summary of meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases; 13.868, Anterior Segment Diseases Research; and 13.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: August 3, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-19325 Filed 8-16-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 13 and 14, 1990, Building 31, Conference Room 6, Bethesda, Maryland.

This meeting will be open to the public on September 13, in Building 31, Conference Room 6, from 8:30 a.m. to 11 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 13 from 11 a.m. to 6 p.m., and on September 14 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

In addition to the regular meeting of the National Advisory General Medical Sciences Council, the Council will be meeting on September 13, Building 31, Conference Room 7, Bethesda, Maryland, from 9 a.m. to 3 p.m., in a closed session for the review, discussion, and evaluation of individual grant applications for the National Center for Human Genome Research.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301–496–7301 will provide a summary of the meeting, roster of council members.

Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 938, Bethesda, Maryland 20892, Telephone: 301–496–7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13–821, Biophysics and Physiological Sciences; 13–859, Pharmacological Sciences; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; 13–880, Minority Access Research Careers [MARC]; and 13–375, Minority Biomedical Research Support [MBRS].

Dated: August 8, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–19415 Filed 8–16–90; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on October 12, 1990, from 8:30 a.m. to 1 p.m., at the Washington Sheraton Hotel, 2660 Woodley Road, NW., Washington, DC 20008 (202) 328–2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the Public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A05, Bethesda, Maryland 20892, (301) 496–0554.

Dated: August 10, 1990.

William F. Raub,

Acting Director, NIH.

[FR Doc. 90–19326 Filed 8–16–90; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Blood Resource Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, October 30, 1990, from 8:30 a.m. to 3 p.m. The meeting will be held at the Bethesda Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland, 20814 (301) 657–1234.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Blood Resource Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Ms. Susan D. Rogus, Coordinator, National Blood Resource Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes, of Health, Building 31, room 4A05, Bethesda, Maryland 20892, (301) 496–0554.

Dated: August 10,1990.

William F. Raub,

Acting Director, NIH.

[FR Doc. 90–19327 Filed 8–16–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the Committees of the National Institute of Neurological Disorders and Stroke.

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Advisory Neurological Disorders and Stroke Council and Its Planning Subcommittee

Date: October 3, 1990 (Planning Subcommittee)

Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: 1 p.m.—3 p.m.

Closed: 3 p.m.—recess

Dates: October 4–5, 1990 (Council)

Place: National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892

Open: October 4, 9 a.m.—1 p.m.

Closed: October 4, 1 p.m.—recess; October 5, 8:30 a.m.—adjournment

Executive Secretary: John C. Dalton, Ph.D., Associate Director for Extramural Activities, NINDS, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9248.

Name of Committee: Neurological Disorders Program Project Review B Committee

Date: October 26–28, 1990

Place: Sheraton Hotel, 910 North 7th Street, St. Louis, Missouri 63101.

Open: October 26, 8 a.m.—8:30 a.m.

Closed: October 26, 8:30 a.m.—recess; October 27, 8:30 a.m.—recess; October 28, 8 a.m.—adjournment
Executive Secretary: Dr. A. Beau White, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223.
Name of Committee: Neurological Disorders Program Project Review A Committee
Date: November 7–9, 1990
Place: Hyatt Regency-Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.
Open: November 7, 8:30 a.m.—9 a.m.
Closed: November 7, 9 a.m.—recess; November 8, 8:30 a.m.—recess; November 9, 8:30 a.m.—adjournment
Executive Secretary: Dr. Katherine Woodbury, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Research Related to Neurological Disorders; No. 13.854, Biological Basis Research in the Neurosciences)

Dated: August 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–19416 Filed 8–16–90; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on September 27–28, 1990, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Subcommittees will meet on September 26 as follows:

Extramural Programs Subcommittee, 5th-floor Conference Room, Bg. 38A, 1:30 to 2:30 p.m.; Planning Subcommittee, Conference Room B, Bg. 38, 1:30 p.m. to 2:30 p.m.; Pricing Subcommittee, Conference Room A, Bg. 38, 2:45 to 3:30 p.m. All, but the Extramural Programs Subcommittee, will be open to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 4 p.m. on September 27 and from 9 a.m. to approximately 12 noon on September 28 for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), title 5 U.S.C. and section 10(d) of Public Law 92–463, the entire meeting of the Extramural Programs Subcommittee on September 26 will be closed to the public, and the regular Board meeting on September 27 will be closed from approximately 4 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: August 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–19417 Filed 8–16–90; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Sevice (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 3, 1990. (Call PHS Reports Clearance Officer on 202–245–2100 for copies of package.)

1. Mandatory Guidelines for Federal Workplace Drug Testing Programs—0930–0130—Executive Order 12564 certified the need for and implementation of a drug testing program for employees of Executive Agencies to assure a drug-free Federal workplace. These guidelines promulgate standards for the certification of laboratories to conduct urine drug testing and establish scientific and technical guidelines for drug testing programs to assure compliance with the intent of the Executive Order. Respondents: Businesses or other for-profit, Federal agencies or employees, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting	152	8.855	4
Recordkeeping	52	250.0	1

Estimated Annual Burden..... 18,384

2. Bureau Common Reporting Requirements (BCRR Forms)—0915–0004—The BCRR data are provided by health centers receiving Federal grants and/or using National Health Service Corps personnel. The data are needed for program monitoring, evaluation, and integration, and to identify grantees in need of technical assistance. This revision of the BCRR includes significant changes in content and reduction in reporting frequency. Respondents: Non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Annual Report	894	25	1
Mid-Year Report	90	3	1

Estimated Annual Burden..... 22,620

3. Community Mental Health Centers (CMHC) Construction Grantee Checklist—0930–0104—To ensure that CMHC facilities built with Federal assistance provide mental health services for a 20-year period as requried, NIMH will (1) Survey the universe or CMHC construction grantees annually through a compliance checklist; and (2) utilize survey results to determine appropriate follow up; e.g., waivers/recovery activities. Respondents: State or local governments, non-profit institutions, small businesses or organizations; Number of Respondents: 439; Number of Responses per Respondent: 1; Average Burden per Response: .25 hours; Estimated Annual Burden: 110 hours.

4. Research and Research Training Grant Application and Related Forms—0925–0001—PHS 398 and PHS 2590 are used to apply for new, renewal, noncompeting continuation and supplemental support for research, Institutional National Research Service Awards, and Research Career Development Awards. PHS 2271 is used to activate trainees receiving funds under an NRSA training grant. PHS 3734 is used when research project is transferring from one institution to another. DHHS 568 is used to report

inventions made in the course of work thus supported. Burden associated with changes is shown below. Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organization.

	No. of respondents	No. of hours per response	No. of responses per respondent
Program Income	53,613	.50	1
Statement of Apptmt of Trainee	15,079	.018	1
Biomedical Research Support Grant	653	3.0	1

Estimated Annual Burden.....730,769 hours*

OMB Desk Officer: Shannah Koss-McCallum.

Writen comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: August 13, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90-19418 Filed 8-16-90; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on August 10, 1990.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Residual Functional Capacity Assessment and Mental Residual Functional Capacity Assessment—0960-0431—The information on forms SSA-4734 and SSA-4734 SUP is used to provide the State agency medical consultants with the data needed to properly assess a claimant's ability to perform work-related physical or mental activities on a sustained basis in competitive employment. This information is needed by the consultants to help them make an accurate disability determination. The respondents are medical consultants who work for the State agencies and make disability determinations for the Social Security Administration.

Number of respondents: 2,000.

Frequency of response: 667.5.

Average burden per response: .33 hours.

Estimated annual burden: 447,150 hours.

2. Supplemental Security Income Claim Information—0960-0324—The information collected on the form SSA-L8050 is used by the Social Security Administration to identify SSI applicants/recipients potentially eligible for other benefits, so that they may file and receive such benefits. The respondents are agencies or organizations which pay other benefits.

Number of respondents: 10,000.

Frequency of response: 1.

Average burden per response: 6 minutes.

Estimated annual burden: 1,667 hours.

3. Statement of Living Arrangements, In-Kind Support and Maintenance—0960-0174—The information collected on the form SSA-8006-F4 is used by the Social Security Administration to verify other sources of unearned income which should be used in determining whether or not an applicant or recipient is entitled to receive benefits under the SSI program. The respondents are individuals who apply for or who are receiving SSI payments.

Number of respondents: 775,000.

Frequency of response: 1.

Average burden per response: 7 minutes.

Estimated annual burden: 90,417 hours.

4. Statement of Marital Relationship (By One of the Parties)—0960-0038—The information collected on the form SSA-754 is used by the Social Security Administration to prove or disprove the existence of a common-law marriage. The respondents are individuals who allege a common-law marriage to someone entitled to Social Security benefits.

Number of respondents: 30,000.

Frequency of response: 1.

Average burden per response: 30 minutes.

Estimated annual burden: 15,000 hours.

OMB Desk Officer: Allison Herron.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: August 13, 1990.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 90-19447 Filed 8-16-90; 8:45 am]

BILLING CODE 4190-11-M

*Includes currently approved burden of 701,682 hours.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3134]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its

proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total 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).

Dated: August 8, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Management Documents for Multifamily Housing Projects.
Office: Housing.
Description of the Need for the Information and its Proposed Use: The Management Documents for Multifamily Housing Projects will be used by the Department to determine the acceptability of proposed management agents, assure compliance with program requirements, provide leverage for removing poor managers, and recover excessive management fees.
Form Number: HUD–9832, 9839A, 9839B, 9839C.
Respondents: Individuals or Households, Businesses Or Other For-Profit, and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection:							
Initial Profile	900		1		2		1,800
Updated Profile	2,700		1		½		1,350
Staff & Salaries	3,600		1		⅙		600
Mgmt. Certification	3,600		1		⅙		600
Other Information	1,800		1		3		5,400

Total Estimated Burden Hours: 9,750.
Status: Reinstatement.
Contact: James Tahash, HUD, (202) 708–3944, Scott Jacobs, OMB, (202) 395–6880.

Dated: August 8, 1990.

[FR Doc. 90–19350 Filed 8–16–90; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–90–3135]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total 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).

Dated: August 6, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Outline Specifications.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: The form contains information supplied by the project architect to assure the PHA and the Department that suitable equipment and materials, which meet codes and HUD standards, will be incorporated into the project.
Form Number: HUD–5087.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours
Annual Reporting	240		3.4		3		2,448
Recordkeeping	816		1		.25		204

Total Estimated Burden Hours: 2,652.
Status: Reinstatement.
Contact: William Thorson, HUD, (202) 708–0460, Scott Jacobs, OMB, (202) 395–6880.

Dated: August 6, 1990.

[FR Doc. 90–19351 Filed 8–16–90; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–90–1917; FR–2606–N–85]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: August 17, 1990.

ADDRESSES: For further information, contact James Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized and underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimtely be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use of facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; Room 1E671 Pentagon, Washington, DC 20360–2600; (202) 693–4583; U.S. Air Force: H. L. Lovejoy, Bolling AFB, HQ–USAF/LEER, Washington, DC 20332–5000; (202) 767–4191; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067. (These are not toll-free numbers.)

Dated: August 10, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable Land (by State)

New York

Portion—Transmitter Facility
Sayville Inter. Flight Service Trans. Fac.
Cherry Street
Islip, NY, Co: Suffolk
Landholding Agency: GSA
Property Number: 549030003
Status: Excess
Comment: 7.854 acres; height limitation for construction; most recent use—clear zone for transmitter site. GSA No. 2–U–NY–0590F

Suitable Buildings (by State)

Idaho

Bldg. 121
Mountain Home Air Force Base
Main Avenue
(See County), ID, Co: Elmore
Landholding Agency: Air Force
Property Number: 189030007
Status: Excess
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Montana

House Area Facility #130
Kalispell Air Force Station
Kalispell, MT, Co: Flathead
Landholding Agency: Air Force
Property Number: 189030033
Status: Unutilized
Comment: 960 sq. ft.; 1 story concrete bldg; possible asbestos; easement restrictions; most recent use—automotive shop.

Housing Area Facility #5
Kalispell Air Force Station
Kalispell, MT, Co: Flathead
Landholding Agency: Air Force
Property Number: 189030034
Status: Excess
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #6
Kalispell Air Force Station
Kalispell, MT, Co: Flathead

Landholding Agency: Air Force
Property Number: 189030035
Status: Excess
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #7
Kalispell Air Force Station
Kalispell, MT, Co: Flathead
Landholding Agency: Air Force
Property Number: 189030036
Status: Excess
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #8
Kalispell Air Force Station
Kalispell, MT, Co: Flathead
Landholding Agency: Air Force
Property Number: 189030037
Status: Excess
Comment: 1768 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #9
Kalispell Air Force Station
Kalispell, MT, Co: Flathead
Landholding Agency: Air Force
Property Number: 189030038
Status: Excess
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #10
Kalispell Air Force Station
Kalispell, MT, Co: Flathead
Landholding Agency: Air Force
Property Number: 189030039
Status: Excess
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #11
Kalispell Air Force Station
Kalispell, MT, Co: Flathead
Landholding Agency: Air Force
Property Number: 189030040
Status: Excess
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #12
Kalispell Air Force Station
Kalispell, MT, Co: Flathead
Landholding Agency: Air Force
Property Number: 189030041
Status: Excess
Comment: 1266 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Oklahoma

Bldg. S–701
Fort Sill
701 Randolph Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219030183
Status: Unutilized
Comment: 19903 sq. ft.; steel/wood frame; 1 story; needs rehab; possible asbestos; most recent use—general instruction building.

South Dakota

Bldg. 8475A
Skyway Housing, Ellsworth Air Force Base
81 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189030008
Status: Unutilized
Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potental utilities; secured area with alternate access.

Bldg. 8452A
Skyway Housing, Ellsworth Air Force Base
279 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189030009
Status: Unutilized
Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8472B
Skyway Housing, Ellsworth Air Force Base
96 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189030010
Status: Unutilized
Comment: 918 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8437D
Skyway Housing, Ellsworth Air Force Base
256 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189030011
Status: Unutilized
Comment: 960 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8448B
Skyway Housing, Ellsworth Air Force Base
221 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189030012
Status: Unutilized
Comment: 1114 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8472C
Skyway Housing, Ellsworth Air Force Base
94 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189030013
Status: Unutilized
Comment: 918 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8459D
Skyway Housing, Ellsworth Air Force Base
427 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189030014
Status: Unutilized
Comment: 960 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8477C
Skyway Housing, Ellsworth Air Force Base
71 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189030015
Status: Unutilized
Comment: 960 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Texas

Bldg. 617
Brooks Air Force Base
San Antonio, TX, Co: Bexar
Location: Middle of block between 5th and 6th street.
Landholding Agency: Air Force
Property Number: 189030042
Status: Unutilized
Comment: 3608 sq. ft.; 1 story masonary building; structurally deteriorated.

Bldg 2302
Ford Hood
Headquarters Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219030169
Status: Unutilized
Comment: 7239 sq. ft.; 2 story; needs rehab; potential utilities; presence of asbestos; most recent use—administrative/storage.

Bldg. 2234
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219030170
Status: Unutilized
Comment: 1523 sq. ft.; 1 story; needs rehab; potential utilities; presence of asbestos; most recent use—battalion storage building.

Bldg. 2230
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219030171
Status: Unutilized
Comment: 2025 sq. ft.; 1 story; needs rehab; potential utilities; presence of asbestos; most recent use—office/administrative.

Bldg. 1000
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Bell
Landholding Agency: Army

Property Number: 219030172
Status: Unutilized
Comment: 126 sq. ft.; 1 story; no utilities; most recent use—disintegrator building.
Bldg. 104
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Bell
Landholding Agency: Army
Property Number: 219030173
Status: Unutilized
Comment: 7239 sq. ft.; 2 story; needs rehab; potential utilities; most recent use—office/administrative.
Bldg. 103
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Bell
Landholding Agency: Army
Property Number: 219030174
Status: Unutilized
Comment: 7239 sq. ft.; 2 story; needs rehab; potential utilities; most recent use—office/administrative.
Bldg. 102
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Bell
Landholding Agency: Army
Property Number: 219030175
Status: Unutilized
Comment: 7239 sq. ft.; 2 story; needs rehab; potential utilities; most recent use—office/storage.
Bldg 101
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Bell
Landholding Agency: Army
Property Number: 219030176
Status: Unutilized
Comment: 6903 sq. ft.; 2 story; needs rehab; potential utilities; most recent use—office.
Bldg. 35
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219030177
Status: Unutilized
Comment: 5346 sq. ft.; 1 story; needs rehab; potential utilities; presence of asbestos; most recent use—administrative office.
Bldg. 7
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Bell
Landholding Agency: Army
Property Number: 219030178
Status: Unutilized
Comment: 5214 sq. ft.; 1 story; needs rehab; potential utilities; most recent use—administrative office.
Bldg. 34
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219030179
Status: Unutilized
Comment: 3996 sq. ft.; 1 story; needs rehab; potential utilities; presence of asbestos; most recent use—administrative/office.
Universe of Properties:

Total	58
Suitable	32
Suitable Buildings	31
Suitable Land	1
Unsuitable	26
Unsuitable Buildings	25
Unsuitable Land	1
Number of Resubmissions	0

[FR Doc. 90-19157 Filed 8-16-90; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-040-09-4830-12]

Cedar City District Use Advisory Council; Meeting

Notice is hereby given in accordance with Public Law 92-463, that a two day field meeting of the Cedar City District Multiple Use Advisory Council will be held Wednesday and Thursday, September 19 and 20, 1990. The meeting will begin at 9:30 a.m. at the Mt. Carmel Junction 15 miles north of Kanab, Utah on US Highway 89. The agenda will include: The Muddy Creek-Orderville proposed watershed project, other proposed watershed and pinyon juniper chaining and seeding projects, riparian management, T/E species, and a briefing on ongoing district activities.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at the evening business meeting at 8 p.m. on September 19, 1990, or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District manager, 176 East D.L. Sargent Drive, Cedar City, Utah 84720 by Monday, September 10, 1990. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or the Council Chairman.

Persons interested in accompanying the Council on the field trip must provide their own four wheel drive transportation, lunch and overnight accommodations.

Dated: August 10, 1990.

Gordon R. Staker,

District Manager.

[FR Doc. 90-19309 Filed 8-16-90; 8:45 am]
BILLING CODE 4310-DQ-M

[ID-030-4830-12]

Idaho Falls District Advisory Council: Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Tour of the Idaho Falls District Advisory Council.

SUMMARY: The Idaho Falls District Advisory Council will meet Thursday, October 25, 1990. Notice of this meeting is in accordance with Public Law 92-463. The tour will begin at 8:30 a.m. at the Idaho Falls District Office at 940 Lincoln Road, Idaho Falls, Idaho. The tour is open to the public; however individuals must provide their own transportation. Written comments may be submitted by the public for council consideration. These comments must be submitted by 4:30 p.m., October 24th to the BLM District Office at the above address. The agenda of the Advisory council tour will include review of the small hydropower projects in the Little Lost and Birch Creek Valleys.

Dated: August 10, 1990.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 90-19308 Filed 8-16-90; 8:45 am]
BILLING CODE 4310-GG-M

[NV-060-09-4132-02]

Battle Mountain District Advisory Council Meeting in Eureka, NV

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Tuesday and Wednesday, September 18 and 19, 1990. The meeting will convene at 1 p.m. at the Eureka County Courthouse.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: 1. Cumulative Impact Analysis with emphasis on Roberts Mountain; 2. Battle Mountain District Recreation Program; and 3. Field trip (Wednesday, Sept. 19) to look at mining and mineral exploration on Roberts Mountain.

The meeting is open to the public. Interested persons may make oral statements between 3:30 and 4 p.m. on Tuesday, Sept. 18. If you wish to make an oral statement, please contact James D. Currivan, District Manager, by 4:30 p.m., September 14, 1990.

FOR FURTHER INFORMATION: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635-4000.

Dated: August 9, 1990.

Micheal C. Mitchel,

Battle Mountain, Nevada.

[FR Doc. 90-19323 Filed 8-16-90; 8:45 am]
BILLING CODE 4310-HC-M

[CO-050-4320-12]

Canon City District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal advisory Committee Act (Pub. L. 463), that a meeting of the Canon City District Grazing Advisory Board will be held at 10 a.m. Thursday, September 13, 1990 at the Bureau of Land Management Office, 3170 East Main, Canon City, Colorado.

The purpose of this meeting will be: 1. Discussion of proposed Range Improvement projects. 2. Initiate, conduct and settle business pertaining to the expenditure of Range Betterment Funds. 3. Update Board on status of ongoing resource management planning efforts in the Canon City District.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with a public comment period at 1 p.m. Any member of the public may file with the Board a written statement concerning matters to be discussed. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Donnie R. sparks, District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212 or telephone (719) 275–0631.

Stuart A. Parker,

Acting District Manager.

[FR Doc. 90–19365 Filed 8–16–90; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-00-4212-13; N-35298]

Issuance of Land Exchange Patent and Order Providing for Opening of Public Lands; Nevada; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: The notice of issuance of land exchange patent and opening order published on page 38093 of the September 29, 1988 edition of the **Federal Register** (FR Doc. 88–22252) contained an error in the legal description of the lands the United States acquired from Ray Corta. The proper legal description is as follows:

Mount Diablo Meridian, Nevada

T. 32 N., R. 54 E., sec. 13, all.
T. 31 N., R. 55 E., sec. 9, all; sec. 15, all.

The area described contains 1,920 acres.

At 10 a.m. on October 31, 1988, said lands became open to the operation of the public land laws, the mining laws, material sale laws, and the mineral leasing laws except for oil and gas.

Dated: July 31, 1990.

Fred Wolf,

Acting State Director, Nevada.

[FR Doc. 90–19321 Filed 8–16–90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-14; N-50904]

Realty Action; Postponement of Sale Date for Public Land Sale in Washoe County, NV

The public land sale scheduled for September 12, 1990, as announced in the Notice of Realty Action published in the **Federal Register**, on June 21, 1990, (55 FR 25360) is hereby postponed until further notice pending a final decision by the State Director regarding a protest to this sale.

Any sale bids received on or before September 12, 1990, will be returned immediately to the party of issuance.

Upon resolution of the protest, the sale will be rescheduled and all affected and interested parties will be contacted regarding the new sale date.

Any interested parties who did not receive a copy of this Notice of Realty Action by mail, and would like to be informed of the new sale date for the Sparks Public Land Sale should contact the Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, within 30 days of the publication date of this notice.

Dated this 7th day of August 1990.

Norman L. Murray,

Acting District Manager.

[FR Doc. 90–19322 Filed 8–16–90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-040-00-4110-08]

Egan Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Change in the scope of the amendment to the Egan Resource Management Plan (RMP) as was published in the **Federal Register**, Vol. 54, No. 192, Thursday, October 5, 1989, page 41176.

SUMMARY: The Bureau of Land Management (BLM) Ely District Office gives notice of a reduction in the scope of the amendment to the Egan RMP. The Egan RMP Energy and Minerals Amendment has been changed to an Oil and Gas Leasing Amendment and will address only the oil and gas leasing issues for the Egan Resource Area.

FOR FURTHER INFORMATION CONTACT: Gene L. Drais, Area Manager, Egan Resource Area, Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301 or telphone (702) 289–4865.

SUPPLEMENTARY INFORMATION: The Ely District has made the decision to address only the oil and gas leasing issues in this amendment. This will exclude consideration of other fluid minerals and salable or locatable minerals issues. After review of public comment received during the initial scoping period, the complexity of issues relating to locatable and other mineral commodities indicate the need to treat these resources in a sepaate amendment subsequent to the amendment for oil and gas leasing. It has been determined that the resource information required to delineate locatable and other mineral potentials, reasonable foreseeable development scenarios (RFDS), and potential impacts to other resource values requires additional and more detailed information. Therefore, in order to meet the planning schedule (**Federal Register** Vol. 55, No. 75, Wednesday, April 18, 1990, page 14482), this amendment will address only oil and gas leasing.

The proposed planning action will result in determinations as to which public lands will be leased for oil and gas resources and what stipulations or conditions may be necessary to protect other resource values. The issues that will be addressed consist of:

1. Determination of which lands will be open to oil and gas leasing.

2. Determination of what stipulation, conditions, or designations are necessary for exploration and/or development of oil and gas resources to protect, maintain, and/or enhance other resources.

3. Determination of the impacts to the oil and gas industry from the conditions placed on oil and gas leasing, exploration and development.

There are no significant changes to the proposed planning criteria as published in the October 5, 1989, **Federal Register** Notice of Intent. The planning criteria specifically relating to oil and gas leasing portion of fluids minerals will apply to this amendment. Those planning criteria relating to locatable, salable, and other leasable minerals will not apply.

Dated: August 9, 1990.

Fred Wolf,

Acting State Director, Nevada.

[FR Doc. 90-19311 Filed 8-16-90; 8:45 am]

BILLING CODE 4310-40-M

[OR-942-00-4730-12: GPO-350]

Filing of Plats of Survey; OR/WA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 23 S., R. 1 W., accepted 7/20/90
T. 27 S., R. 3 W., accepted 6/22/90
T. 21 S., R. 4 W., accepted 7/10/90
T. 40 S., R. 3 E., accepted 7/20/90

Washington

T. 40 N., R. 34 E., accepted 7/20/90 (sheets 1 and 2)

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision. For further information contact: Bureau of Land Management, 1300 NE 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 7, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-19366 Filed 8-16-90; 8:45 am]

BILLING CODE 4310-33-M

[MT-930-00-4214-10; MTM 79374]

Proposed Withdrawl and Opportunity for Public Meeting, MT

Correction

In notice document 90-18040 appearing on page 31452 in the issue of Thursday, August 2, 1990, make the following correction:

In the first column, second line, "Park County" should read "Beaverhead County."

Dated: August 9, 1990.

John A. Kwiatkowski

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-19310 Filed 8-16-90; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Record of Decision for Issuance of an Endangered Species Permit To Allow Incidental Take of the Endangered Stephens' Kangaroo Rat in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Record of decision.

SUMMARY: Notice is hereby given that the Fish and Wildlife Service (Service) has decided to issue a permit to allow incidental take of the endangered Stephens' Kangaroo rat (SKR) (*Dipodomys stephensi*) in western Riverside County (County), California. The permit is issued under the authority of section 10(a) of the Endangered Species Act of 1973, as amended (ESA), for a duration of 2 years. In conjunction with approval of this permit, it is also my decision to implement a Short-term Habitat Conservation Plan (HCP) Alternative B as the preferred means to allow the County and the Cities of Riverside, Perris, Moreno Valley, Lake Elsinore, and Hemet (Cities) to carry out otherwise lawful private and public improvement projects in occupied SKR habitat which are compatible with the continued existence of the SKR. This decision is based upon: Information and the analysis contained in the Final Environmental Impact Statement (EIS) and the Environmental Assessment for a subsequent amendment to this permit application, the required HCP, comments from the public on the draft EIS, and the Implementation Agreement for administering the permit and managing the conserved habitat reserves. This Record of Decision was prepared in accordance with the Council on Environmental Quality Regulations, CFR 1505.2.

SUPPLEMENTARY INFORMATION:

Background

The County and the Cities have applied to the Service for a permit to incidentally take the SKR, a federally listed endangered species, in the County for a period of 2 years. A HCP was submitted as part of the application. The required HCP presents a program of biological research, habitat protection, and habitat acquisition. The area covered by the permit application includes virtually the entire known historical range of the SKR within the County.

The listing of the SKR in October of 1988, and the attending prohibition of "take" required by the ESA posed an immediate and substantial constraint to many types of land development over much of the County. Existing general development plans and zoning designations were oriented towards the accommodation of the rapid urbanization occurring in this portion of the County. A substantial number of land development projects, previously approved by their respective jurisdiction and in varying stages of construction, were halted because continuance of these projects would have resulted in the "taking" of the SKR. Approval of proposed development and use permits, as well as some public facilities projects, is also presently constrained by the prohibition of take contained in section 9 of the ESA. A section 10(a) permit constitutes an exception to the taking prohibitions of section 9.

The action being taken involves the issuance by the Service of an ESA 10(a) permit that would allow for the incidental take of the endangered SKR in certain areas of the County for a period of 2 years. It also involves the approval and implementation of a HCP and an attending Implementation Agreement.

The approved action includes the following elements:

1. Approval of the short-term HCP developed by the County, the Cities, the Service, and the California Department of Fish and Game (CDFG);

2. Issuance of a conditioned section 10(a) permit by the Service authorizing the incidental take of SKR for a 2 year period on lands located within the HCP

fee area, but outside of proposed reserve study areas;

3. Authorization and execution of an Implementation Agreement by the County, the Cities, and the Service providing for the implementation of the Short-term HCP;

4. Authorization and execution of a Joint Powers Agreement by the Cities and the County;

5. Authorization and execution of a Memorandum of Understanding (MOU) between the County and CDFG authorizing the incidental take of SKR under the California Endangered Species Act (SKR is State listed as threatened);

6. Implementation of the Short-term HCP by the County, the Cities, the Service, CDFG, and the various landowners and project proponents, including, but not limited to:

a. Development of occupied SKR habitat within the "take" area (area within the HCP fee area, but outside of the reserve study areas) of up to 4,400 acres of occupied habitat or 20 percent of total occupied SKR habitat, whichever is less, resulting in the incidental take of SKR;

b. Acquisition of SKR habitat (acquired on a 1:1 ratio with the amount of SKR habitat affected by incidental take) within reserve study areas which would be managed by the Riverside County Habitat Conservation Agency (under the authority of the JPA) or their agent for the benefit of the SKR;

c. Monitoring and enforcement of the provisions and conditions of the ESA, Implementation Agreement, Short-term HCP, section 10(a) permit, and the MOU;

d. Planning and carrying out of studies with respect to a Long-term conservation plan;

e. The seeking of additional financing;

f. Consideration of further reserve study area or conservation plan fee area boundary amendments and applications for permits to develop non-SKR habitat within the reserve study areas (together with further environmental review as required by the ESA, National Environmental Policy Act (NEPA), and the California Environmental Quality Act to ensure the ecological integrity of the study areas prior to final decisions on reserve area boundries; and

g. The preparation and submission of plans, proposals, applications, and other ducuments and studies in connection with the foregoing.

This approved action includes some minor modifications to the short-term HCP and implementation agreement originally submitted by the applicants. The modifications were requested in an amendment to the original application, received by the Service on June 1, 1990. These modifications simply involve a change in the accounting period for incidental take and SKR habitat acquisition from 3 to 6 months and some additional procedures for a limited amount of acreage. Based on our subsequent Environmental Assessment the Service has concluded that it would not be necessary to prepare a supplemental Environmental Impact Statement to consider the technical modifications.

Alternatives Considered

Three alternatives were discussed in detail in the Final EIS for the proposed action. The first two were variations of what is termed the short-term HCP.

Absent any conservation plan that would be implemented by a section 10(a) permittee, responsibility for protection of the SKR would rest solely with the Service and CDFG. This no project alternative was considered as the third alternative action to the proposed permit application.

Various other alternatives were considered but rejected during the initial development of the short-term HCP and the identification of the potential habitat losses connected with its implementation. These alternatives included development of a Long-term HCP without a short-term HCP, development of independent conservation plan's by the individual applicants or on a site by site basis, and the development of an inter-county conservation plan, based upon cooperation among San Diego, San Bernardino, and Riverside Counties.

Through public and internal input, the following alternatives, additional to those alternatives discussed in the Draft EIS, have been considered but were also rejected. A discussion of these alternatives has been included in the Final EIS. These include: Development of a captive breeding program; assurance of the continued existence of the species through implementation of an agreement among public agencies currently responsible for the management of SKR habitat; and acquisition of occupied SKR habitat through private donations. It was further recognized that development and implementation of an SKR Recovery Plan by the Service would not address the need for authorization for incidental take.

The alternatives of a captive breeding program and a conservation program, both on public lands were rejected primarily because there is not enough public lands in the area to ensure conservation of the species. Also, both alternatives require long-term intensive management that would not adequately address the conservation of this species in the wild, under the mandate of the ESA. Acquisition of occupied SKR habitat through private donations would result in small, scattered and isolated parcels of occupied habitat. This would not ensure survival or viability of the species over a long-term period.

The following is a more detailed summary of the approved action.

The primary mitigation feature of the HCP effort for the SKR is the identification and preservation of a viable system of permanent SKR reserves. Because of the time and research needed to plan and acquire these reserves, however, a Short-term HCP to facilitate the protection, evaluation, and acquisition of habitat for the species was developed.

Two Short-term HCP alternatives were reviewed in the EIS: Alternative A and Alternative B. The Short-term HCP, Alternative A was indicated as the proposed action in the Draft EIS that was circulated for public review. The Short-term HCP, Alternative B was called the Modified Study Area Alternative in the Draft EIS. Short-term HCP, Alternative B is identical to the Short-term HCP, Alternative A, with the exception of the configuration of the SKR study areas. The Short-term HCP, Alternative B is identified as the proposed action and the Service preferred alternative in the Final EIS. The modifications proposed under the B alternative were reviewed and approved by the County and participating Cities. These boundary modifications incorporated some important information that provided for important biological corridors between study areas or encompassed new areas of SKR habitat or potential habitat into the reserve system study areas. These modified boundaries also eliminated some portions of study areas that the permit applicants believed were vital for other uses based on land use and land cost considerations. As a result, study area boundaries were adjusted in six of the ten reserves. Three study areas decreased in size and three others are now larger.

Ten study areas have been identified as potential reserve sites under the approved action. Together, the study areas comprise some 81,204 acres, of which 24,750 is already in public or semipublic ownership. The study area contains about 16,052 acres of occupied SKR habitat in the County, including all major populations identified in the CDFG report and approximately 80 percent of all occupied SKR habitat. The total area of each study area ranges from about 1,640 to 20,010 acres; and the

amount of occupied habitat in each ranges from under 200 to about 6,229 acres. All of the areas include unincorporated lands, and four are known to support populations of two or more other species of concern.

The key components of the Short-term HCP included the following: Limitations on the Location of Take; Limitations on the Amount of Take; Mitigation of Allowed Take; Imposition and Use of Mitigation Fees; Reserve Planning and Financing; Monitoring of Potential Reserve Sites; Periodic Review Process; Implementation Agreements.

Evaluation of Alternatives

All alternatives actively considered were evaluated against a set of seven general categories where potential impacts were identified. These potential areas of impact were identified during a series of scoping efforts including a public meeting held on June 12, 1989, in conjunction with a Notice of Intent to prepare an EIS that was published in the **Federal Register** on June 2, 1989. These seven general areas of impact include the following:

(1) Biological resources; (2) land use; (3) public improvements; (4) recreational facilities; (5) brush management; (6) socioeconomics; and (7) cumulative impacts.

Evaluation of the impacts to biological resources included a specific analysis of the impacts of the program on the SKR. This is briefly summarized below and discussed in more detail under Issuance Criteria.

Based upon a complete evaluation of the alternatives, considering all areas of impacts, Alternative B was selected as the Service preferred alternative and the alternative most likely to ensure survival and viability of the species into the future.

For the reasons discussed in the Issuance Criteria, the Service believes that this selection represents the most environmentally preferred Alternative and that all practical means to avoid or minimize environmental harm have been considered and incorporated.

The principal environmental consequence of the proposed action would be incidental taking of the SKR as a result of development in 4,400 acres or up to 20 percent of the occupied habitat of the SKR, whichever is less. While this is clearly a significant impact, the permit applicants have prepared a program that will substantially mitigate these impacts through the implementation of their short-term HCP and the resulting establishment of permanent resources for the remaining SKR populations.

In addition to benefiting the SKR, this HCP will protect the habitat of other sensitive species. Several natural communities of special concern are located within the proposed study areas. Nine of 24 wildlife species of concern in the County occupy habitat within the boundaries of the study areas.

The implementation of the HCP is not expected to result in substantial land use impacts. The present land use constraints affecting SKR habitat do not stem from the HCP but result from the provisions against take contained in section 9 of the ESA. The implementation of the HCP and the issuance of a section 10(a) permit will relax a substantial land use constraint presently affecting much of the County, confining this constraint to the limitations of the permit.

Several instances where proposed study area configurations conflicted with planned public facilities improvements were identified. It was in recognition of these conflicts that the proposed HCP includes provisions for incidental take to occur in study areas only in conjunction with such projects and only after the appropriate independent environmental review of these projects and concurrence by the Service. Under the proposed action these projects include the Interstate 215/Allesandro Boulevard interchange, the enlargement of the San Diego Canal, and a Southern California Gas pipeline that would cross a portion of the San Jacinto Wildlife Area study area. Metropolitan Water District facilities at Lake Skinner, presently being upgraded, would be added, as would the proposed alignment of the County's Gavilan Road. Southern California Gas Company has been requested by the California Public Utilities Commission to construct a new pipeline through a portion of the Sycamore Canyon study area.

The proposed HCP was found to have no substantial effects under the category of recreational facilities in the County. The allowed recreational uses at existing facilities would not be impacted by the configuration of the proposed study areas to any extent beyond the existing limitation against the taking of SKR.

The brush management practices of the applicant jurisdictions have been modified in such a way as to avoid substantial impacts to SKR populations occurring within study areas.

The SKR mitigation fees associated with the permit applicants HCP were seen as having relatively minor socioeconomic impact. The primary area where such an impact would be felt would be in housing prices. The SKR fee of $1,950 per acre or $1,000 per residence would represent an increase in housing prices of a maximum of $1,000. For a typical subdivision, developing at five dwelling units per acre, the fee would add approximately $400 to the cost of the average single family dwelling. This fee represents about 1.5 percent of the current estimated annual appreciation of $27,000 per year (based on a median price of $150,000). This is not seen as a significant added cost.

The issuance of the section 10(a) permit, together with other past, present, and proposed projects in the region could initially have a cumulative impact on the existence of the SKR in the County. However, the Service, the County, and participating Cities examined the potential impacts of the proposed action on the SKR with this in mind. The responsible agencies believe that the small, isolated parcels of occupied habitat outside of the reserve study areas would likely be eventually extirpated due indirectly to fragmentation of habitat, with or without the issuance of the section 10(a) permit. The provisions of the HCP for the acquisition of SKR habitat to be placed in protective status and managed for the benefit of the species would provide for the needed protective reserves for the SKR and other sensitive species. The responsible agencies would continue to examine all proposed regional projects as they may relate to the design of future reserves, provisions of the HCP and conditions of the section 10(a) permit.

Issuance Criteria for a section 10(a) Permit (50 CFR 17.22 (b)(2))

Upon receiving an application completed in accordance with the application requirements for an incidental taking permit, as described in section 10(a) of the ESA and the regulations at 50 CFR 17.22 (b)(1), the Director of the Fish and Wildlife Service will decide whether or not a permit should be issued. The Director shall consider the general criteria for issuing permits found at 50 CFR 13.21 (b) and shall issue the permit if he further finds that the following six specific criteria have been adequately met.

1. The taking will be incidental

The County and the Cities have applied to the Service for a permit to incidentally take the SKR under the authority of section 10(a) of the ESA. The underlying purpose of the permit applicants proposal is to ensure the continued existence of the species while resolving potential conflicts that may arise from otherwise lawful private or public improvement projects.

The County, due to the escalation of housing and commercial property prices

in neighboring locales of southern California, provides more affordable residential and business opportunities. This has resulted in rapid urban development activities scattered throughout this area.

The permit applicants, on behalf of all the various development activities they regulate within the designated HCP area (i.e. the area subject to the permit application) of their respective jurisdictions, seek to authorize limited take of the SKR. This take will be incidental to the otherwise lawful development activities that would occur as a result of grading or other earth moving activities necessary for housing construction or related activities. The purpose of these activities is development of land and they are not directed at the SKR. All authorized take would be incidental to these otherwise legally authorized land development activities.

2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking

The permit applicants have developed a HCP, pursuant to the incidental take permit requirements codified at 50 CFR 17.22 (b)(1), that proposes to minimize and mitigate the impact of the proposed take. Under the provisions of the plan, the take would be minimized in three ways.

(1) Approximately 75 percent of the known occupied habitat of the SKR in the County (i.e. permit plan area) is located within the "reserve study areas", as designated by the plan. Under the provisions of the plan, these areas would not be subject to any take other than limited essential utility projects approved by the Service. This 75 percent of the occupied habitat represents virtually all of the large and/or more or less contiguous patches of remaining occupied habitat of the SKR in the County. The intention of this design is to provide adequate protection of the remaining viable areas of habitat while studies continue to define the precise boundaries of a system of reserves for the species. There is a cap on the total amount of take that would be allowed by this permit. This is 20 percent of the total known occupied habitat (only allowed outside the study areas) or 4,400 acres, whichever is less. As the permit applicants both implement this plan and/or continue their studies towards a long-term HCP the data on distribution and abundance of the species within the plan area will become more precise. Nevertheless, this cap on take will remain.

(2) The take allowed by this permit would involve only 20 percent or 4,400 acres, which ever is less (as discussed above) and it is limited only to the scattered, small and disjunct parcels that lie outside the study areas. Of the 40 habitat areas (i.e. patch of occupied SKR habitat) located outside the reserve study areas (as identified by the comprehensive assessment of SKR habitat conducted by Dr. Michael O'Farrell and published by CDFG), 25 are 50 acres or less in size and only 4 are larger than 250 acres. These small habitat areas are subject to a variety of encroaching human land uses that will eventually lead to the probable expiration of these above-mentioned isolated populations. This fragmentation effect represents one of the chief threats to this species in general, and particularly to these above-mentioned isolated populations. Absent direct and intensive protection and management of these specific sites and the surrounding habitat and neighboring occupied habitat with the intention of maintaining a viable biological community, the long-term survival of these isolated populations is unlikely.

(3) This short-term HCP would provide periodic review and quarterly monitoring to ensure that prime habitat areas (including potentially suitable habitat adjacent to occupied areas) will not be fragmented by small amounts of take over the permit period. The intention is to promote the eventual establishment of a system of viable of biological reserves to sustain this species over its historical range for the indefinite future.

The take would be mitigated by the short-term HCP through the following three ways:

(1) Funds would be raised to plan and establish the foundation of a network of permanent biological reserves for this species. The planning effort would identify the ecological strategy for a reserve system and the long-term conservation of the species throughout its historical range in Riverside County.

(2) Acquisition would be accomplished at the rate of 1 acre of occupied habitat within a reserve study area for each acre of occupied habitat subject to incidental take outside the study areas. This effort would consolidate protected habitat within the reserve study areas, build upon existing public ownership, and ultimately lead towards establishment of viable, manageable, and defensible reserve areas.

(3) The acquisition effort would be based on priorities established by the reserve planning process. The more important areas would be acquired as they are identified. Selection and acquisition of habitat areas would be subject to evaluation and approval by the Service. All lands acquired on behalf of the permit applicants, subsequent to the date this species was proposed for listing (November 18, 1987), will be eligible to be credited to the permit applicants acquisition effort. However, these lands must be approved by the Service as suitable for inclusion in a network of permanent reserves, as described in the implementation agreement.

3. The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforseen circumstances will be provided

The permit application is for a duration of 2 years and for a maximum of 4,400 acres of occupied SKR habitat or 20 percent (whichever is less) of the known occupied range in Riverside County. To implement the HCP, funding is required for program administration, biological and land planning, land acquisition, and habitat management. Land values vary from approximately $2,000 per acre to $300,000 per acre or more for lands where the SKR is currently found. Therefore, land acquisition costs are going to require the vast majority of the necessary funds for this program. Funds may also be used for all purposes ancillary to those stated above, including the studying and planning for establishment and operation of permanent reserves for the SKR and multi-species-ecosystem reserves in the conservation planning area. However, not less than 10 percent of all mitigation fees collected, pursuant to the Implementation Agreement, shall be set aside and used for management, operation and maintenance of land acquired for the SKR reserves.

The Implementation Agreement for the HCP outlines the obligations of the parties to this plan as well as other legal requirements described within the plan including funding. Funds to implement this HCP in its entirety are to be derived from as many sources as possible including, but not limited to, State and Federal agencies such as the CDFG, the Bureau of Land Management and the Service (through potential appropriations from the Land and Water Conservation Fund); existing and future Federal, State and local bond issues; local and regional open space and habitat assessment districts; land conservancies and trusts as well as mitigation fees collected from persons, firms or entities which develop or otherwise disturb any parcel of land located within a participating political jurisdiction in the HCP area. Mitigation

fees are essential to the program at this time, although other sources are being explored and pursued by the permit applicants. The fee is currently set at $1,950 per acre or $1,000 per residence for each parcel proposed for development within the overall HCP area during the term of this proposed section 10(a) permit. Such a mitgation fee, when added to other funding sources contemplated by this Implementation Agreement, is sufficient to implement the HCP. In this regard, the Implementation Agreement provides that the amount of occupied SKR habitat in which incidental take is allowed during any 6 month period following approval of the plan shall not exceed by more than 10 percent in area, the amount of occupied habitat acquired as replacement habitat suitable for SKR reserves.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild

Issurance of the section 10(a) permit was reviewed by the Service under section 7 of the ESA. In a biological opinion issued on April 9, 1990, and a supplemental biological opinion issued on July 23, 1990, which are incorporated herein by reference, the Service concluded that issuance of the incidental take permit is not likely to jeopardized the continued existence of the SKR.

5. Other measures, as required by the Director of Fish and Wildlife Service, have been met

The Final EIS, HCP, and Implementation Agreement have incorporated all elements necessary for issuance of a section 10(a) permit. All such elements are addressed elsewhere in this Record of Decision.

6. The Director of the Fish and Wildlife Service has received the necessary assurances that the plan will be implemented

The permit will only take effect if and when the Implementation Agreement for the HCP and ancillary programs is signed by the necessary parties. These parties include:

—The permit applicants (Riverside County, the Cities of Riverside, Perris, Lake Elsinore, Riverside, Moreno Valley, and Hemet).
—The Riverside County Habitat Conservation Agency (the Joint Powers Authority).
—The U.S. Fish and Wildlife Service.

The signed Implementation Agreement is incorporated herein by reference. The Implementation Agreement is a legally binding agreement assuring the performance of the signatory parties. Performance of the Implementation Agreement will be included as a condition of the section 10(a) permit. Failure to perform these obligations may be grounds for suspension or revocation of the permit.

FOR THE INFORMATION CONTACT: Robert Smith, Assistant Regional Director, U.S. Fish and Wildlife Enhancement, Portland Regional Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; telephone 503–231–6150.

Provisions or procedures directly attributable to this decision shall become effective upon signature.

Dated: July 31, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–19309 Filed 8–16–90; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming initial meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: September 14, 1990; 8 a.m. to 11:30 a.m.

ADDRESSES: Room 1–A, Metropolitan Council, Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota.

FOR FURTHER INFORMATION CONTACT: Norman J. Reigle, Superintendent, Mississippi National River and Recreation Area, Post Office Box 65456, St. Paul, MN 55165–0456 (612–290–4160).

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

Dated: August 3, 1990.

Don H. Castleberry,

Regional Director, Midwest Region

[FR Doc. 90–19314 Filed 8–16–90; 8:45 am]

BILLING CODE 4310–70–M

Proposed Addition to U.S. Indicative Inventory of Potential Future Nominations to the World Heritage List

AGENCY: National Park Service, Department of the Interior.

ACTION: Public notice and request for comment.

SUMMARY: On March 20, 1990, the Department of the Interior, through the National Park Service, set forth in a public notice the process and schedule that will be used in calendar year 1990 to identify and prepare U.S. nominations to the World Heritage List (55 FR 10327). In addition, the March 20 notice identified the criteria and requirements that U.S. properties must satisfy before nomination for World Heritage status and solicited public comments and suggestions regarding cultural and natural properties that should be considered as potential U.S. nominations this year. The March 20 notice listed the Indicative Inventory of Potential Future Nominations as a basis for comment. This notice announces and invites comment on the proposed addition to the Indicative Inventory of the property described below.

DATES: Written comments or recommendations regarding the property listed herein as a proposed addition to the U.S. Indicative Inventory must be received on or before September 17, 1990, to ensure full consideration. A decision on the proposed addition will be made based on public comment and will be published in the **Federal Register.**

ADDRESSES: Written comments or recommendations should be sent to the Director, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127. Attention: World Heritage Convention-023.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Milne, Chief, Office of International Affairs, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127 (202–343–7063).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 112 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. The Convention complements each participating nation's heritage conservation programs and provides for:

(a) The establishment of an elected 21-member World Heritage Committee to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of a World Heritage Fund to assist participating countries in identifying, preserving, and protecting World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and

(f) The promotion and enhancement of public knowledge and understanding of the importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List. The World Heritage Committee reviews and evaluates all nominations against established criteria. Under the Convention each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 16 U.S.C. 470a-1, a-2). On May 27, 1982, the Interior Department published in the Federal Register the policies and procedures which are used to carry out this legislative mandate (47 FR 23392). The rules, codified at 36 CFR part 73, contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status (i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment).

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Land Management within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; Forest Service, Department of Agriculture; the U.S. Information Agency; and the Department of State.

PROPOSED ADDITION TO THE U.S. INDICATIVE INVENTORY: The following cultural property, indicated by major theme, has been proposed as an addition to the U.S. Indicative Inventory of Potential Future Nominations. Also listed are the World Heritage Criteria that the property appears most nearly to satisfy:

Arizona.

Architecture: Wright School.

Taliesin West, Arizona (33 50'N.11 90'W). This desert complex, the winter quarters of the Taliesin Fellowship, operated as the complement to Taliesin in Wisconsin, during the last 20-odd years of Wright's life. Together with Taliesin, Wisconsin, this property expresses Wright's educational theories and vision of society, as well as his mature architectural concepts.

Criteria: (i) Represents a unique artistic achievement, a masterpiece of the creative genius; and (ii) has exerted great influence over a span of time and within a cultural area of the World on developments in architecture.

Dated: August 6, 1990.

Knute Knudson, Jr.,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90-19315 Filed 8-16-90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Activities Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) were submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor (202) 275-7322. Comments regarding this information collection should be addressed to Darlene Proctor, Interstate Commerce Commission, Room 2121, Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Type of clearance: Reinstatement of a previously approved collection for which approval has expired.

Bureau/office: Bureau of Accounts.

Title of form: Report of Railroad Employees, Service and Compensation.

OMB form number: 3120-0074.

Agency form no.: ICC Wage Forms A and B.

Frequency: Form A—Quarterly. Form B—Annually.

No. of respondents: 18.

Total burden hours: 9360.

Type of clearance: Existing collection in use without own OMB control number.

Bureau/office: Bureau of Accounts.

Title of form: Monthly Report of Number of Railroad Employees.

OMB form number: 3120-{to be assigned}—Formerly combined with 3120-0074.

Agency form no.: ICC Form C.

Frequency: Monthly.

No. of respondents: 18.

Total burden hours: 3,024.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-19406 Filed 8-16-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31718]

Exemption; Iowa Power, Inc. and CBEC Railway, Inc., Acquisition and Operation Exemption; Iowa Southern Railroad Co. Line Near Council Bluffs, IA

Iowa Power, Inc. (IP),[1] a noncarrier, has filed a notice of exemption to acquire and operate approximately 3.84 miles of rail line owned by Iowa Southern Railroad Company (Iowa Southern). The line begins at the eastern terminus of the line and yards of the Union Pacific Railroad, Inc. in Council Bluffs, IA, and extends in a southeasterly direction to the point at which the property sold in 1989 by Iowa Southern to the Iowa Natural Heritage Foundation (INHF) for public trail use begins (or milepost 407.0). IP also seeks to return to operation the former rail line over the right-of-way held by INHF for trail use, beginning at milepost 407.0 and extending in a southeasterly direction for a distance of 350 feet. The entire line subject to the proposed transaction

[1] Formerly, Iowa Power and Light Company, Inc.

totals approximately 3.85 miles. IP's newly incorporated railroad subsidiary, CBEC Railway, Inc. (CBEC), will operate the line.

This transaction is related to a joint petition filed by INHF and CBEC requesting that the Commission modify the Notice of Interim Trail Use issued in Docket No. AB–298 (Sub–No. 1X), *Iowa Southern Railroad Company—Exemption—Abandonment in Pottawattamie, Mills, Fremont, and Page Counties, IA* (not printed), served December 12, 1988. In their petition, they request that the Commission free the above-described portion of the right-of-way from the trail use agreement so that the line may be reactivated for rail purposes.[2]

This transaction also is related to a complaint proceeding in Docket No. 40224, *Iowa Power and Light Company v. Burlington Northern Railroad Company.* That proceeding is being held in abeyance to give IP an opportunity to develop an alternative rail line to its Council Bluffs Energy Center through the filing of this notice of exemption and other related petitions.[3]

Applicants shall retain their interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.[4]

Comments must be filed with the Commission and served on: Keith D. Hartje, Iowa Power, Inc., 666 Grand Avenue, Des Moines, IA 50309; and Nicholas J. DiMichael, Donelan, Cleary, Wood & Maser, P.C., 1275 K Street, NW., Washington, DC 20005–4006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ad initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 8, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–19405 Filed 8–16–90; 8:45 am]

BILLING CODE 7035–01–M

[2] IP acknowledges that Commission action on the request to reactivate the right-of-way segment for rail purposes is necessary before it may consummate this transaction. Since this is the first request for reactivating a rail-banked line that has been filed with the Commission, this matter will be addressed in Docket No. AB–298 (Sub-No. 1X). The authority granted under this notice of exemption will be subject to the Commission's decision in that proceeding.

[3] The other petitions filed by IP are: (1) A petition for exemption from 49 U.S.C. 10901 in Finance Docket No. 31717, *Iowa Power, Inc.—Construction Exemption—Council Bluffs, IA,* to construct a new line from milepost 407.0 to a point of intersection with IP's loop track, which ultimately terminates at the Energy Center; and (2) a petition for a order in Finance Docket No. 31718, *Iowa Power, Inc.—Petition Under 49 U.S.C. 10901(d),* to permit IP's construction to cross an abandoned rail line or, in the alternative, a motion to dismiss the petition to cross for lack of jurisdiction.

[4] Applicant has certified that it has complied with the notice requirements of 49 CFR 1105.11 and has consulted with the Iowa Bureau of Historic Preservation regarding sites or structures on the line listed or nominated for listing in the National Register of Historic Places.

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 May 7, 1990, Applied Science Labs, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-ethylamphletamine (1475)	I
cis-4-Methylaminorex (1590)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-methylenedioxyamphetamine (MDA) (7400).	I
N-hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-methylenedioxy-N-ethylamphetamine (7404).	I
3,4-methylenedioxymethamphetamine (MDMA) (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethylamine analog of phencyclidine (7455).	I
Pyrrolidine analog of phencyclidine (7458).	I
Thiophene analog of phencyclidine (7470).	I
Dihydromorphine (9145)	I
Thebacon (9315)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603).	II
Cocaine (9041)	II
Codeine (1950)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments 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 Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than September 17, 1990.

Dated: August 6, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90–19337 Filed 8–16–90; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the

foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

Corrections to General Wage

Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate volume(s).

Volume III

Wage Decision No. ID90-1, Modification 5.

Pursuant to the Regulations, 29 CFR part 1, section 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

Modification to General Wage

Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
GA90-1 (Jan. 5, 1990)..... p. 213, p. 214
GA90-3 (Jan. 5, 1990)..... p. 217, p. 220
GA90-4 (Jan. 5, 1990)..... p. 221, p. 222
GA90-5 (Jan. 5, 1990)..... p. 225, p. 226
GA90-6 (Jan. 5, 1990)..... p. 227, p. 228
GA90-7 (Jan. 5, 1990)..... p. 229, p. 230
GA90-8 (Jan. 5, 1990)..... p. 231, p. 232
GA90-12 (Jan. 5, 1990)..... p. 241, p. 242
GA90-13 (Jan. 5, 1990)..... p. 243, p. 244
GA90-14 (Jan. 5, 1990)..... p. 245, p. 246
GA90-15 (Jan. 5, 1990)..... p. 247, p. 248
GA90-16 (Jan. 5, 1990)..... p. 249, p. 250
GA90-17 (Jan. 5, 1990)..... p. 251, p. 252
GA90-18 (Jan. 5, 1990)..... p. 253, p. 254
GA90-19 (Jan. 5, 1990)..... p. 255, p. 256
GA90-20 (Jan. 5, 1990)..... p. 257, p. 258
GA90-24 (Jan. 5, 1990)..... p. 265, p. 266
GA90-26 (Jan. 5, 1990)..... p. 269, p. 270
GA90-27 (Jan. 5, 1990)..... p. 271, p. 272
GA90-29 (Jan. 5, 1990)..... p. 275, p. 276
GA90-30 (Jan. 5, 1990)..... p. 277, p. 278
GA90-31 (Jan. 5, 1990)..... p. 279, p. 280a-z
GA90-32 (Jan. 5, 1990)..... p. 280a, p. 280b
GA90-33 (Jan. 5, 1990)..... p. 280c, p. 280d
GA90-34 (Jan. 5, 1990)..... p. 280e, p. 280f
GA90-35 (Jan. 5, 1990)..... p. 280g, p. 280h
GA90-36 (Jan. 5, 1990)..... p. 280i, p. 280j
New York, NY90-11 (Jan. 5, 1990). p. 843, pp. 844-846
Pennsylvania:
PA90-4 (Jan. 5, 1990) ..... p. 941, p. 943
PA90-21 (Jan. 5, 1990) ..... p. 1063, p. 1064
Tennessee, TN90-2 (Jan. 5, 1990). p. 1163, pp. 1164-1165

Volume II

Iowa, IA90-1 (Jan. 5, 1990)... p. 17, p. 18
Illinois, IL90-1 (Jan. 5, 1990). p. 59, p. 62
Indiana, IN90-3 (Jan. 5, 1990). p. 267, p. 268
Nebraska, NE90-1 (Jan. 5, 1990). p. 717, p. 718

Volume III

Alaska, AK90-1 (Jan. 5, 1990). p. 1, pp. 2-4
California, CA90-1 (Jan. 5, 1990). p. 31, pp. 32-34

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC. This 16th Day of August 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-19349 Filed 8-16-90; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 27, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 27, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 6th day of August 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Advanced Monobloc Corp. (Company)	Canbury, NJ	8/06/90	7/26/90	24,678	Cans.
Bohemia, Inc. (IWA)	Culp Creek, OR	8/06/90	7/26/90	24,679	Plywood Siding.
Bradford Pipe, Inc. (Workers)	Titusville, PA	8/06/90	7/24/90	24,680	Oil & Gas.
Bradford, Pipe, Inc. (Workers)	Bradford, PA	8/06/90	7/24/90	24,681	Oil & Gas.
D&G Shake Co., Inc. (Company)	Amanda Park, WA	8/06/90	7/12/90	24,682	Shakes & Shingles.
Diebold, Inc. (SWO)	Hamilton, OH	8/06/90	7/24/90	24,683	Automatic Tellers.
E.H. Hall Co., Inc. (UFCW)	Williamsport, PA	8/06/90	7/17/90	24,684	Shoe Soles.
Fairset Mfg. (ACTWU)	New York, NY	8/06/90	7/20/90	24,685	Bridal Veils & Hats.
Gaylord Container (Workers)	Baltimore, OH	8/06/90	7/17/90	24,686	Boxes.
GBC Industries, Inc. (Company)	Cinnaminson, NJ	8/06/90	7/20/90	24,687	Yarn.
Homestead Industries (Company)	Claremont, NH	8/06/90	7/23/90	24,688	Fabrics.
ISC-Bunker Ramo (Workers)	Spokane, WA	8/06/90	7/27/90	24,689	Computers.
Kaman Instrumentation (Workers)	Colorado Springs, CO	8/06/90	7/17/90	24,690	Oil Field Tools.
Malouf Co. (Workers)	Dallas, TX	8/06/90	7/22/90	24,691	Ladies' Sportswear.
Maxon Systems, Inc. (Workers)	St. Joseph, MO	8/06/90	7/19/90	24,692	Telephones.
Milliken & Co., Inc. (Robbins Plant) (Workers)	Robbins, NC	8/06/90	7/20/90	24,693	Yarn.
Nor East Plastics (CWA)	Elmira, NY	8/06/90	7/26/90	24,694	Plastic Covers.
Patton Industries, Inc. (Workers)	Patton, PA	8/06/90	7/25/90	24,695	Ladies' Sportswear.
Pharmacia Diagnostics (Workers)	Fairfield, NJ	8/06/90	7/27/90	24,696	Chemistry Reagents.
Phoenix Tube (Company)	New Brunswick, NJ	8/06/90	7/26/90	24,697	Steel.
Schott Electronics, (Workers)	Seymour, CT	8/06/90	7/23/90	24,698	Electronic Components.
Skagit Shake Co. (Company)	Concrete, WA	8/06/90	7/11/90	24,699	Shakes & Shingles.
Smithkline Beecham (Company)	Bristol, TN	8/06/90	7/26/90	24,700	Ethical Pharmaceutical.
Ted Butcher, Inc. (Company)	Sequim, WA	8/06/90	7/11/90	24,701	Cedar Fencing.
Tektronix (Workers)	Wilsonville, OR	8/06/90	7/21/90	24,702	Computers.
Watervliet Paper Co. (UPWIU)	Watervliet, MI	8/06/90	7/25/90	24,703	Paper.
W.C.I.-White Consolidated Industries (IUE)	Edison, NJ	8/06/90	7/23/90	24,704	Air Conditioners.

FR Doc. 90-19424 Filed 8-16-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-107-C]

BethEnergy Mines, Inc., Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., Box 143, Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment or slurry impoundments and impounding structures; abandonment) to its Barrackville Mine No. 41 (I.D. No. 46-01427) located in Marion County, West Virginia, for Sediment Ponds (I.D. No. 1211WV 30053-00, 1211WV 30053-01, 1211WV 30053-02). The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that persons owning, operating or controlling an impounding structure submit to and obtain approval of the District Manager a plan for abandonment. The plan for abandonment should contain provisions to preclude the probability of future impoundment of water, sediment, or slurry.

2. As an alternate method, petitioner proposes to abandon the ponds at the mine without eliminating the probability of future use.

3. In support of this request, petitioner states that—

(a) No mining activities are conducted at this facility;

(b) The ponds and impoundments are stable and have a low hazard classification.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 17, 1990. Copies of the petition are available for inspection at that address.

Dated: August 9, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-19425 Filed 8-16-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-124-C]

Big Bottom Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Big Bottom Coal Company, P.O. Box 682, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Mine No. 1 (I.D. No. 15-12618) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that whenever any working place approaches within 200 feet of any workings of an adjacent mine, a borehole or boreholes must be drilled to a distance of at least 20 feet in advance of the working face of such working place and must be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they must be drilled sufficiently close to each other to ensure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes must also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. As an alternate method, the petitioner proposes to explore the area to be mined by predrilling using up to 400-foot deep test holes in lieu of 20-foot deep test holes.

3. In support of this request, the petitioner states that—

(a) The longhole drill would be permissible, equipped with stabilizing jacks, a rod guide, and drill steel stabilizers and capable of accurately drilling holes in excess of 400 feet;

(b) The drill operators would be thoroughly trained in all aspects of the drill operations;

(c) One of two drill patterns would be utilized depending on the location of the adjacent mine and direction of mining:

(i) *Drill Pattern A* would be utilized when mining towards abandoned works or adjacent mines and proposes to drill longhole test drill holes on ten-foot centers at a demarcation point 200 feet from abandoned works or adjacent mines. Additionally, a longhole will be drilled 14 feet from the outermost projected entry ribline, on both sides of the section or panel. All test drill holes will be 10 feet deeper than the projected section or panel depth; and

(ii) *Drill Pattern B* would be utilized when mining parallel to abandoned works or adjacent mines and proposes to develop sidecuts from which two longhole test drill holes can be drilled parallel to the projected entries and between the entries and the abandoned works or adjacent mines. One longhole would be drilled 14 feet from the projected ribline closest to the abandoned works or adjacent mine, and one longhole would be drilled in the face of the entry closest to the abandoned works or adjacent mine.

(d) As mining advances toward or along side the abandoned areas or adjacent mines, the longhole test drill hole location and alignment would be continuously evaluated to ensure accuracy. Additional holes would be drilled when necessary;

(e) Most test drilling would be conducted away from current working faces;

(f) Longhole drilling reduces the frequency and number of equipment moves, thereby, reducing the miners' exposure to caught-by and struck-by accidents as compared to strict application of the standard.

4. The petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 17, 1990. Copies of the petition are available for inspection at that address.

Dated: August 13, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-19430 Filed 8-16-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-104-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, HC 67, Box 1290, Cumberland, Kentucky 40823 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Scotia Mine (I.D. No. 15-02055) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to heavy bottom heaving and deteriorating supports, the return entry at the G-Gate longwall panel tailgate cannot be safely traveled.

3. As an alternate method, petitioner proposes to establish evaluation points where the air quality and quantity would be evaluated.

4. In support of this request, petitioner states that—

(a) Travel would be possible through the return entry in an emergency;

(b) Miners would be refreshed in the use of self-contained self-rescuers, which would be stored at the tailgate and near the headgate;

(c) At least three and possibly four separate escape routes would be provided from the headgate to the mouth of the section;

(d) The belt air would be continuously monitored with low-level carbon monoxide sensors; and

(e) Two continuous methane monitors would be added at the headgate with constant readouts which would indicate the presence of methane throughout the face.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 17, 1990. Copies of the petition are available for inspection at that address.

Dated: August 9, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-19428 Filed 8-16-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-113-C]

U.S. Steel Mining Co., Inc., Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Company, Inc., 600 Grant Street, room 1580, Pittsburgh, Pennsylvania 15219-4776 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Maple Creek Mine (I.D. No. 36-00970) and its Cumberland Mine (I.D. No. 36-05018) located in Washington and Greene Counties, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables, and transformers be kept at least 150 feet from pillar workings and not be located inby the last open crosscut.

2. As an alternate method, petitioner proposes to use high-voltage cables (2400 volt) throughout the mine to power longwall mining equipment inby the last open crosscut and within 150 feet of pillar workings. The petitioner outlines specific equipment and procedures in the petition.

3. In support of this request, petitioner states that the cables used would be SHD-GC or SHD+GC 5000 V MSHA jacketed cables.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 17, 1990. Copies of the petition are available for inspection at that address.

Dated: August 9, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-19426 Filed 8-16-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-112-C]

Wyoming Fuel Co., Petition for Modification of Application of Mandatory Safety Standard

Wyoming Fuel Company, P.O. Box 15265, Lakewood, Colorado 80215 has filed a petition to modify the application of 30 CFR 75.1400(e) (hoisting equipment; general) to its Golden Eagle Mine (I.D. No. 05-02820) located in Las Animas County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that where persons are transported into or out of a mine by a hoist, a qualified hoisting engineer be on duty while any person is underground.

2. Petitioner seeks an exception to the provision for six months of immediately precedent and contiguous employment prior to certification as a hoistman.

3. As an alternate method, the petitioner proposes to use a hoistman who possesses the experience and skill necessary to qualify as a hoistman without the six months of precedent employment.

4. The granting of this petition will in no way compromise the health and safety of the miners.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 17, 1990. Copies of the petition are available for inspection at that address.

Dated: August 9, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-19427 Filed 8-16-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-66)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATES: September 11, 1990, 8:30 a.m. to 5:30 p.m.; September 12, 1990, 8 a.m. to 4:45 p.m.; and September 13, 1990, 8 a.m. to 2:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 258, Auditorium, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration, and Technology (OAET) on space systems and technology programs. The Aerospace Research and Technology Informal Subcommitee (ARTS) was formed to provide technical support for the SSTAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Dr. Joseph F. Shea, is composed of 17 members. The Subcommittee is composed of 32 members. The meeting will be open to the public up to the seating capacity of the room (approximately 120 persons including the Subcommittee members and other participants).

TYPE OF MEETING: Open.

AGENDA:

September 11, 1990

8:30 a.m.—Welcome by Committee Chairman.

8:45 a.m.—Overview of Ames Research Center's Activities.

9:15 a.m.—Space Budget Overview.

9:30 a.m.—Space Research and Technology Program Status.

10 a.m.—Parallel Discipline Sessions.
1:30 p.m.—Resume Parallel Discipline Sessions.
5:30 p.m.—Adjourn.

September 12, 1990

8 a.m.—Resume Parallel Discipline Sessions.
1:30 p.m.—Tour of NASA/Ames Space Facilities.
4:45 p.m.—Adjourn.

September 13, 1990

8 a.m.—Opening Remarks by Committee Chairman.
8:10 a.m.—OAET Overview.
8:30 a.m.—NASA Research and Development Review.
9:30 a.m.—Discipline Report Summaries.
12:30 p.m.—Ad Hoc Study Activities.
1:55 p.m.—Fiscal Year 1991 Meeting Schedule.
2 p.m.—Summary Session and Closing Remarks.
2:30 p.m.—Adjourn.

Dated: August 10, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-19324 Filed 8-16-90; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al., San Onofre Nuclear Generating Station, Unit Nos. 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. NPF-10 and Facility Operating License No. NPF-15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside California, and the City of Anaheim, California (the licensee), for operation of San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed exemption from 10 CFR 70.24 would allow irradiated or unirradiated fuel assemblies to be handled and stored in the San Onofre Unit Nos. 2 and 3 fuel handling building without having two criticality monitoring systems. The exemption would be subject to the restriction that no more than one fuel assembly be outside an approved shipping container, storage rack, or the fuel transfer carriage at any time, although two fuel assemblies may be in the fuel transfer carriage.

The Need for the Proposed Action

The proposed exemption is required to permit refueling operations at San Onofre Unit Nos. 2 and 3 to be conducted without installing the criticality detection systems specified by 10 CFR 70.24. Also, it will facilitate control element assembly transfers, neutron source transfers, efficient core offloads/fuel shuffled, and provide temporary setdown locations when fuel handling difficulties occur in the reactor vessel.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed exemption does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from 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. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to the operation of San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemption, and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated July 5, 1990 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Main Library, University of California, P.O. Box 19557, Irvine, California 92173.

Dated at Rockville, Maryland, this 9th day of August 1990.

For the Nuclear Regulatory Commission.

John T. Larkins,

Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation

[FR Doc. 90-19399 Filed 8-16-90; 8:45 am]

BILLING CODE 7590-01-M

Public Workshop on Maintenance Standard for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notification of cancellation of workshop.

SUMMARY: On April 10, 1990, the Commission published in the **Federal Register** (55 FR 13340) a notification of a public workshop on Maintenance Standards for Nuclear Power Plants to be held September 5-6, 1990. The workshop for September 5-6, 1990 has been cancelled. The need for the workshop is being reevaluated. A new date will be announced in the **Federal Register** if a decision is made to hold the workshop.

FOR FURTHER INFORMATION CONTACT: Robert Riggs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3732.

Dated in Rockville, Maryland this 10th day of August, 1990.

For the Nuclear Regulatory Commission.

Frank A. Costanzi,

Deputy Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 90-19398 Filed 8-16-90; 8:45 am]

BILLING CODE 7590-01-M

Annual License Fees for FY 1991 for Power Reactor Operting Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Notification of amount of annual fees for FY 1991 for nuclear power reactor operating licenses.

SUMMARY: The Nuclear Regulatory Commission is revising the amount of the annual fees to be assessed during FY 1991 for nuclear power reactor operating licenses.

FOR FURTHER INFORMATION CONTACT: H. Lee Hiller, Acting Director, Division of Accounting and Finance, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-492-7535.

Background and Notice of Fees

On March 2, 1990, the Nuclear Regulatory Commission published in the **Federal Register** (55 FR 7610) the annual fee for FY 1990 based on 45 percent recovery of the Commission's budget of $438.8 million. This was based on Public Law 101-239 which amended the provisions of Section 7601 of the Consolidated Omnibus Budget Reconciliation Act and increased, from 33 percent to 45 percent of the budget, the collection of user fees for FY 1990. Congress, however, limited the 45 percent recovery provision only to FY 1990 after which the NRC's authority to collect fees reverts back to level of 33 percent of the budget. As of this date, the Congress has not amended the Public Law. Therefore, for fiscal year 1991, the law requires that approximately 33 percent of the budget be collected. Based on ongoing actions by the Congress, the NRC fully expects, however, that the law will be changed to a recovery level in excess of 33 percent as was done for FY 1990. Because Congress has neither changed the law nor passed an appropriation for fiscal year 1991, the NRC, in accordance with 10 CFR 171.13 is publishing the amount of the annual fees for fiscal year 1991 based on the existing law of 33 percent and the FY 1991 President's budget of $475 million. The NRC estimates that in applying the 33 percent, approximately $157 million will be collected through user fees. The $157 million collection total is estimated as follows: $80 million from part 171 annual fees and $77 million from part 170 licensing and inspection fees. During the current fiscal year, the Congress has made provision that the amounts budgeted for high level waste costs were to be directly appropriated to the NRC from the DOE Nuclear Waste Fund; therefore, those monies will not be included in fees collections under 10 CFR part 171 for FY 1991.

Notice is hereby given pursuant to 10 CFR 171.13 that the annual fees to be assessed for FY 1991 are those amounts shown in Table 1 below for each nuclear power operating license. When the Congress passes a final appropriation for fiscal year 1991, the annual fee will be revised and the affected licensees notified pursuant to 10 CFR 171.13.

TABLE 1.—ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR-Large Dry Containment.	$719,000
2. Beaver Valley 2	do	719,000
3. Braidwood 1	do	719,000
4. Braidwood 2	do	719,000
5. Byron 1	do	719,000
6. Bryon 2	do	719,000
7. Callaway 1	do	719,000
8. Comanche Peak 1	do	719,000
9. Diablo Canyon 1	do	712,000
10. Diablo Canyon 2	do	712,000
11. Farley 1	do	719,000
12. Farley 2	do	719,000
13. Ginna	do	719,000
14. Haddam Neck	do	719,000
15. Harris 1	do	719,000
16. Indian Point 2	do	719,000
17. Indian Point 3	do	719,000
18. Kewaunee	do	719,000
19. Millstone 3	do	719,000
20. North Anna 1	do	719,000
21. North Anna 2	do	719,000
22. Point Beach 1	do	719,000
23. Point Beach 2	do	719,000
24. Prairie Island 1	do	719,000
25. Prairie Island 2	do	719,000
26. Robinson 2	do	719,000
27. Salem 1	do	719,000
28. Salem 2	do	719,000
29. San Onofre 1	do	712,000
30. Seabrook 1	do	719,000
31. South Texas 1	do	719,000
32. South Texas 2	do	719,000
33. Summer 1	do	719,000
34. Surry 1	do	719,000
35. Surry 2	do	719,000
36. Trojan	do	712,000
37. Turkey Point 3	do	719,000
38. Turkey Point 4	do	719,000
39. Vogtle 1	do	719,000
40. Vogtle 2	do	719,000
41. Wolf Creek 1	do	719,000
42. Zion 1	do	719,000
43. Zion 2	do	719,000
44. Catawba 1	PWR-Ice Condenser.	722,000
45. Catawba 2	do	722,000
46. Cook 1	do	722,000
47. Cook 2	do	722,000
48. McGuire 1	do	722,000
49. McGuire 2	do	722,000
50. Sequoyah 1	do	722,000
51. Sequoyah 2	do	722,000
Combustion engineering		
1. Arkansas 2	PWR-Large Dry Containment.	$730,000
2. Calvert Cliffs 1	do	730,000
3. Calvert Cliffs 2	do	730,000
4. Ft. Calhoun 1	do	730,000
5. Maine Yankee	do	730,000
6. Millstone 2	do	730,000
7. Pallisades	do	730,000
8. Palo Verde 1	do	723,000
9. Palo Verde 2	do	723,000
10. Palo Verde 3	do	723,000
11. San Onofre 2	do	723,000
12. San Onofre 3	do	723,000
13. St. Lucie 1	do	730,000
14. St. Lucie 2	do	730,000
15. Waterford 3	do	730,000
Babcock & Wilcox		
1. Arkansas 1	PWR-Large Dry Containment.	$775,000
2. Crystal River 3	do	775,000
3. Davis Besse 1	do	775,000
4. Oconee 1	do	775,000
5. Oconee 2	do	775,000
6. Oconee 3	do	775,000
7. Rancho Seco 1	do	768,000
8. Three Mile Island 1	do	775,000
General Electric		
1. Browns Ferry 1	Mark I	$732,000
2. Browns Ferry 2	do	732,000
3. Browns Ferry 3	do	732,000
4. Brunswick 1	do	732,000
5. Brunswick 2	do	732,000
6. Clinton 1	Mark III	719,000
7. Cooper	Mark I	732,000
8. Dresden 2	do	732,000
9. Dresden 3	do	732,000
10. Duane Arnold	do	732,000
11. Fermi 2	do	732,000
12. Fitzpatrick	do	732,000
13. Grand Gulf 1	Mark III	719,000
14. Hatch 1	Mark I	732,000
15. Hatch 2	do	732,000
16. Hope Creek 1	do	732,000
17. LaSalle 1	Mark II	719,000
18. LaSalle 2	do	719,000
19. Limerick 1	do	719,000
20. Limerick 2	do	719,000
21. Millstone 1	Mark I	732,000
22. Monticello	do	732,000
23. Nine Mile Point 1	do	732,000
24. Nine Mile Point 2	Mark II	719,000
25. Oyster Creek	Mark I	732,000
26. Peach Bottom 2	do	732,000
27. Peach Bottom 3	do	732,000
28. Perry 1	Mark III	719,000
29. Pilgrim	Mark I	732,000
30. Quad Cities 1	do	732,000
31. Quad Cities 2	do	732,000
32. River Bend 1	Mark III	719,000
33. Shoreham	Mark II	719,000
34. Susquehanna 1	do	719,000
35. Susquehanna 2	do	719,000
36. Vermont Yankee	Mark I	732,000
37. Washington Nuclear 2	Mark II	712,000

TABLE 1.—ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
Other Reactors		
1. Three Mile Island 2	B&W-PWR-Dry Containment.	
2. Big Rock Point	GE-Dry Containment.	
3. Yankee Rowe	Westinghouse-PWR-Dry Containment.	
4. Ft. St. Vrain	High Temperature Gas Cooled.	

The "Other Reactors" listed above have not been included in the fee base because historically they have been granted either full or partial exemptions from the annual fees. Should these licensees not request and/or be granted similar exemptions for FY 1991, the fees for the remaining reactors will be appropriately adjusted.

The above fees are applicable beginning October 1, 1990, and will be collected in accordance with 10 CFR Part 171. The analysis used for determining the annual fees is available in the NRC Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555, the Gelman Building.

Dated at Bethesda, Maryland, this 10th day of August, 1990.

For the Nuclear Regulatory Commission.

Ronald M. Scroggins,

Controller.

[FR Doc. 90-19400 Filed 8-16-90; 8:45 am]

BILLING CODE 7590-01-M

Baltimore Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50-317]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-53 issued to Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit 1, located in Calvert County, Maryland.

The proposed amendment would modify the existing 0-12 effective full power year (EFPY) heatup and cooldown curves and rates based on the guidance provided in Regulatory Guide 1.99, Revision 2. In addition, adjustments to the low temperature overpressure protection (LTOP) mitigating system including changes to the power operated relief valve (PORV) lift setpoint and reactor coolant pump (RCP) start controls.

By letter dated July 24, 1990, the Commission issued Amendment No. 145 to Facility Operating License DPR-53 for Calvert Cliffs Unit 1. The amendment replaced the existing heatup and cooldown curves with the current 0-12 EFPY heatup and cooldown curves. In addition, new controls were implemented to establish adequate LTOP. These inlcuded: (1) Adjustments to the LTOP mitigating system; i.e., the PORV pressure lift setting and enable temperature; (2) changes to RCP controls; (3) changes to clarify high pressure safety injection (HPSI) operability requirements; and (4) modifications to HPSI pump controls.

The RCP controls, unlike the other controls, were temporary and only valid for the current low decay heat condition (60 days shutdown). These controls were put in place on an emergency basis to allow a continuation of the Unit 1 outage while analyses were completed for long-term RCP controls. The analysis of long-term requirements for the control of RCP starts was completed by the licensee. The results indicate that only modest adjustments to the current controls are required to still be effective in the mitigation of energy addition transient when LOTP is required. Accordingly, the licensee is proposing the changes previously described. These changes are required prior to entry into Mode 2 Startup.

The specific Technical Specification (TS) changes proposed for the heatup and cooldown curves; LTOP controls; RCP start criteria; and revised bases sections to support the changes are:

1. *Changes proposed to the heatup and cooldown curves and rates:*

1.1 Change TS Limiting Condition for Operation (LCO) 3.4.9.1.a (p.3/4 4-23), maximum allowable heatup rates, as follows:

Maximum allowable heatup rate	RCS temperature
(From)	
60°F in any hour period	70°F to 305°F.
10°F in any hour period	305°F to 327°F.
60°F in any hour period	greater than or equal to 327°F
(To)	
40°F in any hour period	70°F to 313°F.
10°F in any hour period	314°F to 327°F.
60°F in any hour period	greater than 327°F.

1.2 Change TS LCO 3.4.9.1.b (p. 3/4 4-23) to limit the cooldown rate to 10° F per hour when RCS temperature is below 170.° F. The current limit is 20° F per hour cooldown rate.

1.3 Replace old TS Figures 3.4-2a and 3.4-2b (pp. 3/4 4-24 and 4-24a), RCS Pressure-Temperature Limits, with new Technical Specification Figures 3.4-2a and 3.4-2b.

2. *Changes proposed to adjust LTOP controls:*

2.1 Change the PORV lift setting of TS LCO 3.4.9.3.a.1 and 2 (p.3/4 4-26a) from "less than or equal to 424.5 psia" to "less than or equal to 430 psia."

2.2 For references to the minimum pressure temperature (MPT) enable temperature, where the wording "below 327° F" occurs; change it to "327°F or less." This is an editorial change for consistency with other references to MPT enable temperature; i.e., "less than or equal to 327° F," and more properly reflects its meaning. Affected Technical Specifications are:

TS	Page
3.1.2.1	3/4 1-8
3.1.2.3	3/4 1-10
Table 3.3-3	3/4 3-11
4.5.2	3/4 5-4
3.5.3	3/4 5-6
Bases 3/4.4.9	B 3/4 4-8
Bases 3/4.5.2	B 3/4 5-2

3. *Changes proposed to change RCP start criteria:*

3.1 Change the RCP start controls in footnote (* * *) to the APPLICABILITY of TS 3.4.1.3 (p. 3/4-2a) as follows:

	From	To
Pressurizer water level.	less than or equal to 165 in.	less than or equal to 170 in.
Pressurizer pressure.	less than or equal to 300 psia.	less than or equal to 290 psia.

3.2 Add a footnote (**) to the APPLICABILITY of TS 3.4.1.2 (p.3/4 4-

2) to provide start controls consistent with those existing in TS 3.4.1.3.

3.3 Also in footnote (* * *) to TS 3.4.1.3 delete the requirement to measure pressurizer pressure "* * * by plant computer or equivalent precision instrument," and the restriction on entry into Mode 2. These requirements were part of the temporary RCP controls established by Reference (a) and are no longer needed. Normal control room panel indication of pressurizer pressure is sufficient for implementation of the newly proposed controls. The new controls are also valid for higher decay heat loads, therefore the restriction from entry in Mode 2 can be removed.

4. Supportive TS Bases changes:

Revise TS Bases 3/4.4.1, Coolant Loops and Coolant Circulation and Bases 3/4.4.9, Pressure/Temperature Limits, to be consistent with the above changes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Change 1—Heatup and Cooldown Curve and Rates

The existing Unit 1 12 EFPY P–T limits were conservatively developed in accordance with the fracture toughness requirements of 10 CFR 50, appendix G, as supplemented by the ASME Code section III, appendix G. The reactor vessel material Adjusted RT_{NDT} values are based on the conservative methodology provided in Regulatory Guide 1.99, Revision 2.

This amendment will not change the P–T limit calculations that are the basis for the existing heatup and cooldown curves; however, a new combination of heatup and cooldown curves and associated rates has been selected from this set of limits. This new selection, which features lower heatup and cooldown rates, permits the appendix G allowable pressure to be increased for corresponding temperatures, thereby increasing the region of allowable operations with reactor coolant pumps. This additional operational flexibility minimizes the potential for pressure transients that could challenge the P–T limits during normal plant startup and shutdown evaluations. The new heatup and cooldown curves and associated limits continue to provide conservative administrative restrictions on reactor coolant system pressure to minimize material stresses in the RCS due to normal operating transients, thus minimizing the likelihood of a rapidly propagating fracture due to pressure transients at low temperature. Because these new heatup and cooldown curves and rates are based on the same P–T limits previously approved by the NRC, this portion of the proposed amendment does not involve an increase in the probability or consequences of accidents previously evaluated.

Change 2—LTOP Controls

Consistent with the selection of new heatup and cooldown curves and rates, the LTOP controls are being changed by increasing the PORV lift setting to 430 psia. The MPT enable temperature of 327 °F is not being changed. The new PORV setpoint is based on protecting the most restrictive pressure of both the heatup and cooldown curves; i.e., a 10 °F per hour cooldown at 70 °F RCS temperature. Since the basis for the selection of the PORV setpoint has not changed, the PORV would provide the same degree of protection in mitigating postulated LTOP transients with the new setting as that provided by the present LTOP system. Therefore, this portion of the change does not increase the probability or consequences of accidents previously evaluated.

Change 3—RCP Start Criteria

The lower heatup and cooldown rates and the increased PORV lift setting provides additional margin to accommodate postulated pressurization from energy addition transients. New calculations have been performed that more precisely predict the response to such transients. From these calculations, a revised set of RCP start controls have been selected that will permit planned RCP starts during normal operational activities without challenging the PORV. For the postulated start of 2 RCPs during recovery from a loss of decay heat removal, the PORVs may be required to respond in cases where decay heat load is high if operator actions are either not taken or are ineffective. A single PORV has been determined to be capable of adequately mitigating this transient. Because these RCP controls now credit the function of the PORV to mitigate certain energy addition transients, this is considered a slight increase in the consequences of these transients. However, because the results of the analysis remain well within the conservative acceptance limits of 10 CFR 50 Appendix G, this increase is not significant.

Thus, the probability or consequences of an accident previously evaluated are not significantly increased.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different type from any accident previously evaluated.

The changes to: (1) The heatup and cooldown curves and rates, (2) PORV lift setting and, (3) the RCP controls do not represent a significant change in the configuration or operation of the plant. Specifically, no new hardware is being added to the plant as part of the proposed change, no existing equipment is being modified, nor are any significantly different types of operations being introduced. Therefore, the proposed amendment would not create the possibility of a new or different kind of accident from those previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in margin of safety.

These changes (changes 1 through 3), will ensure that the margin of safety is maintained. With respect to an energy addition event, the margin of safety is maintained in that there are no postulated events that could challenge the Appendix G curves. The changes to the controls placed on the variables for a planned RCP start are minor in nature and provide an additional margin of safety. The changes to the heatup and cooldown curves/rates and the PORV lift setting ensure that the margin safety is maintained by protecting the Appendix G limits for all postulated transients.

The changes made in the manner of reference to the MPT enable temperature are editorial. The MPT enable temperature is 327 °F; therefore, all references to the LTOP temperature region should be "at 327 °F and less," or equivalent. Since this is consistent with other existing references to MPT enable

temperature, this portion of this change does not reduce the margin of safety.

Thus, proposed Changes 1 through 3 would not involve a significant reduction in a margin of safety.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 17, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written 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. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555 and at the Local Public Document Room located at Calvert County Library, Prince Frederick, Maryland. 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 proeeding. 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 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 indentify 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. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged fact or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to mattters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisifies these requirements with respect to at least one contention will not be permittted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involved a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may isue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800 342-6700). The Western Union operator should be given Datagram Identification Number 3737

and the following message addressed to Robert A. Capra: (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 Jay E. Silbert, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 North Street, NW., Washington, DC, 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 24, 1990, 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 Local Public Document Room located at the Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 14th day of August, 1990.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Senior Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–19525 Filed 8–16–90; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

New Publications Concerning Special Bulk Third-Class Rates

AGENCY: Postal Service.

ACTION: Notice of the Issuance of USPS Publications 417 and 417A.

SUMMARY: The U.S. Postal Service has issued Publication 417, *Special Bulk Third-Class Rates,* and Publication 417A, *Customer Guide To Cooperative Mailings,* to remind mailers concerning the types of organizations which may be authorized to mail at the special bulk third-class (nonprofit) rates, and what restrictions exist on matter which may be mailed at those rates.

FOR FURTHER INFORMATION CONTACT: Jerome Lease, Office of Classification and Rates Administration, (202) 268–5188.

SUPPLEMENTARY INFORMATION: An organization authorized to mail at the special bulk third-class rates may mail only its own matter at those rates. It may not delegate or lend to any other person or organization the use of its permit to mail at the special bulk rates.

Cooperative mailings (joint mailings of more than one organization) may be made at the special bulk rates only when each of the cooperating organizations is individually authorized to mail at the special bulk rates at the post office where the mailing is deposited. Cooperative mailings involving the mailing of any matter in behalf of or produced for an organization not itself authorized to mail at the special bulk rates at the post office where the mailing is deposited must be paid at the applicable regular rate. (*See* Chapter 6, Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations, 39 CFR 111.1.)

A recent investigation by the Postal Inspection Service has documented what appears to be the proliferation of improper cooperative mailings made at the special bulk rates. This investigation explored the often complex nature of the contractual relationships which underlie several types of cooperative mailing arrangements. Primarily, the activities investigated promoted the sale of "affinity" credit cards, group insurance, and travel plans to the members of nonprofit organizations. As a result of this investigation, many improper cooperative mailings have been detected and a number of postage deficiencies have been disclosed. In light of these events, the Postal Service has chosen to increase its efforts to inform mailers as a means to reduce the number of cooperative mailings. Based upon the experience discussed above, it is clear that there are many cooperative mailings entered into the postal system at the special bulk rates which are actually improper mailings and should be required to be mailed at the regular bulk rates instead. Detecting these mailings, however, is no simple matter. The procedure used to investigate a particular cooperative mailing is tedious and often must be undertaken after-the-fact because such mailings often appear, on their face, to be the mail of the nonprofit organization and only come into question as a result of further investigation after their acceptance at the special rates. The procedure requires an examination not only of the characteristics of the mailpiece, but also of the underlying business arrangements between the nonprofit organization and the commercial firm.

The Postal Service uses a two-part test to determine whether a cooperative mailing is improper. First, the material mailed must be the organization's "own" matter. Second, it cannot be designed to serve the uses of or benefit some other person or organization. Accordingly, materials which may appear to be acceptable on their face, may be found to be ineligible for the special rates because they were actually paid for or produced by or for a party other than the authorized nonprofit organization, or they promote the business venture of some other party, or they represent a joint venture between the authorized organization and another party. Similarly, mailings for which the nonprofit organizaiton is reimbursed for its preparation and postage costs, and arrangements through which a nonprofit organization "rents" the use of its permit in exchange for royalties, commissions, dividends, or donations are also improper.

Instead of relying chiefly on "after-the-fact" investigations, the Postal Service wants to remind the nonprofit mailing community of the cooperative mailing rules and encourage improved compliance by providing information to help mailers determine whether planned mailings are cooperative. The information in publications 417 and 417A is designed to assist organizations in avoiding cooperative mailing problems. Nonprofit organizations should consider the factors explained in those publications when deciding whether or not to enter into specific fund-raising programs with commercial firms.

The Postal Service encourages mailers who review the information found in publications 417 and 417A, and have questions concerning whether or not mailings they are considering as part of a fundraising program will be eligible for the special rates, to submit a sample of the mailpiece or pieces, as well as a copy of the contracts and all other documentation affecting the relationship between the parties, to the appropriate field division manager of mailing requirements for review.

Copies of publications 417 and 417A are being sent directly to each organization authorized by the Postal Service to mail at the special rates. Supplies of each publication are being sent to post offices for general use and distribution.

Stanley F. Mires,

Assistant General Counsel Legislative Division.

[FR Doc. 90–19379 Filed 8–16–90; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28327; File No. SR-BSE-90-11]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Filing and Order Granting Temporary Accelerated Partial Approval of a Proposed Rule Change Relating to Specialist Combinations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 27, 1990, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II 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 BSE seeks permanent approval of its rules for reviewing proposed combinations among specialist units on the Exchange and accelerated approval of a one-year extension of its specialist concentration pilot program in the interim.[3]

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 III below and is set forth in sections A, B and C below. The BSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] On February 7, 1990, the Commission approved, as a six-month pilot program expiring August 7, 1990, a proposed rule change by the BSE to establish procedures for reviewing proposed combinations among specialist units on the Exchange. *See* Securities Exchange Act Release No. 27684 (February 7, 1990), 55 FR 5527 (February 15, 1990) (approving File No. SR-BSE-89-5).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since its inception as a pilot program, the Exchange has had little opportunity to evaluate the effectiveness of its proposed rules permitting the Exchange's Executive Committee ("Committee") to review proposed combinations among specialist units that, in the Exchange's view, may lead to undue concentration within the specialist community. Indeed, no reviews have been conducted during the pilot period.

The purpose of the proposed rule is to provide a process for reviewing certain proposed mergers, acquisitions, and other combinations between or among specialist units in an effort to prevent undue concentration within the specialist community. Under the BSE proposal, a Committee review would be triggered whenever a proposed combination would result in a specialist organization specializing in securities equalling 15% or more of the first or second 100 most actively traded Consolidated Tape Association ("CTA") stocks, 15% or more of all the CTA stocks eligible for trading on the BSE where the Free List [4] contains fewer than 100 issues, or 20% of the third 100 most actively traded CTA stocks.

In conducting its review, the Committee would assess the following considerations in determining whether to approve a proposed combination: specialist performance and market quality in the stocks subject to the combination; the effects of the proposed combination on the financial and operational capacities of the resulting specialist organization; the effect of the proposed combination on overall concentration; and the specialists' commitment to the Exchange market. In determining a specialist unit's commitment to the Exchange market, the Committee would assess such factors as: acceptance and cooperation in using the Boston Exchange Automated Communications and Order Routing Network ("BEACON"); efforts at resolving problems concerning customer orders; willingness to facilitate early openings; and willingness to voluntarily provide execution guarantees beyond those required in the Exchange rules.

The statutory basis for the proposed rule change is section 6(b)(5) of the Act in that the BSE will be able to monitor tendencies toward concentration in the specialist community and intervene to prevent undue concentration. Further, it will serve to remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by allowing the Exchange to identify a special level of review for specialist combinations that could impair market quality to the detriment of investors and the public interest.

[4] The Free List is made up of securities which are not registered to certain specialists and can be traded by any specialist.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change regarding proposed specialist combinations will 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 were neither solicited nor received.

III. 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 BSE. All submissions should refer to File No. SR-BSE-90-11 and should be submitted by September 7, 1990.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to renew its pilot program regarding specialist concentration for an additional one-year period is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange, and, in particular, the requirements of section 6 of the Act.[5] The Commission notes that the renewal of the pilot furthers the protection of investors and the public interest because it allows the Exchange additional time to evaluate the effectiveness of the pilot program. During the renewed pilot period, the Commission expects the Exchange to develop criteria to evaluate the effects of its concentration rules on the activities of specialists and to determine, for example, whether implementation of these concentration rules is increasing the performance and effectiveness of specialists and aiding in the preventing of undue concentration. In particular, the Commission expects the Exchange to provide information to the Commission by May 1, 1991, addressing, among other things, the following issues: since the original inception of the pilot program, how many proposed specialist combinations have triggered a Committee review and the circumstances surrounding these reviews; whether the concentration rules have assisted the Exchange in increasing order flow; whether the existence of more firms has increased competition among specialists for new stock allocations; whether the concentration rules have increased incentives for quality markets and higher standards for performance; and the impact that the specialist combination rules have had upon the competitive environment necessary to maintain an orderly market.

The Commission finds good cause for approving the proposed renewal of the pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes it is necessary to renew the pilot program's operation in order to afford both the Exchange and the Commission a further opportunity to evaluate the pilot's operation. The six-month period of the initial pilot program was an insufficient amount of time to allow the Exchange and the Commission to fully evaluate the operation and effectiveness of the pilot. The Commission believes that allowing the Exchange an additional one-year period in which to implement the pilot will enable it, in conjunction with the Commission, to adequately address the effectiveness of the pilot.

In addition, the Commission notes that the substance of the proposal was noticed in the **Federal Register** for the full statutory period and did not receive any comments.[6] Also, because the Exchange's proposal seeking permanent approval of its specialist concentration rule will be published for public comment, the Commission believes that accelerated effectiveness of the extension of the pilot program for an additional one-year term is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [7] that the proposed rule change is hereby approved for a one-year period ending on August 13, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: August 10, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-19338 Filed 8-16-90; 8:45 am]

BILLING CODE 8010-01-M

[5] *See supra* note 3.

[Release No. 34-28325; File No. SR-ICC-90-05]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Intermarket Clearing Corporation Relating to an Amendment to its Rules Implementing Commodity Futures Trading Commission's Regulation 1.63

August 10, 1990.

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 June 20, 1990, the Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and II 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 purpose of this proposed rule change is to implement the provisions of Regulation 1.63 of the Commodity Futures Trading Commission ("CFTC"). Regulation 1.63 renders individuals with specified disciplinary histories ineligible to serve on self-regulatory organization's governing bodies, disciplinary committees or arbitration panels. The general purpose and effect of this service prohibition was discussed in the CFTC's release published in the **Federal Register** on Marh 6, 1990.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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 change is to implement Regulation 1.63 of the CFTC which requires self-regulatory organizations to adopt rules that, with certain exceptions, prohibit any person with a disciplinary history from serving on any governing body, disciplinary committee or arbitration panel. The general purpose and effect of this Regulation was discussed in the CFTC's release published in the **Federal Register** on March 6, 1990.

The proposed changes consist of adoption of new Rule 224 by ICC in conformance with the requirements of Regulation 1.63. Rule 224 provides that any person who is subject to any of the conditions specified in CFTC Regulation 1.63(b) (1) through (6) shall be ineligible to serve on ICC's Board of Directors ("Board"). In addition, new Rule 224 states that any director who becomes ineligible for service pursuant to the provisions of Regulation 1.63 shall be removed in a manner permitted by ICC's By-laws. ICC's By-laws permit a director's removal by shareholder vote. As ICC has only one shareholder, its parent (the Options Clearing Corporation), ICC will be able to act promptly in accordance with the directives of Regulation 1.63.

New Rule 224 further provides that any Board action taken prior to the removal of such director shall not be affected by said removal. This provision is intended to address the unlikely, although possible, circumstance in which a director, unbeknownst to ICC, is subject to a condition specified in Regulation 1.63 yet votes on an issue pending before the Board. Such circumstance could occur if a "final decision" has been entered by one of the authorities enumerated within the Regulation but has not been communicated to either the director or

ICC. This provision will provide ICC with assurances as to the propriety of continuing to implement a decision of the Board without having to seek Board reauthorization in respect to the same issue. Similar provisions are contained in the amendments to Rules 602 and 609 which are described below.

Conforming changes further are made to ICC Rules 602(b) and 609(a). Rule 602(b) permits the Board to appoint persons to serve on a Disciplinary Committee. Rule 602(b) is amended to provide that no person shall be appointed to such Disciplinary Committee if such person is subject to any of the conditions specified in Regulation 1.63(b) (1) through (6). Rule 602 is further amended by adding new paragraph (c), which authorizes the Chairman to remove and replace any Disciplinary Committee member who becomes subject to any of the conditions specified in Regulation 1.63(b) (1) through (6). While the Board is permitted to appoint all members of a Disciplinary Committee, ICC believes that permitting the Chairman to remove and replace an ineligible member will ensure that the objectives of Regulation 1.63 are implemented expeditiously. Moreover, this provision will prevent undue delays in disciplinary proceedings. This grant of authority is consistent with ICC Rule 104 which states that, except as otherwise provided in the Rules, any action permitted or required to be taken by ICC may be taken by, among others, the Chairman. At the present time, ICC has no rules which address the removal of a Disciplinary Committee member. Rule 609, which provides for the appointment of a Board of Appeals, or panel thereof, to hear appeals from decisions of a Disciplinary Committee, is similarly amended to provide for the removal of any member of a Board of Appeals or panel thereof.

CFTC's Regulation 1.63(a)(4) excludes from the definition of the term "disciplinary offense" any violation of the rules of a self-regulatory organization where such rules are related to (A) decorum or attire, (B) financial requirements, or (C) reporting or recordkeeping (unless such reporting or recordkeeping violations result in fines aggregating more than $5,000 within any calendar year). Regulation 1.63(d) further provides that a self-regulatory organization is to identify those of its rules which, if violated, would not constitute "disciplinary offenses" within the meaning of Regulation 1.63. The CFTC has made clear that the purpose of this provision is to allow a self-regulatory organization to continue to permit an individual that has been sanctioned for relatively insignificant violations of the self-regulatory organization's rules to continue to serve on its governing board, disciplinary committees, and arbitration panels. ICC Rule 601 authorizes ICC to take disciplinary action against a Clearing Member for any violation of the Rules of ICC but, like the rules of other clearing organizations, does not authorize actions against the partners, officers, directors, or employees of a Clearing Member. Thus, an individual will be subject to sanctions under ICC's Rules only if he is a Clearing Member in an individual capacity (*i.e.*, a sole proprietor). ICC does not have any individual Clearing Members. As a consequence, an exclusion of specified ICC Rules from the definition of "disciplinary offense" presently would have no practical or legal significance. Thus, although not required to do so by Regulation 1.63, ICC has determined not to exclude violations of any of the Rules of ICC from the definition of "disciplinary offense."

The proposed rule change is consistent with the requirements of section 17A of the Act in that it facilitates the prompt and accurate clearance and settlement of securities transactions and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICC did not solicit nor did it receive any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19B-4 promulgated thereunder because it is concerned solely with the administration of ICC. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 self-regulatory organization. All submissions should refer to SR-ICC-90-05 and should be submitted by September 7, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[FR Doc. 90-19339 Filed 8-16-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 13, 1990.

The Midwest Stock Exchange, Inc. ("MSE") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities and Exchange Act of 1934 ("Act") [1] and Rule 12f-1 thereunder [2] for unlisted trading privileges ("UTP") in the securities listed below for the purpose of trading these securities in the Dual Trading System of the MSE, and for the possible subsequent assignment to a Specialist/Odd-lot Dealer pursuant to MSE Rules.[3]

Salomon Inc.

FPT.WS: Put Warrants of the Financial Times Stock Exchange (File No. 7-5977)

SPT.WS: Put Warrants of the Financial Times Stock Exchange (File No. 7-5977)

[1] 15 U.S.C. 781(f)(1) (1982).

[2] 17 CFR 240.12f-1 (1989).

[3] *See* Article XXX, Rule 1.01 of the MSE Rules.

The put warrants of the Financial Time Stock Exchange are listed and registered on the American Stock Exchange, Inc. and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 27, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(2) of the Act. Under this section the Commission can only approve the UTP application if it finds, after this notice and opportunity for hearing, that the extensions of UTP pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-19342 Filed 8-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28331; File No. SR-NASD-90-42]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Filing and Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage with the Stock Exchange of Singapore Ltd. for the 90 days

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 30, 1990 the National Association of Securities Dealers, Inc. ("NASD" or "Association) filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed, pursuant to section 19(b)(1) of the Act, for Commission authorization to extend for 90 days the operation of its Pilot Program with the Stock Exchange of Singapore Limited ("SES"). The Pilot program consists of an interchange of closing price and volume data on 27 NASDAQ securities that are also traded through the SES's facilities. With the thirteen hour time difference, the trading hours of the SES and NASD do not overlap. Hence, the end-of-day information being exchanged under the Pilot Program mainly assists the establishment of opening prices the following day.

The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be established during the proposed extension.

The Commission originally authorized operation of the NASD-SES Pilot Program for a two-year term [1] that was recently extended through August 13, 1990.[2] Commission approval of the instant filing would permit continuation of this Pilot Program through November 12, 1990. During this interval, the NASD will assemble certain additional information requested by the Commission staff regarding the future operations of the NASD-SES linkage. This information will be incorporated into another Rule 19b-4 filing dealing with this Pilot Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD-SES Pilot Program commenced operation with the Commission's approval of File No. SR-NASD-87-40 on March 14, 1988. The principal features of this Program were fully described in section 1 of that Form 19b-4, which description is hereby incorporated by reference.[3]

The interim authorization of the NASD-SES Pilot Program will expire on August 14, 1990. The NASD, on its own as well as the SES's behalf, hereby requests that the Commission approve a brief extension of the present Pilot Program for 90 days. This period will be used to gather additional information and to formalize a plan respecting the future operation of the Pilot Program. These matters will be addressed in a subsequent Rule 19b-4 filing.

During the proposed extension, the Pilot Program will continue operating in its present form. Specifically, each market will transmit to the other static price/volume information compiled at the end of each trading day on selected NADSAQ securities.[4] The SES will transmit the closing inside quotation and cumulative reported volume (collectively referred to as "SES information") respecting each Pilot security quoted on the SES. Similarly, the NASD will transmit for each Pilot security the closing inside quotes, cumulative volume, last sale price (for NASDAQ/NMS issues only) and the closing quote of every NASDAQ market maker in each of the 27 Pilot securities (collectively referred to as "NASD information"). Because the SES now employs an order-driven system (known as the "CLOB") rather than a system of competing market makers, SES information received under the Pilot Program no longer includes the closing quotes of individual market makers in Pilot securities.[5] Although some SES members continue to function as market makers, they are not obligated to maintain continuous, two-sided quotes in any of the NASDAQ securities designated as Pilot securities. Hence, the closing inside quotes received from the SES in these securities (which might entirely represent the open limit orders of public investors) may be somewhat wider than the corresponding inside quotes calculated from the bids/offers of NASDAQ market makers that are transmitted to the SES.

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[1] *See* Release No. 34-25457 (March 14, 1988), 53 FR 9156 (March 21, 1988).

[2] *See* Release No. 34-28018 (May 14, 1990), 55 FR 21285 (May 23, 1990) approving File No. SR-NASD-90-29 that authorized the Pilot Program's operation through August 13, 1990.

[3] *See also* Release No. 34-25065 (October 28, 1987), 52 FR 42167 (November 3, 1987).

[4] When the Pilot Program commenced operation, 35 NASDAQ securities were selected for inclusion. These securities were listed in Exhibit 2 to File No. SR-NASD-87-40. Over time, 8 securities were deleted for reasons unrelated to the Pilot Program, *e.g.*, mergers and listing on a national securities exchange. At this point, end-of-day information continues to be exchanged on the remaining 27 NASDAQ securities.

[5] This modification in the SES's market structure was not contemplated when the NASD submitted File No. SR-NASD-87-40.

The exchange of static, end-of-day information will remain the principal function of the Pilot Program for the duration of the proposed extension. Nonetheless, subject to mutual agreement of the NASD and the SES, the number of Pilot securities may be increased to 35, the number originally authorized by the Commission in 1988. SES information will continue to be provided only to subscribers of NASDAQ Level 2/3 services. Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access to exchange's CLOB system. Finally, the original agreement between the NASD and the SES will remain in effect for the term of the extended Pilot Program. This agreement, which provides for the sharing of regulatory information as needed, is believed adequate given the limited nature and limited scope of the ongoing Pilot Program.[6]

Regarding the statutory basis for the extended Pilot Program, the NASD relies on sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17 A(a)(1) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *" Finally, section 17A9a)(1) reflects the Congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits that extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

[6] The NASD notes that any substantive enhancement to the Pilot Program, including introduction of an automated order routing and/or execution system, would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement will be implemented during the requested extension.

B. Self-Regulatory Organization's Statement on Burden on Competition

The extended Pilot Program will permit the continued exchange of static market data on a limited group of NASDAQ securities between the NASD and the SES on a non-exclusive basis. The costs of supporting the Pilot Program are nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by SES and NASD member firms for receipt of the static data being provided on Pilot securities.

The NASD submits that neither the structure nor operation of the present Pilot Program poses any burden on competition. The brief extension being sought will enable the sponsoring markets to formalize the future objectives and structure of the Pilot Program. These matters will be addressed in a subsequent Rule 19b–4 filing that will provide a further opportunity for public comment.

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 this rule proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The commission believes that accelerated approval is appropriate to avoid termination of the Pilot Program pending formalization of the sponsors' plans for the future operation of this Program. The brief extension being approved should allow sufficient time for the NASD to prepare another Rule 19b–4 filing regarding this program, which filing will incorporate certain additional information germane to the Commission's deliberations on this matter. Further, the Commission acknowledges the limited nature of the Pilot Program and that no substantive changes will be implemented during the proposed extension. Accordingly, the Commission believes that the Pilot Program should not be terminated under these circumstances.

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 September 7, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved, for the period from August 13, 1990 through November 12, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: August 13, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–19403 Filed 8–16–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28332; Filed No. SR–NASD–90–44]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Replacement of the Uniform Practice Committee with a Committee Designated by the Board

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 31, 1990, the National Association of Securities Dealers, Inc. ("NASD") or "Association") filed with the Securities and Exchange

Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A)(iii) of the Act; it is therefore effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the NASD's Uniform Practice Code ("Code") to eliminate all references to the National Uniform Practice Committee ("NUPC") and re-vest all of the NUPC's authority in a Committee so designated by the Board of Governors. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Uniform Practice Code

Table of Contents

Section	Subject	Paragraph
1.	Scope of uniform practice code.....	3501
2.	[Uniform practice c]Committees.....	3502

Sec. 2

[The National Uniform Practice Committee] *A committee designated by the Board of Governors (the "Committee")* shall have the power to issue interpretations or rulings with respect to the applicability of this Code to situations in which there is no substantial disagreement as to the facts involved in order to make custom, practice, usage, and trading technique in the investment banking and securities business uniform, to simplify and facilitate day-to-day business of members of and to remove causes for business disputes and misunderstandings which arise from uncertainty and lack of uniformity, including rulings in connection with "when, as and if issued" trading and "when, as and if distributed" trading, and whether a security tendered is a good delivery in settlement of such contracts.

Resolution of the Board of Governors—Refusal of Abide by Rulings of Uniform Practice] *the* Committee"

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to abide by an official ruling of the [National Uniform Practice] Committee, acting within its appropriate sphere, with respect to any transaction which was consummated within the provisions and preview of the Uniform Practice Code.

Definitions

Sec. 3

(a)–(b) No change.

(c) The term "Committee" whenever used in the Code, unless the context otherwise requires, shall mean the [National Uniform Practice] Committee *delegated the authority to administer this Code by the Board of Governors.*[1]

(d) No change.

Sec. 4

Delivery Dates

(a)–(b) No change.

Ruling of the [NUPC] *Committee*—"Notice Re: Trade Date"

Text of the Ruling unchanged.

(c)–(f) No change.

Memorandum of the [NUPC] *Committee*—" 'When, As and If Issued' or 'When, As and If Distributed' Contracts"

Changes in text are made to replace all references to "National Unfiorm Practice Committee" or "NUPC" with "Committee." See exhibit 2 to the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with th Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed by comments it recieved 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 Proposed of, and Statutory Basis for the Proposed Rule Change

The Board of Governors of the NASD, as part of the reappointment process for standing committees, combined the Uniform Practice Committee and the Capital and Margin Committee to create the Operations Committee. The NASD is proposing to amend the Uniform Practice Code to re-vest the authority of the Uniform Practice Committee generally in whatever committee the Board designates; currently, the Operations Committee is so designated.

The proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which generally requires that the Association adopt and amend its rules to promote just and equitable principles of trade, foster cooperation and coordination with regulators, and provide for the protection of the investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited not received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing, pursuant to section 19(b)(3)(A)(iii) of the Act in that it is concerned solely with the administration of a self-regulatory organization.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

[1] The Board of Governors has so designated the NASD Operations Committee.

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 September 7, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 13, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-19404 Filed 8-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28326; File No. SR-SCCP-90-01]

August 10, 1990.

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Stock Clearing Corporation of Philadelphia Relating to Revisions to Schedule of Charges

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act") [1] notice is hereby given that on July 2, 1990, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes, as a rule change, revisions to its schedule of charges. The text of the revisions is as follows with new text italicized, and deleted text bracketed.

SCHEDULE OF CHARGES

[Effective (May 1, 1986) *July 1, 1990*]

Service	Charge
1. Account Charges:	
a. Maintenance Fee[1] ...	$150.00/mo. (*20 or fewer trades/mo.*). *$250.00/mo. (over 20 trades/mo.).*
b. Additonal Suffix [2]	$20.00/mo./suffix (*20 or fewer trades/mo.*). *$32.00/mo./suffix.*
2. Trades Recording Charges:	
a. Regular Trading.....	$0.47 per side.
b. PACE Trades [less than 600 shares].	$0.30 per side for participants with 1 to 1,000 PACE trades/mo. $0.27 per side for participants with 1,001 to 3,000 PACE trades/mo. $0.24 per side for participants with 3,001 to 5,000 PACE trades/mo. $0.20 per side for participants with 5,001 or more PACE trades/mo.
c. Municipal Bond Trades.	$1.00 per compared side.
d. Yellow Tickets (between two accounts).	$0.47 per side.

[1] 15 U.S.C. 78s(b)(1).

SCHEDULE OF CHARGES—Continued

[Effective (May 1, 1988) *July 1, 1990*]

[1] The "maintenance fee" is a basic carrying charge that is imposed on all accounts. Telephone conversation between William N. Briggs, Jr., Senior Vice President, SCCP, and Thomas C. Etter, Jr., attorney, SEC, on July 30, 1990.

[2] Some SCCP participants, particularly specialists, maintain more than one account. These additional accounts are known as suffix accounts and are subject to suffix fees. *Id.*

II. SRO's Statement Regarding the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. SRO's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

On June 20, 1990, the Board of Governors ("Board") of the Philadelphia Stock Exchange, Inc. ("PHLX") approved general amendments to PHLX's schedule of fees and charges. In addition to certain fee increases, the Board approved fee decreases in the form of significant discounts and credits with respect to the execution of stock trades via the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") System. The proposed fees that SCCP will charge to its participants are equitably allocated and reasonable in accord with section 17A(b)(3)(D) of the Act.

To coincide with those PHLX fee changes, SCCP proposes hereby to institute clearing fee changes with respect to PACE trades. Currently, PACE trends over 599 shares are subject to a flat $0.47 per trade side trade recording charge, and PACE trades of less than 599 shares are subject to a schedule of substantially lesser rates depending on the volume of trading done per billing cycle. The proposed SCCP rule change would permit all PACE trades, regardless of size, to benefit from the aforementioned recording charge rate schedule.

Additionally, the SCCP maintenance fee of $150.00 per month will be increased to $250.00 per month for active accounts, which are defined as accounts reflecting 20 or more trades per billing cycle. The additional suffix fee of $20.00 per month, per suffix, would be increased to $32.00 per month, per suffix. Inactive accounts, which are accounts reflecting less than 20 trades per month, will continue to be subject to the existing account charge rates. The proposed revisions more closely align charges with the costs incurred by SCCP in servicing these accounts.

The SCCP Board has designated the above-mentioned fee revisions to become effective on July 1, 1990.

B. SRO's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. SRO's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments have been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19-4 under the Act because the rule change establishes fees to be charged by the SRO. 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 also will be available for inspection and copying at SCCP. All submissions should refer to File No. SR-SCCP-90-01 and should be submitted by September 7, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-19340 Filed 8-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25131]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 10, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgaged thereunder.[1] All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 4, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be grantd and/or permitted to become effective.

National Fuel Gas Company, et al. (70-7201)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its subsidiary, Enerop Corporation ("Enerop"), 10 Lafayette Square, Buffalo, New York 14203, have filed a post-effective amendment under sections 9(a) and 10 of the Act to their application-declaration which was filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45.

By orders dated May 1, 1986 and March 18, 1988 (HCAR Nos. 24081 and 24604, respectively), the Commission authorized, in relevant part: (1) National to loan Metscan, Inc. ("Metscan"), a New York corporation that has developed an electronic remote meter reading system ("Metscan System"), $200,000 and to receive an option to convert the note ("Note") evidencing the loan into 80,000 shares of Metscan's preferred stock, at a price of $2.50 per share; (2) National to assign the Note and option from Metscan to Enerop; (3) National to provide Enerop $442,500 as a contribution to capital, which funds Enerop was authorized to invest, together with third parties, in Metscan Technology Partners ("Partnership"), a New York partnership formed by Metscan, after which Enerop would own approximately 9.96% of the Partnership; and (4) the Partnership and Metscan to be reorganized as a corporation before the end of 1989, and Enerop to acquire approximately 7.23% of the common stock of the new corporation.

The reorganization occurred May 17, 1989, and the new corporation was Metscan Acquisition Corporation ("MAC"). Pursuant to the reorganization, the Note and Enerop's Partnership interest attributable to the $442,500 investment were converted into 80,000 shares and 177,000 shares of MAC common stock, respectively, at a conversion rate of $2.50 per share. MAC subsequently changed its name to Metscan, Inc. ("Metscan"), and the 257,000 shares that Enerop now owns represent 6.0% of the total shares of Metscan common stock outstanding, and 5.1% of that total if shares subject to outstanding warrants and employees' options are included.

Enerop now proposes to acquire an additional 143,000 shares of Metscan common stock, $.001 par value, at $2.50 per share for $357,500, and 39,500 shares of Metscan preferred stock, $4 par value, at par for $158,000. The preferred stock pays a cumulative annual 7% dividend, and is convertible by the stockholders to Metscan common stock on a 1:1 basis for five years, through July 1995. The preferred stock has the traditional priority respecting divident payments and in the event of liquidation. Once Enerop acquires the 143,000 shares of common stock, it will own 9.1% of Metscan's common stock, or 7.8% of such common stock, if all warrant and other rights are exercised. When both the acquisition of common and preferred shares have been consummated, Enerop's total equity investment in Metscan will be 9.1% or about 7.9% of the total potential equity investment, for a total price of $515,500.

Indiana Michigan Power Company (70-7709)

Indiana Michigan Power Company ("I&M"), One Summit Square, Fort Wayne, Indiana 46801, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a declaration under section 12(d) of the Act and Rule 44 thereunder.

I&M proposes to sell certain of its assets to Wabash Valley Power Association, Inc. for a cash purchase price of $1,370,075. The assets to be sold consist of electric power facilities and other related equipment as are located upon real estate owned by General Motors Corporation.

Kingsport Power Company et al. (70-7712)

Kingsport Power Company ("Kingsport"), 422 Broad Street, Kingsport, Tennessee 37660 and Wheeling Power Company ("Wheeling"), 51-16th Street, Wheeling West Virginia 26003, both electric public-utility subsidiary companies of American Electric Power Company, Inc., a registered holding company, have filed an application-declaration under sections 6(a) and 7 of the Act and Rule 50 subsection (a)(5) thereunder.

Kingsport and Wheeling propose to issue, prior to December 31, 1990, unsecured promissory notes in principal amounts up to $2 million and $11 million, respectively, with maturities of not less than nine months or more than

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[2] 17 CFR 200.30-3(a)(12).

[1] The Commission originally issued notices on the filings in File Nos. 70-7201 and 70-7709 on July 20, 1990; however, the notices were never published in the Federal Register.

ten years ("Notes") to one or more commercial banks or other financial institutions pursuant to a proposed term loan agreement ("Agreement"). Under the Agreement, the Notes would bear interest at either a fixed rate, a fluctuating rate or a combination of fixed and fluctuating rates.

Kingsport will use the proceeds from the borrowings to pay at maturity or refund prior to maturity a $2 million term loan due December 31, 1990, bearing interest at the prime rate. Wheeling will use the proceeds from the borrowings together with any other funds which may become available to pay at maturity or to refund a $7 million term loan due November 1, 1990, bearing interest at the prime rate, to repay short-term debt, to reimburse its treasury for expenditures incurred in connection with its construction program and for other corporate purposes.

Blackstone Valley Electric Company (70-7768)

Notice of Proposal To Increase Unsecured Debt Limitation of Preferred Stock; Order Authorizing Solicitation of Proxies

Blackstone Valley Electric Company ("BVEC"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865, a wholly owned subsidiary of Eastern Utilities Associates, a registered holding company, has filed a declaration under sections 6(a), 7, and 12(e) of the Act and Rules 62 and 65 thereunder.

The terms of the preferred stock of BVEC provide that, except with the consent of the owners of a majority of the preferred stock then outstanding, the amount of unsecured indebtedness of the company having maturities of less than ten years which the company may issue or assume shall not exceed 10% of the sum of the principal amount of all bonds and other securities representing secured indebtedness and the capital and surplus of the company, and the amount of all unsecured indebtedness of the company issued or assumed shall not exceed 20% of such sum. By prior Commission order in this matter (HCAR No. 23847, October 1, 1985), BVEC was authorized to solicit proxies in connection with a special meeting on October 8, 1985 of the holders of BVEC preferred stock, who approved an amendment to the terms of the outstanding preferred stock, for a five-year period ending October 1, 1990, permitting BVEC to issue or assume unsecured indebtedness having maturities of less than ten years in excess of the 10% limitation.

BVEC now proposes to call another special meeting of its preferred stockholders for the purpose of voting on a proposed extension, for an additional five-year period, of its authority to issue or assume unsecured debt having maturities of less than ten years in excess of the 10% limitation. The 20% limitation on all unsecured indebtedness shall remain in effect. In connection therewith, BVEC proposes to solicit proxies.

The proposed amendment to the terms of the oustanding preferred stock requires an affirmative vote of the owners of a majority of the preferred stock. BVEC requests authority to solicit proxies from its preferred stockholders for approval of the proposed amendment at a special meeting to be held on September 27, 1990. BVEC has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation of proxies for voting by its preferred stockholders on the proposal to amend the terms of its preferred stock be permitted to become effective as provided in Rule 62(d).

It appearing to the Commission that BVEC's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It Is Ordered, that the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, under Rule 62, and subject to the terms and conditions prescribed in Rule 24 under the Act.

Monongahela Power Company (70-7774)

Monongahela Power Company ("MP"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, an electric-utility subsidiary of Allegheny Power System, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to sections (6)(a), 6(b), and 7 of the Act and Rule 50(a)(5) thereunder.

MP proposes to issue and sell short-term notes from time-to-time to banks and to dealers in commercial paper through September 30, 1992, in an aggregate principal amount not to exceed $64 million at any one time outstanding. Each note payable to a bank will be dated as of the date of the borrowing, will mature not more than 270 days after the date of issuance or renewal thereof, and will bear interest at a rate no greater than the current prime rate or equivalent interest rate of the bank at which the borrowing is made. The notes may or may not have prepayment provisions.

The commercial paper will not be prepayable and will have varying maturities, none greater than 270 days. The notes will be sold directly to the dealer and/or placement agent at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity. An exemption from the competitive bidding requirements of Rule 50 has been requested under Rule 50(a)(5) for the proposed issuance and sale of commercial paper notes.

Allegheny Power System, Inc. (70-7775)

Allegheny Power System, Inc. ("APS"), 320 Park Avenue, New York, New York 10022, a registered holding company has filed a declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By prior Commission orders in this matter, dated August 5, 1977, April 29, 1980, June 23, 1983, June 19, 1984 and March 17, 1987 (HCAR Nos. 20131, 21542, 22985, 23333 and 24344, respectively), APS was authorized to issue and sell a total aggregate number of 9 million shares of its common stock ("Common"), par value $2.50 per share, to its Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan") and to its Employee Stock Ownership and Savings Plan ("ESOSP"). As of June 29, 1990, APS has issued and sold 6,432,429, and 1,696,828 shares of Common to these respective plans.

APS now proposes to issue and sell from time-to-time up to an additional 2 million shares of Common to the Dividend Plan and up to 1 million shares to the ESOSP. The Common will be sold to the Dividend Plan at a price equal to the average of the high and low market prices of APS common stock reported as New York Stock Exchange Composite Transactions for the 10 trading days prior to the dividend payment date. The price for Common sold to the ESOSP will be determined by the applicable provisions of the Internal Revenue Code. APS has requested an exemption from the competitive bidding requirements of Rule 50 under Rule 50(a)(5) for the issuance and sale of its Common to the Dividend Plan and ESOSP.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 90-19341 Filed 8-16-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 21-28; Airworthiness Certification of U.S.—Produced Aircraft and Engine Kits Assembled Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular 21-28, Airworthiness Certification of U.S.—Produced Aircraft and Engine Kits Assembled Outside the United States. Advisory Circular 21-28 provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) part 21, Certification Procedures for Products and Parts.

SUPPLEMENTARY INFORMATION:

Background

Advisory Circular 21-28 provides information and guidance concerning airworthiness certification requirements for aircraft or aircraft engines, assembled from kits by aircraft or aircraft engine manufacturers located in other countries.

FOR FURTHER INFORMATION CONTACT: Donald E. Plouffe, Production Certification Branch, AIR-220, Aircraft Manufacturing Division, room 333, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Phone (202) 267-8361.

Dana Lakeman,

Assistant Manager, Aircraft Manufacturing Division.

FR Doc. 90-19382 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-13-M

Advisory Circular (AC) 20-135, Powerplant Installation and Propulsion System Component Fire Protection Test Methods, Standards, and Criteria; and AC 25.562-1, Dynamic Evaluation of Seat Restraint Systems & Occupant Protection on Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circulars.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20-135, Powerplant Installation and Propulsion Component Fire Protection Test Methods, Standards, and Criteria, which provides guidance and methods for fire testing of materials and components used in propulsion engines and APU installations and in areas adjacent to designated fire zones. Also issued is AC 25.562-1, Dynamic Evaluation of Seat Restraint Systems & Occupant Proteciton on Transport Airplanes, which provides information and guidance concerning compliance with the Federal Aviation Regulations (FAR) applicable to dynamic testing of seats intended for use in transport airplanes.

DATES: AC 20-135 was issued by the Acting Director, Aircraft Certification Service, in Washington, DC, on February 6, 1990. AC 25.562-1 was issued by the Manager, Transport Airplane Directorate, Aircraft Certification Service, in Seattle, Washington, on March 6, 1990.

HOW TO OBTAIN COPIES: These AC's may be obtained by writing to the U.S. Department of Transportation, M-494.3, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on August 3, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-19386 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program and Request for Review; Buchanan Field, Concord, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Buchanan Field, Concord, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by Buchanan Field District. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Buchanan Field were in compliance with applicable requirements effective August 21, 1989. The proposed noise compatibility program will be approved or disapproved on or before January 30, 1991.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is August 3, 1990. The public comment period ends September 17, 1990.

FOR FURTHER INFORMATION CONTACT: David Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303, Telephone (415) 876-2779. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Buchanan Field which will be approved or disapproved on or before January 30, 1991. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Buchanan Field, effective on August, 3, 1990. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 30, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All

comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examinaton at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Hawthorne, California. Mail Address: P.O. Box 92007, Worldway Postal Center, Los Angles, California, 90009

Mr. Harold E. Wight, Manager of Airports, 171 John Glenn Drive, Concord, California 94520.

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT".**

Issued in the Hawthorne, California on August 3, 1990.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 90-19380 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program, Tulsa International Airport, Tulsa, OK

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Tulsa Airports Improvement Trust under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On February 28, 1990, the FAA determined that the noise exposure maps submitted by the Tulsa Airports Improvement Trust under Part 150 were in compliance with applicable requirements. On July 27, 1990, the Administrator approved the noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Tulsa International Airport's noise compatibility program is July 27, 1990.

FOR FURTHER INFORMATION CONTACT: Dean A. McMath, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76193-0612, (817) 624-5594. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Tulsa International Airport, effective July 27, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compabitility program are delineated in FAR Part 150, section 150.5 Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The Tulsa Airports Improvement Trust submitted to the FAA on November 18, 1988, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 10, 1986 through February 26, 1990. The Tulsa International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 28, 1990. Notice of this determination was published in the **Federal Register** on March 12, 1990.

The Tulsa International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1994. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 28, 1990, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained six proposed actions for noise mitigation (on and/or off) the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part

150 have been satisfied. The overall program, therefore, was approved by the Administrator effective July 27, 1990.

Outright approval was granted for four of the specific program elements. Program sub-element 1A was disapproved for purposes of Part 150. This action recommended construction of a new runway. The primary need for such an action was determined to be for capacity and not noise mitigation. Program sub-element 1B was approved in part. This action recommended purchase of several parcels of property surrounding the airport, some of which is deemed compatible as described in Table 1 of part 150. Therefore only part of the property was approved for purchase as per Part 150. The program elements improved in full included a noise complaint and response and investigation system, the update and review of the program at the end of the 5-year period or before if deemed necessary, the performance of an acoustical survey and sound attenuation program, and the update of the future land use plan for the airport and surrounding environs.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on July 27, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Tulsa Airports Improvement Trust.

Issued in Fort Worth, Texas, August 6, 1990.

Hugh W. Lyon,

Assistant Manager, Airports Division.

[FR Doc. 90-19381 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-90-34]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: September 6, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 9, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26260.
Petitioner: Air Transport Association of America.
Sections of the FAR affected: 14 CFR 121.404(b).
Description of relief sought: To allow petitioner's member airlines a 6-month delayed compliance date to July 2, 1991, for the simulator training requirement for second-in-command pilots.

Docket No.: 26283.
Petitioner: Falcon Jet Corporation.
Sections of the FAR affected: 14 CFR 91.30(a) (new 91.213(a).
Description of relief sought: To allow petitioner's flightcrews to perform functional test flights on modified Falcon executive jet aircraft without an FAA-approved minimum equipment list.

Docket No.: 26285
Petitioner: Jet Management Group, Inc.
Sections of the FAR affected: 14 CFR 135.165(b)(6) and (b)(7).
Description of relief sought: To allow petitioner to operate its Learjet aircraft over routes between the east coast of the United States, Bermuda, and Puerto Rico with one transmitter and receiver instead of two as required by the regulation.

Dispositions of Petitions

Docket No.: 23492
Petitioner: United States Hang Gliding Association, Inc.
Sections of the FAR affected: 14 CFR 91.17 (new 91.309) and 103.1(b).
Description of relief sought/disposition: To extend Exemption No. 4144, as amended, that allows petitioner's members to two unpowered ultralights with a powered ultralight.

Grant, June 29, 1990, Exemption No. 4144C

Docket No.: 24237.
Petitioner: Department of the Air Force, Military Airlift Command.
Sections of the FAR affected: 14 CFR 91.119(a)(2) and 91.121[(b)(1) (new 91.177(a)(2) and 91.179(b)(1)).
Description of relief sought/disposition: To extend Exemption No. 4371A that allows the Military Airlift Command to conduct low-level delivery training missions.

Grant, July 31, 1990, Exemption No. 4371B

Docket No.: 26032.
Petitioner: Loken Aviation.
Sections of the FAR affected: 14 CFR 43.3(g)
Description of relief sought/disposition: To allow petitioner's pilots to remove and install seats in petitioner's single-engine aircraft when performing certain types of flight operations.

Grant, July 26, 1990, Exemption No. 5221

Docket No.: 26095.
Petitioner: Cochise Community College.
Sections of the FAR affected: 14 CFR 141.65.
Description of relief sought/dispostion: To allow petitioner to exercise examining authority for its Flight Instructor Course—Airplane Single Engine.

Grant, August 3, 1990, Exemption No. 5225

[FR Doc. 90-19383 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-13-M

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Security Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held September 17, 1990, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held September 17, 1990, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for the meeting is to continue the review of several recommendations from the Report of the President's Commission on Aviation Security and Terrorism. Subcommittee chairs will provide updates on their subcommittee actions since the July 17, 1990 committee meeting. Attendance at the September 17 meeting is open to the public, but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at anytime.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

Issued in Washington, DC on August 10, 1990.

Monte R. Belger,

Acting Assistant Administrator for Civil Aviation Security.

[FR Doc. 90-19384 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-13-M

Security Operations Subcommittee; Meeting

AGENCY: Federal Aviation Administration.

ACTION: Notice of Aviation Security Advisory Subcommittee meeting.

SUMMARY: Notice is hereby given of a meeting of the Security Operations Subcommittee of the Aviation Security Advisory Committee.

DATES: The meeting will be held September 10, 1990, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-7416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Security Operations Subcommittee of the Aviation Security Advisory Committee to be held September 10, 1990, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The Security Operations Subcommittee is chaired by the FAA. The agenda for the meeting is to identify current aviation security issues and to establish task force working groups as might be appropriate to address those issues.

Attendance at the September 10 meeting is open to the public, but limited to space available. Oral statements are not anticipated, but written statements may be submitted anytime. Persons wishing to present statements may be submitted anytime. Persons wishing to present statements or information should contact the Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-7416.

Issued in Washington, DC on August 10, 1990.

Monte R. Belger,

Acting Assistant Administrator for Civil Aviation Security.

[FR Doc. 90-19385 Filed 8-16-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 90-15]

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives rgarding differences in Capital and Accounting Standards among the Federal Banking and Thirft Agencies.

SUMMARY: This report has been prepared by the Office of the Comptroller of the Currency pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Section 1215 requires each Federal banking agency to report annually to the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives any differences between the capital standard used by such agency and capital standards used by any other such agency. The report must also contain an explanation of the reasons for any discrepancy in such capital standards and must be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jennifer C. Kelly, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 447-1164, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

The text of the report follows:

Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thirft Agencies

Interagency Differences in Capital Standards

This report on the differences between the capital requirements applied by the Office of the Comptroller of the Currency (OCC) and the other

bank and thrift regulatory agencies focuses on the standards (risk-based capital and leverage ratio) that will be effective at the end of this year rather than the standards which presently apply. The report is divided into two sections. The first section focuses on areas where there may be differences between bank and thrift rules as well as rules for banks. The second section points out areas where rules for banks are the same but the rules for thrifts are different.

I. Differences Between the OCC and the Other Three Regulators

The banking agencies employ uniform ratios and consistent capital frameworks, but there are some technical differences among the agencies' implementing guidelines.

A. Effective Date of Implementation

The OCC's risk-based capital guidelines become effective 12/31/90. The guidelines promulgated by the Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC) became effective on 3/15/89 and 4/20/89, respectively, but do not require compliance until 12/31/90. The OTS rule became effective and enforceable as of 12/7/89. That date was mandated under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). Pub. L. No. 101–73, 103 Stat. 183 (1989). The differences among the banking agencies' effective dates are inconsequential because none require compliance with the risk-based capital standard until 12/31/90.

B. Leverage Ratio Requirement

All four regulators agreed in principle that the risk-based capital standard should be supplemented with a leverage-based capital ratio, *i.e.*, a ratio that measures capital against total balance sheet assets. However, there are some differences between the specifics of each agency's proposed/actual requirement.

The OCC has proposed that each national bank must maintain sufficient capital to meet a minimum leverage ratio of 3% Tier 1 capital to total balance sheet assets, as well as the minimum risk-based capital ratio of 8% of risk-weighted assets.

The FRB issued a similar proposal in late December 1989, with one significant difference. The FRB's proposal specified that the required leverage ratio for 1-rated banks would be 3% (Tier 1 capital to total assets) and other institutions would be subject to appropriately higher capital requirements based on their risk profiles.

The FDIC has not yet proposed a minimum leverage ratio to operate in tandem with the risk-based capital requirement. However, it has publicly advocated requiring a second level of capital over and above the 3% Tier 1 minimum proposed by the OCC and the FRB.

The OTS has already established and implemented a 3% leverage ratio requirement in addition to its risk-based capital standard. The only significant variation between this leverage ratio and that proposed by the OCC arises from the differences between the OTS and OCC definitions of Tier 1 (or core) capital. Those differences primarily relate to the treatment of goodwill and other intangibles, including purchased mortgage servicing rights. (See the next section for details.)

The OCC believes the combination of a 3% Tier 1 capital leverage ratio and an 8% risk-based capital ratio will provide an improved level of support over current capital standards. It will increase capital requirements for banks engaged in riskier activities and require pure capital to absorb losses from unanticipated or extraordinary events. Too low a capital requirement would threaten the safety and soundness of the banking system because banks would be permitted to operate without sufficient capital to protect against losses. Too high a capital requirement would also threaten the safety and soundness of the banking system because it would inhibit the ability of banks to compete internationally and may increase pressures on bank management to engage in riskier activities.

We believe that a bank's minimum capital requirement should depend upon the riskiness of the business the bank engages in. A capital level at, or near, the regulatory minimum is acceptable only for a bank with excellent control systems, high asset quality, and well-managed on- and off-balance sheet activities. The OCC's supervisory judgment on a particular bank's capital adequacy, both in terms of risk-based capital and the minimum leverage ratio, will continue to be based upon an assessment of all the factors relevant to that bank.

The OCC chose not to set the minimum leverage ratio at a higher level because it would then become the operative capital standard for most banks by overriding the 8% risk-based capital standard. That would be contrary to the OCC's intention for the risk-based capital standard to be the primary focus in the evaluation of capital adequacy.

C. Intangible Assets

There are some differences in the various agencies' treatment of intangible assets in the calculation of Tier 1 capital. The agencies are currently discussing these differences in an effort to achieve consistency on this issue, to the extent permitted by legislation.

1. Goodwill. The banking agencies' guidelines, which were published before FIRREA was enacted, require the deduction of all goodwill. The only exception to this requirement is supervisory goodwill, if approved by the bank's primary regulator. However, the supervisory goodwill provision will be deleted from each agency's final regulation in compliance with section 221 of FIRREA, 12 U.S.C. 1828(n). FIRREA specifically forbids the inclusion of any unidentifiable intangible asset, *i.e.*, goodwill, for federal banking institutions, but permits thrift institutions to phase out its incorporation in core capital through 12/31/94. National banks have been required to deduct goodwill from capital since 1985. Therefore, amending the OCC's regulation to no longer allow the inclusion of supervisory goodwill will have no significant effect on national banks.

2. Other Intangible Assets. As a general rule, the OCC requires the deduction of all intangible assets from Tier 1 capital. The exceptions to this rule are as follows:

a. Any intangible asset that, in the OCC's opinion, satisfies a three-part test. The criteria an intangible asset must meet for this test are: (1) It must be able to be separated and sold apart from the bank or from the bulk of the bank's assets; (2) its market value must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the banks; and (3) the bank must demonstrate that a market exists which will provide liquidity for the intangible asset. At present, the only intangible that the OCC has identified that is presumed to meet those criteria is purchased mortgage servicing rights (PMSR). In an effort to develop further information on this issue, the OCC is preparing to publish an advance notice of proposed rulemaking (ANPR) to request comment on whether other intangible assets can meet the three-part test.

Furthermore, qualifying intangible assets, specifically PMSR, cannot exceed 25% of Tier 1 capital. Any amount in excess of this limit must be

deducted from Tier 1 capital. Recent events in the industry, including the passage of FIRREA, led some national banks to express the belief that the 25% limit on PMSR is too stringent. In light of this renewed interest, the OCC is reexamining the capital treatment of PMSR to determine whether there is a more appropriate method to ensure that national banks maintain sufficient capital. As part of that effort, the ANPR mentioned in the previous paragraph includes a number of specific questions concerning the risks associated with PMSR and the related capitalization issue.

b. Under the transitional risk-based capital rules that apply until December 31, 1992, national banks are allowed to classify "grandfathered intangibles" as qualifying intangibles, subject to the 25% limit in aggregation with the bank's other qualifying intangibles, if any. When the previous capital rule was adopted in 1985, a grandfathering provision was inserted that permitted banks to continue including previously qualifying intangibles. The OCC decided to continue this transitional treatment of the pre-1985 intangibles until the risk-based capital guidelines become fully effective on 12/31/92.

The FRB's capital guidelines for banks contain the same three-part test as the OCC's. However, rather than placing a firm 25% limit on qualifying intangibles, as the OCC does, the FRB states that qualifying intangibles in excess of 25% of Tier 1 capital are subject to special scrutiny.

The FDIC's capital guidelines require the deduction of all intangible assets from Tier 1 capital, except:

a. PMSR. Although the FDIC's risk-based capital guidelines originally did not place an explicit limit on PMSR, it has subsequently proposed a 25% limitation for state nonmember banks and savings associations, as well as the 90% of fair market value "haircut" imposed by FIRREA. The haircut limits the amount that can be recognized for purposes of capital to 90% of the fair market value of readily marketable purchased mortgage servicing rights.

b. Any other intangible asset that is specifically approved by the FDIC on a case-by-case basis. The FDIC's guidelines state that the same criteria used by the OCC and the FRB will be used to make those case-by-case determinations.

The capital rules for savings associations do not require the deduction of the following intangible assets:

a. PMSR, subject to the 90% of fair market value haircut imposed by FIRREA.

b. Any other intangible asset that is determined to meet the three-part test used by the banking agencies.

The OTS has issued temporary guidance stating that core deposit intangibles can be considered a qualifying intangible if management prepares the appropriate documentation relative to the three-part test. The OTS has not published any guidance relative to the ability of other intangible assets to meet the test.

D. Mortgage-Backed Securities

The banking agencies assign all privately-issued mortgage-backed securities to the 50% or 100% risk-weight category, except those composed of, or collaterized by, government agency, or agency-sponsored, securities, which receive a 20% risk-weight. The OTS allows certain high quality privately-issued mortgage-backed securities (AAA or AA-rated plus other requirements), in addition to those collateralized by obligations of government agencies, to receive a 20% risk-weight.

The OCC's risk-based capital guidelines state that any mortgage-backed security that is capable of absorbing more than its pro rata share of principal loss, as well as all stripped mortgage-backed securities, must be risk-weighted at 100%. However, due to the significant levels of interest rate risk associated with certain classes of collateralized mortgage obligations (CMOs), the OCC is currently reviewing its supervisory approach to determine what changes, including capital requirements, are necessary to ensure that banks manage this category of assets prudently.

The FRB's and FDIC's guidelines contain language similar to the OCC's, except that the word "principal" is not included. This gives them more latitude in defining what constitutes a class with high levels of risk since they can take interest rate risk, as well as credit risk, into consideration.

The OTS has issued a Thrift Bulletin identifying classes of CMOs that it places in the 100% risk-weight category. The OTS has also indicated a preference to deal with the issue through an explicit interest rate risk component in the risk-based capital rule (see discussion at II.3.A.

The agencies all agree CMOs that can absorb more than their pro-rata share of loss should be risk-weighted at 100%. They are working together to develop a consistent definition of what is meant by "more than its pro-rata share of loss."

E. Treatment of Junior Liens on One-To-Four Family Properties

While the OCC generally assigns a risk-weight of 50% to first liens on one-for-four family property, all second liens on residential property are assigned a risk-weight of 100%, regardless of whether the institution also holds the first lien. The OTS has adopted the same approach. In order to qualify for the 50% risk-weight, the OCC's guidelines require banks to adhere to prudent underwriting standards with respect to their loans secured by first liens. In assessing the prudence of a bank's underwriting standards, examiners consider factors such as the loan-to-value ratio, the borrower's paying capacity, and the long term expectations for the real estate market.

The FRB's and FDIC's guidelines state that two transactions secured by consecutive liens on the same property are to be viewed as a single loan for the purpose of determining the appropriate risk-weight. If, in aggregate, the two loans exceed a prudent loan-to-value ratio, the asset would be assigned to the 100% category. On the other hand, if the bank has prepared adequate documentation to demonstrate the prudence of its underwriting standards relative to the combined loan, the entire value may be risk-weighted at 50%. Therefore, although there are some technical differences in the methodology, all the agencies have the same ability to adjust the capital requirement to account for imprudent loans secured by first liens on one-to-four family properties.

II. Differences Between the OTS and the Banking Agencies

The three banking agencies have uniform positions on the following issues. The identified differences between the banking agencies and OTS have been subdivided into three categories, based on the primary reason for the difference.

1. Legislative Requirements

A. Agricultural Loan Losses. Title VIII of the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. No. 100–86, 101 Stat. 552 (1987), permits agricultural banks to amortize losses on qualified agricultural loans over seven years, if approved by the primary regulator. The unamortized portion of these losses is included in Tier 2 capital.

The OTS' rules do not permit this capital component since CEBA did not extend the program to cover thrifts.

B. Noncompliance with Capital Standards. FIRREA established statutory restrictions to be followed by

OTS regarding thrifts in noncompliance with the capital standards. Such actions include growth restrictions and other capital directives. Banking regulators are not bound by the statute and may determine the most effective supervisory efforts on an individual bank basis.

C. Phase-in Requirements. The banking agencies have adopted transition rules for a two year period beginning 12/31/90. During this period, banks will be required to maintain at least 7.25% risk-based capital, and may take advantage of various other transitional rules. For example, up to 10% of Tier 1 capital can be comprised of Tier 2 capital elements. Otherwise stated, the "true" Tier 1 capital to risk-weighted assets need be only 3.25%. On 12/31/92, the transition rules expire and all banks must maintain at least 4% Tier 1 and 8% total capital to risk-weighted assets.

OTS was required by statute to implement its risk-based capital guidelines by 12/7/89. FIRREA also provided for a different set of transition rules than those afforded banks, although the ultimate date for full implementation is the same. Thrifts are required to maintain 80% of the 8% risk-based capital standard from 12/7/89 to 12/30/90; 90% from 12/31/90 to 12/30/92; and 100% thereafter.

2. Differences in Allowable Activities

A. Subsidiaries. There are some significant differences in the accounting rules for thrifts and banks relative to the consolidation of subsidiaries, as well as the types of activities in which these subsidiaries may engage. These differences can generate variations in the capital requirement since investments in unconsolidated subsidiaries are generally required to be deducted from the capital base. In general, the banking agencies require the consolidation of all significant subsidiaries of the parent organization. However, the banking agencies do retain a significant amount of discretion to adjust the accounting treatment of individual subsidiaries for the purposes of assessing capital adequacy.

B. Equity Investments. Thrift institutions have historically invested in a much broader range of equity investments than that allowed banks. While the banking agencies include all equity investments in the 100% risk-weight category, the OTS guidelines require the deduction of equity investments from capital that do not represent investments in subsidiaries. However, the thrift guidelines provide for a 5 year phase-in of the deduction requirement. In the interim, the portion not deducted will be risk-weighted at 100%.

C. Pledged Deposits/ Nonwithdrawable Accounts; Income Capital Certificates (ICCs) and Mutual Capital Certificates (MCCs). Thrift institutions may include these instruments as capital. They do not exist within the banking industry.

3. Differences in the Guidelines

FIRREA requires that the capital requirements applicable to thrifts shall be no less stringent than the standards applicable to national banks. However, it also provides that the risk-based capital standards for thrifts may deviate from those of national banks to reflect interest rate risk or other risks. The following are areas where there are deviations.

A. Interest Rate Risk. When the OTS published its capital regulation in November 1989, it announced its intention to propose a modification of the risk-based capital requirement that would incorporate an explicit charge for interest rate risk, in addition to credit risk.

The OCC has notified bankers that its examiners will consider both the level of interest rate risk and the quality of interest rate risk management when assessing capital adequacy. Detailed information has been distributed to all national banks and examiners to help them identify the level of interest rate risk and the quality of risk management at individual institutions. The OCC will require capital levels above the 8% risk-based capital minimum based on the assessment of these two factors.

Because the risk-based capital ratio is based on broad measures of relative credit risk, all three of the banking agencies' risk-based capital guidelines specifically discuss the importance of incorporating noncredit risks, including interest rate risk, into the assessment of capital adequacy. The U.S. banking agencies are also participating in an international effort to develop methodologies to quantify the risks associated with changes in interest rates, equity investments, and foreign exchange activities which will supplement the original risk-based capital framework.

B. Recourse Arrangements. Under the banking agencies' risk-based capital guidelines, the same amount of capital must be held against an asset that a bank originates and sells with recourse, regardless of whether it is accounted for as a sale (off-balance sheet) or a financing transaction (on-balance sheet). The determination of sale versus financing treatment is based on the regulatory reporting rules specified in the Consolidated Reports on Condition and Income Instructions. There are some differences between the thrift and bank regulatory reporting treatment of these transactions, but they generally do not result in a different risk-based capital requirement due to the consistent treatment of on- and off-balance sheet exposures. For further discussion of this area, please refer to the report on interagency accounting differences, 7. Sales of Assets with Recourse.

However, the regulatory reporting differences do generate a variation in the leverage ratio requirement. For purposes of calculating the leverage ratio, capital must be held only against on-balance sheet assets, but not off-balance sheet exposures. At present, the thrift accounting rules are more permissive in categorizing transactions as sales, and therefore, allowing them to be removed from the balance sheet. Thus, a bank may have a relatively higher leverage ratio capital requirement than a thrift that engages in similar recourse transactions. However, under the OCC's proposed leverage ratio rule, the primary emphasis would be placed on risk-based capital, rather than the leverage ratio. Therefore, the OCC does not consider this difference to be a significant issue. Furthermore, the five member agencies of the Federal Financial Institutions Examination Council (FFIEC) have undertaken a project to review, and possibly revise, the regulatory treatment of recourse arrangements. It is the agencies' intention to work to develop common definitions, as well as uniform reporting and capital treatment, of recourse arrangements. The target date for completion of this project is December 31, 1990.

In addition to the accounting issue described above, there are two significant points related to the capital treatment of recourse exposures on which the banking agencies currently differ from the OTS. It is intended that the results of the joint recourse project will eliminate these differences within the next year.

1. Under the banking agencies' rules, the capital charge for the off-balance sheet exposure related exposure related to an asset sold with recourse is based on the entire outstanding principal balance of that asset, regardless of the actual amount of recourse exposure. The OTS has set the capital charge for these off-balance sheet exposures at the *lesser* of: (1) The amount of recourse or (2) the capital charge based on the entire outstanding principal balance of the asset.

2. The current regulatory reporting rules for banks only address recourse exposures that arise from transactions involving assets originated by the selling bank. However, a bank may also provide explicit assurances against the risk of loss associated with assets originated by a third party through a variety of means. Due to limitations in the current bank regulatory reporting framework, the capital requirements for the latter type of recourse exposures may differ from those that would arise from the sale of a bank's own assets. The bank regulators are working to develop a consistent and rational set of rules for reporting, capital and lending limit purposes.

The OTS currently addresses two such situations in their risk-based capital guidelines.

a. When a thrift acts as the servicer of a pool of assets that have been originated by others and accepts exposure to credit risk as part of the servicing arrangement, the thrift must hold capital against that exposure in the same manner as it would if it had originated the assets and sold them with a similar amount of recourse.

b. When a thrift purchases a security representing a subordinated interest in loans originated by other parties, the thrift must hold capital against all the underlying loans, just as it would if it had originated some or all of the underlying loans.

C. Mutual Funds. The banking agencies assign risk-weights for banks' investments in mutual funds based upon the riskiest asset that a particular mutual fund is allowed to invest in, rather than its actual holdings. This approach is taken to acknowledge the unknown future composition and risk characteristics of a fund's holdings. The OTS bases the risk-weight on the fund's actual asset with the highest capital requirement; on a case-by-case basis, OTS will allow pro-rata capital weights based upon the actual composition of a fund.

D. Residential Mortgage Loans and Construction Loans. The banking agencies place a 50% risk-weight on one-to-four family residential mortgage loans and loans made to individual purchasers for the construction of their own homes providing certain conditions are met. Among other things, such loans must be performing and the bank must adhere to prudent underwriting standards to qualify for the 50% risk-weight. The OTS guidelines allow a 50% risk-weight for one-to-four family residential mortgage loans if the loan-to-value ratio (LTV) does not exceed 80%. However, the OTS does not make any distinctions among construction loans; they all must be included in the 100% risk-weight category.

Multifamily (5 units or more) mortgage loans are assigned a risk-weight of 100% by the banking agencies. Multifamily mortgage loans carry the same risks inherent in other commercial loans as they are income producing properties rather than personal residences. The OTS allows the inclusion of certain multifamily (5–36 units) residential mortgage loans in the 50% risk-weight if several conditions are met (LTV must be 80% or less and occupancy rates must be at least 80%).

E. Nonresidential Construction and Land Loans. The banking agencies assign a risk-weight of 100% to nonresidential construction and land loans. The OTS assigns a risk-weight of 100% to these assets up to an 80% loan-to-value ratio. Any excess portion must be deducted from total capital, using a five-year phase-in. The banking agencies address the risk that arises from excessive loan-to-value ratios on a bank by bank through the supervisory process.

F. Repossessed Assets/Assets More Than 90 Days Past Due. The banking agencies assign a risk-weight of 100% to repossessed assets/assets more than 90 days past due. The OTS assigns a 200% risk-weight to these assets, with the exception of one-to-four family real estate mortgages, which are assigned a 100% risk-weight. The highest risk-weight assigned to any asset by the banking agencies is 100%. The banking agencies rely upon the allowance for loan and lease losses for anticipated losses. Writing down assets to fair market value or charging them off effectively results in a reduction of capital. In addition, banks with high levels of risk in asset quality, including a significant volume of nonperforming or past due assets, will be expected to maintain ratios above the minimum levels.

G. FSLIC/FDIC-Covered Assets (Assets Subject to Guarantee Arrangements by the FSLIC or FDIC). The banking agencies generally place these assets in the 20% risk category, the same category to which claims on depository institutions and government-sponsored agencies are assigned. The banking agencies permit a 0% risk-weight only if the guarantee is unconditional and directly backed by the full faith and credit of the U.S. government. We understand that most yield maintenance agreements are conditioned on certain performance or reporting requirements, and therefore, cannot be considered unconditional guarantees. The OTS permits a 0% risk-weight for these assets.

H. Limitations on Limited-Life Capital Instruments in Tier 2 Capital. The banking agencies limit the amount of subordinated debt and intermediate-term preferred stock instruments that may be counted as Tier 2 capital to 50% of Tier 1 capital. In addition, all maturing capital instruments, namely term subordinated debt and limited-life preferred stock, must be discounted by 20% each year of the five years before maturity. The banking agencies adopted this approach in order to emphasize equity versus debt in the assessment of capital adequacy.

The OTS does not restrict the amount of limited-life capital instruments that may be counted as Tier 2 capital. Furthermore, all maturing instruments issued before 11/7/89 have been grandfathered with respect to the discounting requirement. For limited-life capital instruments issued on or after 11/7/89, thrifts have the option of using either (a) the discounting approach used by the banking regulators, or (b) an approach which allows for the full inclusion of all such instruments provided that the amount (of such instruments that mature within the next 7 years) maturing in any one year does not exceed 20% of the thrift's total capital.

Interagency Differences in Accounting Principles

The Comptroller of the Currency (OCC), as well as the other bank regulatory agencies, requires banks to follow generally accepted accounting principles (GAAP) except when significant supervisory concerns dictate more stringent standards. For the most part, the regulatory accounting standards for all commercial banks, whether regulated by the OCC, the Federal Reserve Board (FRB), or the Federal Deposit Insurance Corporation (FDIC), are prescribed in the Instructions to the Report of Condition and Income (the Call Report).

The Call Report Instructions are established by the Federal Financial Institutions Examination Counsel (FFIEC), and are generally consistent with GAAP. Differences in interpretations between the OCC and the other banking agencies may occur. However, such differences are usually infrequent and involve immaterial or emerging issues which the FFIEC has not yet reviewed on a joint agency basis.

The Office of Thrift Supervision (OTS) requires each thrift institution to file the Thrift Financial Report. That report is filed on a basis consistent with GAAP as it is applied by thrifts, which differs

in a few respects from GAAP as it is applied by banks.

These differences in accounting principles between banks and thrifts may cause differences in financial statement presentation and in amounts of regulatory capital required to be maintained by depository institutions.

The following summarizes the significant differences in accounting standards between the Thrift Financial Report and the Call Report. These differences generally arise because of either: (1) Differences between regulatory accounting standards and GAAP applicable to banks, or (2) differences in GAAP applicable to banks and GAAP applicable to thrifts.

1. Specific Valuation Allowances for and Charge-offs of Troubled Loans

The differences between bank and thrift accounting for the specific valuation allowances result primarily from differing GAAP principles set forth in their respective industry audit guides.

The banking regulators require banks to follow bank GAAP to account for the allowance for loan and lease losses (ALLL). Generally, real estate loans that lack other sources of repayment, or the apparent ability of the borrower to generate such repayment (besides the collateral) are considered "collateral dependent."

Collateral for real estate loans is evaluated using appraisal methodologies, including a discounted cash flow approach based upon market discount rates. Charge-off of a portion of the loan or the establishment of a specific valuation allowance to reduce the value of the loan to the fair value of the collateral is generally required.

The OTS primarily follows GAAP applicable to thrift institutions to account for the ALLL. Thrift GAAP requires specific valuation allowances for troubled loans (not considered to be foreclosed) based on the estimated net realizable value (NRV) of the collateral.

NRV represents the estimated future sales price reduced by certain expenses and direct holding costs. Direct holding costs include a cost-of-capital (debt and equity) discount rate applied to expected cash flows during the anticipated holding period. This approach estimates the principal that will be collected after earning the cost of capital. If additional safety and soundness concerns exists, OTS examiners may require additional general valuation allowances based on historical experience and other criteria.

2. General Valuation Allowances for Troubled Loans

Differences also exist between banks and thrifts with respect to the establishment of the general valuation allowance for troubled loans.

The banking regulators generally expect the overall balance of the ALLL to be sufficient to cover losses inherent in the loan portfolio. The amount deemed necessary for the general valuation portion of the ALLL should be based on judgments regarding the risk of error in the sepcific allowances for individual loans and pools of loans, plus some margin for losses that have already occurred but have not been specifically identified in the loan and lease portfolio review process.

The OTS usually does not require general valuation allowances for loans that have been specifically reviewed and a specific loss has been provided for. The specific loss estimate provides for losses as of the report date plus some amount for risk of error.

3. Valuation of Foreclosed Real Estate

Banks report foreclosed real estate at fair value while thrift institutions use net realizable value.

The banking regulators require foreclosed real estate to be valued at the lower of book value or fair value at the date of foreclosure. The regulators require additional write-downs of real estate owned if fair value declines further after foreclosure.

The OTS also requires foreclosed real estate to be valued at the lower of book value or fair value at the date of foreclosure. However, valuation allowances for real estate owned after the acquisition date are generally based on the NRV of the property using a cost-of-capital discount rate.

4. Futures and Forward Contracts

Differences in this area result because the banking regulators generally require futures and forward contracts to be marked to market, whereas thrift institutions may defer gains and losses resulting from hedging activities.

The banking agencies do not follow GAAP, but require banks to report changes in the market value of futures and forward contracts even when used as hedges in current income. However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP.

The OTS requires thrifts to follow GAAP to account for futures contracts. Accordingly, when specified hedging criteria are satisfied, the accounting for the futures contract is matched with the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the income effects of the hedged item are recognized. This reporting can result in the deferral of both gains and losses. Although there is no specific GAAP for forward contracts, the OTS applies these same principles to forward contracts.

5. Excess Servicing Fees

Thrift institutions consider excess servicing fees in the determination of the gain or loss on a loan sale, whereas banks generally recognize the excess fee over the life of the loans.

The banking agencies require banks to follow GAAP for residential mortgage loans. This requires that when loans are sold with servicing retained and the stated servicing fee is sufficiently higher than a normal servicing fee, the sales price is adjusted to determine the gain or loss from the sale. This allows additional gain recognition at the time of sale and recognizes a normal servicing fee in each subsequent year. This gain cannot exceed the gain assuming the loans were sold with servicing released. The subsequent valuation of the excess servicing is adjusted based upon anticipated prepayment rates and interest rates.

For all other loans, the banking agencies follow a more conservative treatment and require that excess servicing fees retained on loans sold be recognized over the contractual life of the transferred asset.

The OTS follows GAAP in valuing all excess servicing fees. Therefore, the accounting stated above for sale of mortgage loans with excess servicing at banking institutions would apply to all loan sales with excess servicing at thrift institutions.

6. In-substance Defeasance of Debt

The banking agencies do not permit banks to defease their liabilities in accordance with FASB Statement No. 76, whereas thrifts may eliminate defeased liabilities from the balance sheet.

The banking agencies report in-substance defeased debt as a liability and the securities contributed to the trust as assets with no recognition of any gain or loss on the transaction.

The OTS accounts for debt that has been in-substance defeased in accordance with GAAP. Therefore, when a debtor irrevocably places risk-free monetary assets in a trust solely for satisfying the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer

can result in a gain or loss in the current period.

7. Sales of Assets with Recourse

Banks generally do not report sales of receivables if any risk of loss is retained. Thrifts report sales when the risk of loss can be estimated in accordance with FASB Statement No. 77.

The banking agencies generally allow banks to report transfers of receivables as sales only when the transferring institution: (1) Retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financing, not sales.

However, this rule does not apply to the transfer of mortgage loans under certain government programs (GNMA, FNMA, etc.). Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, private transfers of mortgages are also reported as sales if the transferring institution does not retain more than an insignificant risk of loss on the assets transferred.

The OTS follows GAAP to account for a transfer of receivables with recourse. A transfer of receivables with recourse is recognized as a sale if: (1) The seller surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

Dated: August 13, 1990.

Susan F. Krause,

Senior Deputy Comptroller for Bank Supervision Policy.

[FR Doc. 90-19356 Filed 8-16-90; 8:45 am]

BILLING CODE 4810-33-M

UNITED STATES INFORMATION AGENCY

Grants Programs for Private, Non-Profit Organizations in Support of International and Cultural Activities

The Office of Citizen Exchanges of the United States Information Agency (USIA) announces an Initiative Grant program to U.S. nonprofit organizations for projects that support the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before making inquiries to the Office.

General Information

The Office of Citizen Exchanges of the United States Information Agency announces a program to encourage, through limited grants to nonprofit institutions, increased private sector commitment to and involvement in international exchanges.

The Office is a networking instrument that seeks to link the international exchange interests of U.S. private sector nonprofit institutions and organized groups with their counterparts abroad, preferably on a long-term basis.

Projects must feature an international people-to-people component, have a professional and cultural focus, and make a substantial contribution to long-term communication and understanding between the United States and the countries specified in this announcement.

The Office's programs focus on substantive issues of mutual interest, and the projects it supports should be intellectual and cultural, not technical in nature. Each private sector activity must maintain a non-political character and shall represent in a balanced way the diversity of American political, social, and cultural life. Programs under the authority of the Bureau of Educational and Cultural Affairs shall maintain scholarly integrity and meet the highest professional standards. The participation of respected universities and/or professional associations and other major cultural institutions is encouraged.

Request For Proposals For an Initiative Grant Project

Legislative Elections and the Role of the Party, a Project for Anglophone African Legislators

Summary: The Office of Citizens Exchanges, Initiative Grants and Bilateral Accords Division, proposes a three-week international exchange project to bring eight to ten legislators and political party leaders from Kenya, Uganda and Tanzania to the U.S. during the November 1990 elections for an intensive study tour to consider and compare election procedures, the role of the legislature in lawmaking, and the role of political parties in the overall political system.

A U.S. not-for-profit institution will design this program and select the American speakers. The participants will be nominated by USIS personnel overseas and selected by the United States Information Agency (USIA).

Basic Application Guidelines

The Office of Citizens Exchanges offers the following guidelines to prospective grant applicants:

Projects supported by the Office of Private Sector programs are intended to further USIA goals by assisting U.S. private sector organizations in their efforts to advance international understanding in areas identified as important for bilateral relations. The Office welcomes clearly defined projects and requires that USIS posts be involved in the nomination of foreign participants, with a view toward building ongoing institutional linkages between foreign and U.S. institutions.

Programs may take place anywhere in the United States or, in some instances, overseas, in general accordance with the USIA program design.

Programs taking place in the United States should feature some geographic diversity in order to expose foreign participants to various regions.

Proposals should explicitly deal with translation and interpretation requirements, if any.

The Office does not support conferences or symposia except insofar as they are integral parts of a larger project that meets the USIA objectives defined in a request for proposals. In applications for funds to cover seminar costs as part of a larger project, proposals should include a detailed agenda, clearly identified speakers/presenters (and the professional/academic credentials thereof), and a careful explanation of the role of participants from other countries in the conference. The participation of a respected university or scholarly organization would in many cases be advantageous. Further, the themes addressed in such meetings must be of long-term importance rather than focused on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution the conference or symposium will yield. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered, nor does the Office support film festivals.

In most cases, the Office will not provide funding merely to enable foreign participants to attend a conference on a few days' visit, and no funding is available simply to send U.S. citizens to conferences overseas.

On receipt of a letter of interest from institutions, this office will send out a concept paper and a grant application

package that includes additional guidelines.

Institutions must submit sixteen copies of the final grant proposal.

Funding and Budget Requirements

The Office of Citizen Exchanges requires co-funding with grantees in all projects. Proposals with less than 30% cost-sharing must provide particularly strong justification even to receive consideration.

Most funding assistance is limited to participant travel and per diem requirements with modest contributions to defray administrative costs (salaries, benefits, other direct and indirect costs), which may not exceed 20% of the total funds requested. The grantee institution may wish to share any of these expenses.

Grant applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Following is an example of the required format:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.			
Total	$	$	$

USIA can provide up to $85,000 funding for this legislative project, though organizations with less than four years' experience in successfully administering international exchange programs are restricted to a maximum of $60,000.

Application Deadlines

In order to receive grant application materials, prospective applicants should express their interest in writing no later than two weeks from the publication date of this announcement, to the Office of Citizen Exchanges at the address given below. On receipt of a letter of interest, E/PI will forward the project concept paper and all necessary application materials. Final proposals, complete with all necessary documentation and forms, will be due by close of business six weeks from the publication date of this announcement. Incomplete or late proposals will not be reviewed.

Proposals must be in accordance with Project Proposal Information Requirements (OMB #31180175).

For additional information and planning assistance relating to this grant award, prospective applicants should contact: Hugh J. Ivory, Initiative Grants and Bilateral Accords Division, Office of Citizen Exchanges, United States Information Agency, 301 4th Street SW., Washington, DC 20547. Attention: African Legislative Project

Dated: August 9, 1990.

Stephen J. Schwartz,

Director, Office of Citizen Exchanges.

[FR Doc. 90-19316 Filed 8-16-90; 8:45 am]

BILLING CODE 8230-01-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 obained from Ann Bickoff, Veterans Health Services and Research Administration (136E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2282.

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.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 17, 1990.

DATED: August 10,1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Health Services and Research Administration.

2. Prescription, Authorization, Application, Procurement, Repair and Loan of Prosthetic Items.

3. Department Form Numbers;

a. VA Form 10-1394, Application for Adaptive Equipment Motor Vehicle.

b. VA Form 10-2421, Prosthetic Authorization and Invoice.

c. VA Form 10-2520, Prosthetic Service Card Invoice.

d. VA Form 10-2914, Prescription and Authorization for Eyeglasses.

e. Form Letter 10-90, Request to Submit Estimate.

f. Form Letter 10-426, Loan Followup letter.

4. These forms and letters are used to determine eligibility, prescribe, and authorize prosthetic devices; obtain repair estimates and allow for the direct purchase of prosthetic devices; and obtain followup information on loaned prosthetic items.

5. On occasion.

6. Individuals or households; Business or other for-profit.

7. Estimate of the Number of Responses:

a. VA Form 10-1394—10,844 responses.

b. VA Form 10-2421—250,000 responses.

c. VA Form 10-2520—40,000 responses.

d. VA Form 10-2914—175,000 responses.

e. Form Letter 10-90—22,500 responses.

f. Form Letter 10-426—14,500 responses.

8. Estimate of Total Number of Hours:

a. VA Form 10-1394—¼ hour.

b. VA Form 10-2421—1/15 hour.

c. VA Form 10-2520—1/12 hour.

d. VA Form 10-2914—1/15 hour.

e. Form Letter 10-90—1/12 hour.

f. Form Letter 10-426—1/60 hour.

9. Not applicable.

[FR Doc. 90-19313 Filed 8-16-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 160
Friday, August 17, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2 P.M. (EASTERN TIME) WEDNESDAY, SEPTEMBER 5, 1990.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations.

Closed Session

1. Litigation Authorization: General Counsel Recommendations.
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663-7100 at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-7100.

August 15, 1990.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 90-19527 Filed 8-15-90; 1:09 pm]

BILLING CODE 6750-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its opening meeting held at 2:00 p.m. on Tuesday, August 14, 1990, the Corporation's Board of Directors determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Vice Chairperson Andrew C. Hove, Jr., concurred in by Chairman L. William Seidman, Director Robert L. Clarke (Comptroller of the Currency, and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of (1) the issue of whether the assessment to be paid by Bank Insurance Fund ("BIF") members during calendar year 1991 should be increased and, if so, at what rate, and (2) the assessment rates to be paid by Savings Association Insurance Fund ("SAIF") members in 1991 and later years.

The Board further determined, by the same majority vote, that no notice earlier than August 9, 1990, of the change in the subject matter of the meeting was practicable.

Dated: August 15, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-19528 Filed 8-15-90; 1:21 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:46 p.m. on Tuesday, August 14, 1990, the Corporation's Board of Directors determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairperson Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the Corporation's corporate activities.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(2)).

Dated: August 15, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-19529 Filed 8-15-90; 1:21 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10 a.m., August 22, 1990.

PLACE: Hearing Room 1, 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.

MATTER(S) TO BE CONSIDERED:

Portion Open to the Public

1. Docket No. 90-11—Anti-Rebating Certification—Tariff Cancellation and Rejection and License Suspension—Consideration of Comments.

Portion Closed to the Public

1. Carinter Miami, Inc.—Application for an Ocean Freight Forwarder License.
2. Junior R. Wong dba JBJ Shipping—Application for an Ocean Freight Forwarder License.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 90-19561 Filed 8-15-90; 3:01 pm]

BILLING CODE 6730-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:40 p.m. on Tuesday, August 14, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions; (2) recommendations regarding the proposed reorganization of the subsidiaries of Lincoln Savings and Loan Association, Federal Association, Irvine, California (In Conservatorship).

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove Jr.; seconded by Director C.C. Hope, Jr. (Appointive), and

concurred in by Director Robert L. Clarke (Comptroller of the Currency), Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550–17th Street, NW., Washington, DC.

Dated: August 14, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–19592 Filed 8–15–90; 3:41 pm]

BILLING CODE 6714–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 522b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session at 2:00 p.m. on Tuesday, August 21, 1990 to consider the following matters:

SUMMARY AGENDA: None.

DISCUSSION AGENDA:

A. *Memorandum re:* Revision to Resolution Trust Corporation Rules and Regulations, Part 1605, to conform with the Rules and Regulations of the Oversight Board.

B. *Memorandum re:* Resolution Trust Corporation's Affordable Housing Program.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: August 14, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–19593 Filed 8–15–90; 3:41 pm]

BILLING CODE 6714–01–M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 32997, August 13, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (EDT), Wednesday, August 15, 1990.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

CHANGES IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following items to the previously announced agenda:

A—Budget and Financing

3. Mitigation Payments to Taxing Entities-State of Mississippi.

B—Purchase Award

4. Contract with Mita Copystar America, Inc.

E—Real Property Transactions

5. Grant of Easement over Norris Reservoir to City of Lafollette, Tennessee.

6. Grant of Eastment over Wheeler Reservoir to Morgan County Commission.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call 615–632–6000, Knoxville, Tennessee. Information about this meeting. Call 615–632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–479–4412.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 90–19496 Filed 8–15–90; 11:35 am]

BILLING CODE 8120–01–M

Corrections

Federal Register
Vol. 55, No. 160
Friday, August 17, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendments Relating to the Broiler Chickens Futures Contract, and Proposal to Recommence Trading In That Contract

Correction

In notice document 90-18939 beginning on page 32945 in the issue of Monday, August 13, 1990, make the following correction:

On page 32945, in the third column, under "**DATES**", "September 10, 1990" should read "September 12, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD85

Veterans Education; The Veterans' Benefits and Programs Improvement Act of 1988 and VEAP

Correction

In rule document 90-18135 beginning on page 31580 in the issue of Friday, August 3, 1990, the agency lines should read as set forth above to reflect a joint issuance of this document.

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067-AB60

National Flood Insurance Program; Financial Assistance/Subsidy Arrangement

Correction

In rule document 90-18826 beginning on page 32627 in the issue of Friday, August 10, 1990, make the following corrections:

1. On page 32627 in the third column, in the second complete paragraph on the thirteenth line, the word "charge" should read "change".

2. On page 32628 in the first column, in the twenty-first line "(8c)" should read "(c)".

Part 62, Appendix A [Corrected]

3. On the same page under Appendix A in the second column, in the ninth line from the bottom, the word "to" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 89C-0203]

Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis[4-(2-Methacryloxyethyl) Phenylamino] Anthraquinone

Correction

In rule document 90-17312 beginning on page 30212 in the issue of Wednesday, July 25, 1990, make the following correction:

On page 30213, in the third column, in the fourth line from the top, "75.15" should read "71.15"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 89N-0109]

General Biological Products Standards; Test for Residual Moisture

Correction

In rule document 90-16116 beginning on page 28380 in the issue of Wednesday, July 11, 1990, make the following corrections:

On page 28380, in the second column, in the third line from the end of the **SUMMARY**, and in the third column, in the first full paragraph, in the second line, "lability" should read "availability".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 90N-0134]

RIN 0905-AD08

Food Labeling; Reference Daily Intakes and Daily Reference Values

Correction

In proposed rule document 90-16727 beginning on page 29476 in the issue of Thursday, July 19, 1990, make the following correction:

§ 101.9 [Corrected]

In § 101.9(c)(10)(iv) on page 29486, in the table at the top of the page, in the sixth column (Pregnant women), the third entry from the bottom, "13" should read "130".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F-0220]

Hoechst Celanese Corp.; Filing of Food Additive Petition

Correction

In notice document 90-17661 appearing on page 30983 in the issue of Monday, July 30, 1990, make the following correction:

In the second column, under the heading "**SUPPLEMENTARY INFORMATION**", in the eighth line "§ 172.900" should read "§ 172.800".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 90-10]

List of State-Designated Routes for the Transportation of Highway Route Controlled Quantity Shipments of Radioactive Materials

Correction

In notice document 90-12043 beginning on page 21480 in the issue of Thursday, May 24, 1990, make the following correction:

On page 21481, in the second column, in the 11th line from the bottom, "in lieu of I-275" should read "in lieu of I-471".

BILLING CODE 1505-01-D

federal register

Friday
August 17, 1990

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public Housing Resident Management Program Technical Assistance; Announcement of Funding Awards

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-90-3011; FR-2756-N-02]

Public Housing Resident Management Program Technical Assistance; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding decisions made by the Department for Fiscal Year 1990 under the Public Housing Resident Management program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to train residents in management and operational skills, encourage economic development, and assist in the creation of Resident Management Corporations.

FOR FURTHER INFORMATION CONTACT: Dorothy Walker, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; Telephone (202) 708-3611; TDD for the hearing- and speech-impaired (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, February 5, 1988) amended the U.S. Housing Act of 1937 (1937 Act) by adding a new section 20 that states as part of its purpose the encouragement of "increased resident management of public housing projects [and the provision of funding] * * * to promote formation and development of resident management entities" (sec. 20(a)). The policies, procedures, and requirements of public housing are set out in 24 CFR part 964.

On February 27, 1990 (55 FR 6958), the Department announced the availability of $2.3 million for Fiscal Year 1990 under the Public Housing Resident Management program. Applications for funding, which were due March 29, 1990, were reviewed, evaluated, and scored based on the evaluation criteria contained in section 8 of the February 27, 1990 NOFA. As a result, the Office of Resident Initiatives has awarded 37 resident management groups $2.3 million dollars to be used to train residents in management and operational skills, encourage economic development, and assist in the creation of Resident Management Corporations. These resident housing management grants were awarded under Section 122 of the Housing and Community Development Act of 1987, signed into law February 5, 1988, which authorizes HUD to make grants to encourage increased resident management as a means of improving the quality of life in public housing.

Accordingly, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards, as follows:

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

Region	Funding recipient (name and address)	PHA	Project	Amount approved	Statute or regulation
01	Elm Haven Council, Ms. Ola Mae Riddick, 25 South East Drive, New Haven, CT 06611.	New Haven H.A	Elm Haven	$87,000	Section 122 of the Housing Community Development (HCD) Act of 1987.
02	Stella Wright RMC, Ms. Elaine Hall, 159 Spruce Street, Newark, NJ 07108.	Newark H.A	Stella Wright	12,100	
02	Donelly-Page & Wilson H. RC, Ms. Gloria Pace, 610 Hoffman Avenue, Trenton, NJ 08944	Trenton H.A	Donelly-Page & Wilson-Hav.	84,300	
02	Stephen Crane, Ms. Angie Demeo, 49 North Hawthorne, Newark, NJ 07107.	Newark H.A	Stephen Crane	94,000	
02	Elm-West Tenants Assoc., Ms. Lauretia Darby, 525 West Third Street, Plainfield, NJ 07060.	Plainfield H.A	Elwood Gardens & West End.	70,000	
03	Pin Oaks Estates RC, Ms. Darlene Walker-Lyons, P.O. Box 311, Petersburg, VA 23804.	Petersburg, VA H.A	Pin Oaks Estates	73,600	Section 122 of the Housing Community Development (HCD) Act of 1987.
03	Westhaven Tenant Assoc., Ms. Joy Johnson, 801 Hardy Drive, Charlottesville, VA 22901.	Charlottesville, VA H.A	Westhaven	79,700	
03	Alexandria Resident Council, Ms. Ramona Younger, 1017 Madison Ave., Alexandria, VA 22314.	Alexandria Red. H.A	Consortium	81,400	
03	Pine Chapel Resident Council, Ms. Linda Nicholson, 222 Freeman Drive, Hampton, VA 23666.	Hampton H.A	Pine Chapel	100,000	
03	Richard Allen Homes TC, Ms. Virginia Wilks, 810 B. Warnock Place, Philadelphia, PA 19123.	Philadelphia H.A	Richard Allen Homes	78,400	Section 122 of the Housing Community Development (HCD) Act of 1987.
03	Passyunk Homes Tenant Council, Ms. Myrtle Carter, 3108 S. 23rd Street, Philadelphia, PA 19145.	Philadelphia H.A	Passyunk Homes	79,500	
03	United Morton Homes TC, Ms. Ethel Branch-Cooper, 412 Narragansett Place, Philadelphia, PA 19144.	Philadelphia H.A	Morton Homes	65,800	
03	Centennial Heights Assembly, Ms. Faye Wampler, P.O. Box F5, Haysi, VA 24256.	Cumberland Plateau H.A	Centennial Heights	94,000	
03	North Phoebus RC, Mrs. Elaine Gray, 313 W. Chamberlin Ave., Hampton, VA 22901.	Hampton H.A	North Phoebus	17,500	

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Region	Funding recipient (name and address)	PHA	Project	Amount approved	Statute or regulation
03	Lincoln Park Resident Council, Ms. Cynthisa Manley, 1135 Lasalle Ave., Hampton, VA 23669.	Hampton H.A	Lincoln Park	45,000	
04	Branch Heights Homebuyer Assoc., Ms. Shirley D. Winn, P.O. Box 781, Eutaw, AL.	Green County, Ala. H.A	Branch Heights	100,000	Section 122 of the Housing Community Development (HCD) Act of 1987.
04	Horton Gardens RA, Mr. Perry Benton, 684 Bluff Road, #1, Memphis, TN 38127.	Memphis H.A	Horton Gardens	76,500	
04	Tenants on the Move	Greenville H.A	Chamlee	15,000	
04	Dade County Overall TAC, Inc., Ms. Helen Whack, 6302 NW 14th Street, Miami, FL 33147.	Metro-Dade County H.A	Consortium (4 sites)	76,200	
04	Residents Council of Mobile, Ms. Melba Jones, 602-A Thomas Ave., Mobile, AL 36610.	Mobile H.A	Consortium	59,200	
04	Central Park Village RMC, Ms. Sheila Palmore, 1514 Union Street, Tampa, FL 33607.	Tampa H.A	Central Park Village	45,500	Section 122 of the Housing Community Development (HCD) Act of 1987.
04	Resident Advisory Council, Ms. Annie Faye Jones, 3020 Clanton Road, Charlotte, NC 28208.	Charlotte H.A	Dalton Village	100,000	
04	SDRHA Resident Council, Ms. Hattie Davis, 2824 Elliout Drive, Greenville, MS 38704.	South Delta Regional H.A	Consortium (11 projects)	62,600	
04	Tenant Advisory Council, Mr. Lewis Robinson, 1223 Board St., Jacksonville, FL 32202.	Jacksonville H.A	Consortium	100,000	
04	Carver Homes Tenant Council, Ms. Louise Watley, 1559 Wilcox St., S.W., Atlanta, GA 30312.	Atlanta H.A	Carver Homes	78,000	
04	Jesse Jackson Townhouse TA, Mr. Jasper S. Sweeney, 50 Ramsey Court #9C, Greenville, NC 29607.	Greenville H.A	Jesse Jackson	71,000	Section 122 of the Housing Community Development (HCD) Act of 1987.
05	4414 B. Cottage Grove RMC, Ms. Ann Swann, 4414 S. Cottage Grove, Chicago, IL 60653.	Chicago H.A	Cottage Grove	20,500	
05	706 E. 39th Street, Ms. Patricia Perry, 706 E. 39th Street, Chicago, IL 60653.	Chicago H.A	Clarence Darrow Homes	18,800	
05	Burch Village/Dunbar Court RC, Ms. Annie Newbean, 34 Burch Village, Champaign, IL 61820.	Champaign H.A	Burch Village/Dunbar Ct	62,500	
05	Wentworth RMC, Ms. Hallie Amey, 3752 S. Wells Street, Chicago, IL 60609.	Chicago H.A	Wentworth	35,000	
07	West Bluff Tenant Assoc., Mrs. Dorothy Marley, 1223 West Bluff, Kansas City, MO.	Kansas City, MO H.A	West Bluff	77,000	
09	City-Wide Resident Management, Ms. Angela Andradi, Chairperson, Marcos De Niza RC, 314-H West Cocopah #706, Phoenix, Arizona 85003.	Phoenix H.A	Consortium	47,500	Section 122 of the Housing Community Development (HCD) Act of 1987.
09	Marin City Tenants Council, Ms. Ocita Teal, 103 Drake Avenue, Marin City, CA 94965.	Marin City	Consortium	66,400	
09	Normont Terrace Coord. Cmte, Ms. Janetta Dobbins, 1078 W. 256th St., #85, Harbor City, CA 90710.	City of Los Angeles H.A	Normont Terrace	88,600	
09	Pico Aliso RAC, Mr. Breavon McDuffie, 535 S. Gless Street, Los Angeles, CA 90033.	City of Los Angeles H.A	Consortium	53,857	
10	Parkview Resident Council, Mr. Daniel Esparza, 801 Karluk, #216, Anchorage, AK 99523.	Anchorage State H.A	Park View Manor	59,500	
10	Salishan Alliance for CS, Ms. Beverly Johnson, 1720 East 44th Street, Takoma, WA 98404.	Tacoma H.A	Salishan	49,000	

Dated: August 8, 1990.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 90-19352 Filed 8-16-90; 8:45 am]

BILLING CODE 4210-33-M

federal register

Friday
August 17, 1990

Part III

Department of Transportation

Coast Guard

33 CFR Parts 127 and 154
46 CFR Part 25 et al.
Incorporation and Adoption of Industry Standards; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 127 and 154

46 CFR Parts 25, 32, 34, 50, 52, 53, 54, 55, 56, 57, 58, 59, 71, 76, 91, 92, 95, 107, 108, 150, 153, 162, 163, 169, 170, 174, 182, 189, 190, and 193

[CGD 88-032]

RIN 2115-AD05

Incorporation and Adoption of Industry Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations to adopt industry standards and specifications. These changes will eliminate the submission of technical information for affected components and reduce the overall cost and burden in staff hours and paperwork for both industry and the government, while providing a better method for ensuring that the affected components comply with Coast Guard regulations.

DATES: Comments must be received on or before October 1, 1990.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 88-032), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. Comments may also be delivered to and will be available for examination or copying between 8 a.m. and 3 p.m., Monday through Friday, except holidays, at the Marine Safety Council, room 3406, at the above address. The telephone number is (202) 267-1477.

Persons desiring to comment on the paperwork reduction aspects of this rulemaking should submit their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen R. Irvin, Office of Marine Safety, Security, and Environmental Protection, (202) 267-2206.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice (CGD 88-032) and the specific section of the proposal to which each comment applies, and give the reasons for the comment. If acknowledgment of receipt of a comment is desired, a stamped, self-addressed postcard or envelope should be enclosed.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposal may be changed in view of the comments received. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are Mr. Stephen R. Irvin, Project Manager, and Lieutenant Commander Don M. Wrye, Project Attorney, Office of Chief Counsel.

Background

This rulemaking proposes to incorporate industry developed standards by reference. Since 1968 the Marine Safety Program has adopted over 250 industry consensus standards into the regulations. This action has lessened the regulatory burden on industry as well as saved many pages of regulations.

The Coast Guard has taken a very proactive stance in promoting incorporation of industry standards in the spirit of OMB's Circular 119, "Federal Participation in the Development and Use of Voluntary Standards." The National Shipbuilding Research Program, with the full concurrence of senior shipbuilding, ship operating, and government officials, recognized that a body of national shipbuilding standards are essential for the U.S. industry to be competitive. Through such bodies as the Society of Naval Architects and Marine Engineers' standards development panel (SP-6) and the American Society for Testing and Materials (ASTM) Shipbuilding Committee (F-25), much progress has been made to eliminate separate federal specifications for construction and testing of components, and adopt industry consensus standards that achieve the same level of safety.

This process has mutual benefit for both industry and government. Government costs are reduced in the areas of people intensive activities needed to review and approve equipment and the time expended by field inspectors to verify compliance with the standards. Industry no longer needs to submit plans to the government for review. Standards save money by providing design repetitiveness, streamlining bid preparation and response, and enlarge the sales base since the product specifications are common throughout the industry. This rulemaking will also adopt international standards, allowing the U.S. to be more competitive in the world market.

This rulemaking proposes to incorporate those standards considered suitable for inclusion into the regulations regarding the following four basic categories. First, the ASTM Committee F-25 has developed additional standards for equipment and piping system components. Second, the Society of Automotive Engineers (SAE) and Underwriters Laboratories (UL) have recently developed standards for gasoline engine backfire flame arresters. Thirdly, the Boiler and Pressure Vessel Code published by the American Society of Mechanical Engineers (ASME) contains certain requirements for safety relief valves adnd provisions for independent third party certification through the National Board of Boiler and Pressure Vessel Inspectors. Lastly, ASTM F-25 has also developed standards for watertight door assemblies and controls. The regulations proposed in this rulemaking will have no effect on installations and equipment already accepted by Coast Guard marine inspectors and maintained in good and serviceable condition. However, when a piece of equipment, system component, or whole system is replaced, the regulations proposed in this rulemaking, if adopted, as well as other regulations promulgated after the original date of acceptance which relates to the equipment or system would be applicable to the replacement.

Incorporation of these standards demonstrates compliance with Circular A-119 of the Office of Management and Budget (OMB) which requires the Coast Guard's participation in the development and use of voluntary standards. Incorporation of these standards will also permit the elimination of the equipment certification burden that is currently imposed on manufacturers by 46 CFR subparts 162.016, 162.041, 162.042, and 162.043 and elimination of the sliding watertight door plan approval and shop inspection requirements of 46 CFR 163.001. The existing certificates approving equipment now in use could continue to be used until the expiration of those certificates. This will provide manufacturers sufficient time to self-certify their equipment to the standards that are being proposed for incorporation in this rulemaking, if adopted. Additionally, it is anticipated that all equipment currently certified under 46 CFR subparts 162.016, 162.041

or 162.042 will qualify to the applicable replacement standard and can be marked in accordance with the standard. There is no record of a certificate ever being issued under 46 CFR 162.043, thus, provisions for certification are considered unnecessary, and any request for acceptance can be considered under the provisions of 46 CFR 58.10–5.

Certain key elements must be included in a standard before it will be incorporated by reference. These elements include: Acceptable materials of construction, adequate design criteria, quality assurance during fabrication, final product testing, manufacturer's certification, and product marking to indicate conformance to the standard. Members of standards developing committees are strongly encouraged to include these criteria in their standards, thereby enabling them to be incorporated by reference into these regulations. Interested persons are encouraged to continue to suggest standards for incorporation into these regulations.

The standards being proposed for incorporation by this rulemaking are:

	Title
ASTM No.:	
F–1121–88	Standard Specification for International Shore Connections for Marine Applications.
F–1122–88	Standard Specification for Quick Disconnect Couplings.
F–1196–88	Standard Specification for Sliding Watertight Door Assemblies.
F–1197–88	Standard Specification for Sliding Watertight Door Control Systems.
F–1271–89	Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications.
F–1273–89	Standard Specification for Tank Vent Flame Arresters.
SAE No.:	
J–1928–89	Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications.
J–1942–89	Hose and Hose Assemblies for Marine Applications.
UL No.:	
1111–88	Marine Carburetor Flame Arresters.

Discussion of Regulations Proposed for Title 33, CFR

A new § 127.003 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections in the regulations affected.

Subpart 127.611 will be revised to incorproate ASTM F–1121 for international shore connections. This standard was developed with Coast Guard input, based on the requirements presently contained in 46 CFR 162.034, and as written is a complete replacement for those requirements.

Paragraph (d)(3) of § 154.500 will be revised to incorporate ASTM F–1122, developed to standardize a commonly used quick-disconnect coupling.

Discussion of Regulations Proposed for Title 46, CFR

Section 25.01–3 "Incorporation by reference" will be amended, adding the titles of standards incorporated, the effective date of each standard, and the sections in part 25 affected.

Paragraph (c) of § 25.35–1 will be revised to indicate that, in addition to flame arresting devices bearing basic Approval No. 162.015, continued use of in-service backfire flame arresters bearing basic Approval No. 162.041 and engine air and fuel induction systems bearing basic Approval No. 162.042 is acceptable if they are serviceable and in good condition. This change is consistent with the proposed incorporation in subpart 58.10 of this chapter of SAE J–1923 and UL 1111 to replace subpart 162.041 and the proposed incorporation of SAE J–1928 to replace subpart 162.042. Therefore, this paragraph will also be revised to refer to subpart 58.10, in lieu of "this section," for the requirements applicable to new installations or replacements. Paragraph (d) will be deleted since the current provisions will be revised and incorporated into paragraph (c). Paragraph (e) will be deleted since the requirements for new installations and replacements are contained in subpart 58.10, the requirements of which need not be repeated, and paragraph (c) will appropriately refer to subpart 58.10 for the requirements.

A new § 32.01 "Incorporation by reference" will be added, giving the titles of standards developed by industry consensus, the effective date of each standard, and the sections affected in part 32.

Section 32.20–10 will be revised to incorporate ASTM F–1273–89. Flame arrestors constructed to this standard will satisfy the current requirements of subpart 162.016 of this chapter and those of International Maritime Organization's (IMO) Maritime Safety Committee (MSC) Circular 373/Rev. 1.

A new § 34.01–15 "Incorporation by reference"will be added, giving the titles of standards incorporated, the effective date of each standards, and the sections in part 34 affected.

Paragraph (d) of § 34.10–15 will be revised to incorporate ASTM F–1121 for international shore connections, removing the reference to subpart 162.034.

Subpart 50.15 will be deleted in its entirety. All specifications, standards, and codes previously adopted are being incorporated by reference into the individual parts. As a result, this general discussion subpart is not necessary.

Subpart 52.01 will be amended by deleting the note immediately before § 52.01–1 because § 50.15–5 cited therein will be deleted. Section 52.01–1 will be redesignated as § 52.01–2, and a new § 52.01–1 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 52 affected.

Subpart 53.01 will be amended by deleting te note immediately before § 53.01–1 because § 50.15–5 cited therein will be deleted. Section 53.01–1 will be re-numbered as § 53.01–3, and a new § 53.01–1 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 53 affected.

Subpart 54.01 will be amended by deleting the note before § 54.01–1 because §§ 50.15–5 and 50.15–20 cited therein will be deleted, redesignating §§ 54.01–1 and 54.01–2 as §§ 54.01–2 and 54.01–3, respectively, and adding a new § 54.01–1 "Incorporation by reference", giving the titles of standards incorporated, the effective date of each standard, and the sections in part 54 affected.

This section heading and paragraph (a) of § 54.15–1 will be amended to refer to UG–136 in lieu of UG–134 since the requirements for protective devices in division 1 of section VIII of the ASME Code are contained in UG–125 through UG–136.

Paragraph (a) of § 54.15–5 will be amended to refer to UG–136 in lieu of UG–134.

Paragraph (e) of § 54.15–10 will be amended to refer to UG–135 in lieu of UG–134.

Subpart 55.01 will be amended by deleting the note before § 55.01–1 because § 50.15–5 cited therein will be deleted. Section 55.01–1 will be redesignated as § 55.01–3, and a new § 55.01–1 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 55 affected.

Subpart 56.01 will be amended by deleting the note before § 56.01–1 because § 50.15–5–5 cited therein will be deleted.

Paragraph (b) of § 56.01–2, "Incorporation by reference", will be revised by adding additional titles of standards incorporated, the effective

date of each standard, and the sections in part 56 affected.

Section 56.60–25 will be amended by removing Table 56.60–25(c) and revising paragraph (c) to adopt Society of Automotive Engineers (SAE) standard J–1942 for hose and hose assemblies.

Subpart 57.02 will be amended by redesignating §§ 57.02–1 through 57.02–4 as §§ 57.02–2 through 57.02–5, respectively, and adding a new § 57.02–1 "Incorporation by reference," giving the titles of standards incorporated, the effective date of each standard, and the sections of part 57 affected.

A new § 58.03 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 58 affected.

Paragraph (b)(2) of § 58.10–5 will be revised to indicate that in addition to flame arresting devices bearing basic Approval No. 162.015, continued use of in service backfire flame arresters bearing basic Approval No. 162.041 and engine air and fuel induction systems bearing basic Approval No. 162.042 are acceptable if they are serviceable and in good condition. Paragraph (b)(3)(i) will be revised to require that backfire flame arresters be in accordance with either SAE J–1928 or UL 1111 in lieu of subpart 162.041. Paragraph (b)(3)(ii) will be revised to require that an engine air and fuel induction system be a reed valve assembly or be constructed in accordance with SAE J–1928. Reed valve assemblies have performed outstandingly as flame arresting devices and no further qualification is deemed necessary. The language in paragraph (b)(3)(iii) is repeated without change. Paragraph (b)(3)(iv) for an integrated engine-vessel design will be deleted. Provisions for certification are considered unnecessary since there is no record of a certificate ever being issued under 46 CFR 162.043, and any request for acceptance can be considered under the provisions of paragraph (b)(3)(iii).

Subpart 59.01 will be amended by adding a new § 59.01–2 "Incorporation by reference," giving the titles of standards incorporated, the effective date of each standard, and the sections of part 59 affected.

Section 71.65–5 will be revised to delete the requirement for submission of details of sliding watertight doors and operating gear for approval, but will retain the requirement for review of plans and details for hinged watertight doors and operating systems.

A new § 76.01–2 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 76 affected.

Paragraph (c) of § 76.10–10 will be revised to incorporate ASTM F–1121 for international shore connections.

Section 91.55–5 will be revised to delete the requirement for submission of details of sliding watertight doors and operating gear for approval, but will retain the requirement for review of plans and details for hinged watertight doors and operating systems.

A new § 92.01–2 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 92 affected.

Paragraph (a) of § 92.01–13 will be revised to incorporate ASTM F–1196 and F–1197 for the construction and controls of sliding watertight door assemblies. Supplemental Requirements Nos. S1 and S3 of ASTM F–1196 and Supplemental Requirements Nos. S1 through S4 of ASTM F–1197 must be invoked to provide assemblies that comply with all the requirements for previously approved door assemblies. Previously approved designs and plans for watertight door assemblies may continue to be used so long as the assemblies are in compliance with Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F–1196.

A new § 95.01–2 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 95 affected.

Paragraph (a) of § 95.10–10 will be revised to incorporate ASTM F–1121 for international shore connections.

Section 107.305 will be revised to delete the requirement for submission of details of sliding watertight doors and operating gear for approval, but will retain the requirement for review of plans and details for hinged watertight doors and operating systems.

Paragraph (b) of § 108.101 will be revised to incorporate ASTM F–1121 for international shore connections.

Paragraph (a) of § 108.427 will be revised to incorporate ASTM F–1121 for international shore connections.

Paragraph (b) of § 150.210 will be revised to amend the listing of standards incorporated by reference by adding ASTM F–1122 and ANSI B16.24 proposed for incorporation by this rulemaking in § 150.480, and by correcting the title for ANSI B16.5.

Paragraph (a)(2) of § 150.480 will be revised to correct the title of ANSI B16.5 and incorporate ANSI B16.24 for bronze flanges. Paragraph (a)(3) will be revised to incorporate ASTM F–1122, developed to standardize a commonly used quick-disconnect coupling.

A new § 153.4 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 153 affected.

Paragraph (b)(1) of § 153.365 will be revised to incorprate ASTM F–1271, eliminating the need for spill valves to be specifically approved.

Paragraph (a)(2) of § 153.940 will be revised to incorporate ANSI B16.24 for bronze flanges and to delete ANSI B16.31 which was a standard for aluminum flanges. Paragraph (a)(3) will be revised to incorporate ASTM F–1122 for quick disconnect couplings.

Section 162.016 will be removed since all of its requirements for tank vent flame arresters have been included in ASTM F–1273, which is proposed for incorporation by this rulemaking.

Section 162.017 will be amended by removing all requirements applying to spill valves since design, construction, performance, and testing are covered under ASTM F–1271, which is proposed for incorporation by this rulemaking.

Section 162.034 will be removed since all of its requirements for international shore connections have been included in ASTM F–1121, which is proposed for incorporation by this rulemaking.

Section 162.041 will be removed since all of its requirements for backfire flame arresters have been included in UL 1111 and SAE J–1928, which are proposed for incorporation by this rulemaking.

Section 162.042 will be removed since all of its requirements for backfire flame control devices for engine air and fuel induction systems have been included in SAE J–1928, which is proposed for incorporation by this rulemaking.

Section 162.043 will be removed as unnecessary. There is no history of it ever being used to certify an integrated engine-vessel design for backfire flame control.

Section 163.001 will be removed since all of its requirements for sliding watertight doors have been included in ASTM F–1196 and ASTM F–1197, which are proposed for incorporation by this rulemaking.

Paragraph (c) of § 169.611 will be revised to indicate that, in addition to flame arresting devices bearing basic Approval No. 162.015, in-service backfire flame arresters bearing basic Approval No. 162.041 and engine air and fuel induction systems bearing basic Approval No. 162.042 may continue to be used if they are serviceable and in good condition. This change is consistent with the proposed incorporation in subpart 58.10 of this chapter of SAE J–1928 and UL 1111 to replace subpart 162.041 and the

proposed incorporation of SAE J-1928 to replace subpart 162.042. This paragraph will also be revised to refer to subpart 58.10, in lieu of "this section," for the requirements applicable to new installations or replacements. Paragraph (d) will be deleted since § 162.043, to which it refers, will be removed by this rulemaking as discussed above.

Paragraph (c) of § 170.270 will be revised to incorporate ASTM F-1196 and F-1197 for the construction and controls of sliding watertight door assemblies. Supplemental Requirements Nos. S1 and S3 of ASTM F-1196 and Supplemental Requirements Nos. S1 through S4 of ASTM F-1197 must be invoked to provide assemblies that comply with all of the requirements for previously approved door assemblies.

A new § 174.007 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 174 affected.

Paragraph (e) of § 174.100 will be revised to incorporate ASTM F-1196 and F-1197 for the construction and controls of sliding watertight door assemblies. Supplemental Requirements Nos. S1 and S3 of ASTM F-1196 and Supplemental Requirements Nos. S1 through S4 of ASTM F-1197 must be invoked to provide assemblies that comply with all of the requirements for previously approved door assemblies. Previously approved designs and plans for watertight door assemblies may continue to be used so long as the assemblies are in compliance with Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F-1196.

A new § 182.01-10 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 182 affected.

Paragraph (b) of § 182.15-7 will be revised to indicate that, in addition to flame arresting devices bearing basic Approval No. 162.015, continued use of in service backfire flame arresters bearing basic Approval No. 162.041 and engine air and fuel induction systems bearing basic Approval No. 162.042 is acceptable if they are serviceable and in good condition. This change is consistent with the proposed incorporation in subpart 58.10 of this chapter of SAE J-1928 and UL 1111 to replace subpart 162.041 and the proposed incorporation of SAE J-1928 to replace subpart 162.042. This paragraph will also be revised to refer to subpart 58.10, in lieu of "this section," for the requirements applicable to new installations or replacements. Paragraph (c) will be deleted since the requirements for new installations and replacements are contained in subpart 58.10, and paragraph (b) will appropriately refer to subpart 58.10.

Section 189.55-5 will be revised to delete the requirement for submission of details of sliding watertight doors and operating gear for approval, but will retain the requirement for review of plans and details for hinged watertight doors and operating systems.

A new § 190.01-3 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 190 affected.

Paragraph (a) of § 190.01-13 will be revised to incorporate ASTM F-1196 and F-1197 for the construction and controls of sliding watertight door assemblies. Supplemental Requirements Nos. S1 and S3 of ASTM F-1196 and Supplemental Requirements Nos. S1 through S4 of ASTM F-1197 must be invoked to provide assemblies that comply with all of the requirements for previously approved door assemblies. Previously approved designs and plans for watertight door assemblies may continue to be used so long as the assemblies are in compliance with Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F-1196.

A new § 193.01-3 "Incorporation by reference" will be added, giving the titles of standards incorporated, the effective date of each standard, and the sections of part 193 affected.

Paragraph (c) of § 193.10-10 will be revised to incorporate ASTM F-1121 for international shore connections.

Regulatory Evaluation

The Coast Guard considers the proposed regulations to be non-major under Executive Order 12291 and non-significant under Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). These regulations will result in overall savings for industry and the Coast Guard. While industry may incur some short-term retooling costs to change from approval numbers to industry standard markings, these costs should be offset in the long term by the savings realized from reduced administrative costs and industry standardization. Though savings for industry and the Coast Guard are expected, they cannot be determined because they will be dependent on the level of construction for various vessel types. Therefore, the economic impact of these regulations has been found to be so minimal that further evaluation is unnecessary. Since the impact of this rulemaking is minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 through 612) that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in the existing regulations affected by this rulemaking have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.) and have been assigned OMB control numbers 2115-0108 and 2115-0525. This rulemaking proposes the deletion of 46 CFR 162.016, 162.034, 162.041 through 162.043, and 163.001 which will delete many of the information collection requirements covered by OMB control numbers 2115-0108 and 2115-0525. This rulemaking proposes no new or additional information collection or recordkeeping requirements. Persons desiring to comment on the paperwork reduction aspects of this rulemaking should submit their comments to OMB as indicated under "Addresses."

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, these proposed regulations are categorically excluded from further environmental documentation. The proposed regulations revise existing regulations to clarify technical requirements, correct errors, and substitute industry standards for existing regulatory requirements.

Federalism

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

Incorporation By Reference

Approval of the Director of the Federal Register to incorporate by reference the following documents will be requested before the final rule is published. Copies of these documents are available as follows:

ASTM Specifications F-1121-88, F-1122-88, F-1196-88, F-1197-88, F-1271-89, and F-1273-89 are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

SAE Standards J-1928 and J-1942 are available from the Society of

Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

UL Standard 1111 is available from the Underwriters' Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709.

These documents are also available for inspection at the Office of Marine Safety, Security, and Environmental Protection, (G-MTH-2) room 1218, U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001.

List of Subjects

33 CFR Part 127

Harbors, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

33 CFR Part 154

Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements, Vapor control.

46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 32

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Navigation (water), Occupational safety and health, Seamen, Vapor control.

46 CFR Part 34

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety.

46 CFR Parts 52, 53, and 54

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 55

Incorporation by reference, Nuclear vessels, Reporting and recordkeeping requirements.

46 CFR Parts 56, 57, 58, and 59

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 71

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 76

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 91

Cargo vessels, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 92

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Incorporation by reference, Marine safety.

46 CFR Part 107

Incorporation by reference, Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 150

Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 153

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 163

Marine safety.

46 CFR Part 169

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 170 and 174

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 182

Incorporation by reference, Marine safety, Passenger vessels.

46 CFR Part 189

Incorporation by reference, Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 190

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 193

Incorporation by reference, Marine safety, Oceanographic research vessels.

In consideration of the foregoing, it is proposed to amend chapter I of title 33, Code of Federal Regulations, parts 127 and 154, and chapter I of title 46, Code of Federal Regulations, parts 25, 32, 34, 50, 52, 53, 54, 55, 56, 57, 58, 59, 71, 76, 91, 92, 95, 107, 108, 150, 153, 162, 163, 169, 170, 174, 182, 189, 190, and 193 as set forth below.

TITLE 33—[AMENDED]

PART 127—[AMENDED]

1. The authority citation for part 127 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 127.003 is revised to read as follows:

§ 127.003 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC, 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:	
ASTM F-1121, International Shore Connections for Marine Applications, 1988	§ 127.611
National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269:	
NFPA 10, Portable Fire Extinguishers, 1984	§ 127.603
NFPA 51B, Fire Prevention in Use of Cutting and Welding Processes, 1984	§ 127.405
NFPA 59A, Production, Storage, and Handling of Liquified Natural Gas (LNG), 1985	§ 127.101; § 127.201; § 127.405; § 127.603
NFPA 70, National Electrical Code, 1987	§ 127.107; § 127.201

NFPA 251, Fire Tests of Building Construction and Materials, 1985 ..... § 127.005

3. Section 127.611 is revised to read as follows:

§ 127.611 International shore connection.

The marine transfer area must have an international shore connection that is in accordance with ASTM F-1121, a 2½ inch fire hydrant, and 2½ inch fire hose of sufficient length to connect the fire hydrant to the international shore connection on the vessel.

PART 154—[AMENDED]

4. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(c); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

5. Section 154.106 is amended by revising paragraph (b) to read as follows:

§ 154.106 Incorporation by reference.

* * * * *

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Petroleum Institute (API), 2101 L Street NW., Washington, DC 20037:
- API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987) ..... § 154.814
- API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, part II—Process Stream Analyzers, Section 1—Oxygen Analyzers, Fourth Edition, February 1985 ..... § 154.824

American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018:
- ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1981 ..... § 154.500; § 154.808; § 154.810
- ANSI B16.24, Brass or Bronze Pipe Flanges, 1979 ..... § 154.500; § 154.808
- ANSI B31.3, Chemical Plant and Petroleum Refinery Piping, 1987 ..... § 154.510; § 154.808

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:
- ASTM F-1122, Standard Specification for Quick Disconnect Couplings, 1988 ..... § 154.500

International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnical Internationale, 1 rue de Varembe, Geneva, Switzerland:
- IEC 309-1—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 1, General Requirements, 1979 ..... § 154.812
- IEC 309-2—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 2, Dimensional Interchange Requirements for Pin and Contact-tube Accessories, 1981 ..... § 154.812

National Electrical Manufacturers Association (NEMA), 2101 L Street, Washington, DC 20036:
- ANSI/NEMA WD-6—Wiring Devices, Dimensional Requirements, 1988 ..... § 154.812

National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269:
- NFPA 70, National Electric Code, 1987 ..... § 154.735; § 154.808; § 154.812

Oil Companies International Marine Forum (OCIMF), 6th Floor, Portland House, Stag Place, London SWIE 5BH:
- International Safety Guide for Oil Tankers and Terminals, Third Ed., 1988 ..... § 154.735; § 154.810

6. Section 154.500 is amended by revising paragraph (d)(3) to read as follows:

§ 154.500 Hose assemblies.

* * * * *

(d) * * *

(3) Quick-disconnect couplings that meet ASTM F-1122.

* * * * * *

TITLE 46 [AMENDED]

PART 25—[AMENDED]

7. The authority citation for part 25 is revised to read as follows:

Authority: 46 U.S.C. 3306, 4104, 4302; 49 CFR 1.46.

8. Section 25.01-3 is amended by revising paragraph (b) to read as follows:

§ 25.01-3 Incorporation by reference.

* * * * *

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Boat and Yacht Council (ABYC), P.O. Box 747, 405 Headquarters Drive, Suite 3, Millersville, MD 21108-0747:
- A-1-78, Recommended Practices and Standards Covering the Marine Use of Liquified Petroleum Gas Systems, December 15, 1978 ..... § 25.45-2
- A-22-78, Recommended Practices and Standards Covering the Marine Use of Compressed Natural Gas Systems, December 15, 1978 ..... § 25.45-2

National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02260:
- NFPA 302-1989, Pleasure and Commercial Motor Craft, Chapter 6, 1989 ..... § 25.45-2

Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096:
- SAE J-1928, Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, August 1989 ..... § 25.35-1

Underwriter's Laboratories (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709:
- UL 1111, Marine Carburetor Flame Arrestors, June 1988 .... § 25.35-1

9. Section 25.35-1 is amended by revising paragraph (c) and removing paragraphs (d) and (e) to read as follows:

§ 25.35-1 Requirements.

* * * * *

(c) Installations consisting of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet applicable requirements of subpart 58.10 of this chapter.

PART 32—[AMENDED]

10. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

11. Existing subpart 32.01 is redesignated as subpart 32.02 and §§ 32.01-1, 32.01-5, 32.01-10, and 32.01-15 are redesignated, respectively, as §§ 32.02-1, 32.02-5, 32.02-10, and 32.02-15; new subpart 32.01, consisting of § 32.01-1, is added to read as follows:

Subpart 32.01—General

§ 32.01-1 Incorporation by reference.

Subpart 32.01—General

§ 32.01 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this part, and the sections affected are:

American Bureau of Shipping (ABS), 45 Eisenhower Drive, Paramus, NJ 07652:
Rules for Building and Classing Steel Vessels, 1989 ..... § 32.15-15; § 32.60-10; § 32.65-40

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:
F-1273, Standard Specification for Tank Vent Flame Arrestors, 1989 ..... § 32.20-10

12. Section 32.20-10 is revised to read as follows:

§ 32.20-10 Flame arresters—TB/ALL.

Flame arresters must be of a type and size suitable for the purpose intended and meet ASTM F-1273.

PART 34—[AMENDED]

13. The authority citation for part 34 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. The heading of subpart 34.01 is revised to read as follows:

Subpart 34.01—General

15. The heading of § 34.01-1 is revised to read as follows:

§ 34.01-1 Applicability—TB/ALL.

16. Section 34.01-15 is added to read as follows:

§ 34.01-15 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadephia, PA 19103:
F-1121, Standard Specification for International Shore Connections for Marine Applications, 1987 ..... § 34.10-15

17. Section 34.10-15 is amended by revising paragraph (d) to read as follows:

§ 34.10-15 Piping—T/ALL.

* * * * *

(d) Tankships of 500 gross tons and over on an international voyage must be provided with at least one international shore connection which meets ASTMF-1121. Facilities must be available enabling such a connection to be used on either side of the vessel.

* * * * *

PART 50—[AMENDED]

18. The authority citation for Part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 50.01-20 also issued under the authority of 44 U.S.C. 3507.

PART 52—[AMENDED]

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

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

21. Subpart 52.01 is amended by removing the note following the subpart heading, removing paragraph 52.01-1(a)(1), redesignating § 52.01-1 as § 52.01-2, and adding new § 52.01-1 to read as follows:

§ 52.01-1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington, DC, 20593-0001, and is available from sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this party, and the sections affected are:

American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017:
Boiler and Pressure Vessel Code, Section I, Power Boilers (ASME sec. I), July 1989 with addenda ..... § 52.01-2; § 52.01-5; § 52.01-50; § 52.01-90; § 52.01-95; § 52.01-100; § 52.01-105; § 52.01-110 § 52.01-115; § 52.01-120; § 52.01-135; § 52.01-140; § 52.01-145; § 52.05-1; § 52.05-15; § 52.05-20; § 52.05-30; § 52.05-45; § 52.15-1; § 52.15-5; § 52.20-1; § 52.20-17; § 52.20-25; § 52.25-3; § 52.25-5; § 52.25-7; § 52.25-10

PART 53—[AMENDED]

22. The authority citation for part 53 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980. Comp., p. 277; 49 CFR 1.46.

23. Subpart 53.01 is amended by removing the note following the subpart heading, removing paragraph 53.01-1(a)(1), redesignating § 53.01-1 as § 53.01-3 and adding a new § 53.01-1 to read as follows:

§ 53.01-1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society of Mechanical Engineers (ASME) United Engineering Center, 345 East 47th Street, New York, NY 10017:

Boiler and Pressure Vessel Code, section IV, Heating Boilers (ASME sec. IV), July 1989 with addenda...§ 53.01-5; § 53.01-10; § 53.05-1; § 53.05-3; § 53.05-5; § 53.10-1; § 53.10-3; § 53.10-10; § 53.10-15; § 53.12-1

PART 54—[AMENDED]

24. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

25. Subpart 54.01 is amended by removing Notes (1) and (2) preceding § 54.01-1, removing § 54.01-3, redesignating sections 54.01-1 and 54.01-2 as §§ 54.01-2 and 54.01-3, respectively, and adding a new § 54.01-1 to read as follows:

Subpart 54.01—General Requirements

§ 54.01-1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society of Mechanical Engineers (ASME) United Engineering Center, 345 East 47th Street, New York, NY 10017:

Boiler and Pressure Vessel Code, section VIII, Division 1, Pressure Vessels (ASME sec. VIII), July 1989 with addenda...§ 54.01-2; § 54.01-5; § 54.01-15; § 54.01-18; § 54.01-25; § 54.01-30; § 54.01-35; § 54.03-1; § 54.03-5; § 54.05-1; § 54.10-1; § 54.10-3; § 54.10-5; § 54.10-10; § 54.10-15; § 54.15-1; § 54.15-5; § 54.15-10; § 54.15-13; § 54.20-1; § 54.20-3; § 54.25-1; § 54.25-3; § 54.25-5; § 54.25-8; § 54.25-10; § 54.25-15; § 54.25-20; § 54.25-25; § 54.30-3; § 54.30-5; § 54.30-10

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:

ASTM A-20, Street Plates for Pressure Vessels, 1980..... § 54.25-10

ASTM A-203, Pressure Vessel Plates, Alloy Steel, Nickel, 1980..... § 54.05-20

ASTM A-370, Mechanical Testing of Steel Products, 1977..... § 54.25-20

ASTM E-23, Notched Bar Impact Testing of Metallic Materials, 1980..... § 54.05-5

ASTM E-208, Conducting Drop-Weight Test to Determine Nil-Ductility Transition Temperature of Ferritic Steels, 1969..... § 54.05-5

Compressed Gas Association (CGA), 500 Fifth Avenue, New York, NY 10036:

S-1.2, Safety Relief Device Standards—Cargo and Portable Tanks for Compressed Gases, 1979..... § 54.15-25

S-1.2.5.2, Flow Test of Safety Relief Valves, 1979..... § 54.15-10

Manufacturers Standardization Society (MSS) 127 Park Street NE., Vienna, VA 22180:

SP-25, Standard Marking System for Valves, Fittings, Flanges and Unions, 1978..... § 54.01-25

Tubular Exchanger Manufacturer's Association (TEMA), 707 Westchester Avenue, White Plains, NY 10604:

Heat Exchangers, Class "B", "C", or "R", 1978..... § 54.01-3

26. Section 54.15-1 is amended by revising the section heading and paragraph (a) to read as follows:

§ 54.15-1 General (modifies UG-125 through UG-136).

(a) All pressure vessels built in accordance with applicable requirements in division 1 of section VIII of the ASME Code must be provided with protective devices as indicated in UG-125 through UG-136 except as noted otherwise in this subpart.

* * * * *

27. Section 54.15-5 is amended by revising paragraph (a) to read as follows:

§ 54.15-5 Protective Devices (modifies UG-125).

(a) All pressure vessels must be provided with protective devices. The protective devices must be in accordance with the requirements of UG-125 through UG-136 of the ASME Code except as modified in this subpart.

* * * * *

PART 55—[AMENDED]

28. The authority citation for part 55 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

29. Subpart 55.01 is amended by removing the note following the subpart heading, removing paragraph 55.01-1(a)(1), redesignating § 55.01-1 as § 55.01-3, and adding a new § 55.01-1 to read as follows:

§ 55.01-1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017:

Boiler and Pressure Vessel Code, Section III, Division 1, Rules for Construction of Nuclear Power Plant Components (ASME sec. III), July 1989 with addenda...§ 55.01-3; § 55.05-1; § 55.10-1; § 55.10-5; § 55.10-20; § 55.10-25; § 55.10-30; § 55.10-35; § 55.10-40; § 55.15-1; § 55.15-3; § 55.15-5; § 55.15-10; § 55.15-15; § 55.20-1; § 55.20-5; § 55.20-10; § 55.20-20; § 55.25-1; § 55.25-10

PART 56—[AMENDED]

30. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 11735, 38

FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

31. Paragraph (b) of § 56.01–2 is amended by removing the entry "SAE J–343–80", and adding "SAE J–1942" after the entry "SAE J–1475–84" to read as follows:

§ 56.01–2 Incorporation by reference.

* * * * *

(b) * * *

SAE J–1942, Hose and Hose Assemblies for Marine Applications, 1989	§ 56.60–25

* * * * *

32. Section 56.60–25 is amended by removing Table 56.60–25(c), and revising paragraph (c) to read as follows:

§ 56.60–25 Nonmetallic materials.

* * * * *

(c) *Nonmetallic flexible hose.*

(1) Nonmetallic flexible hose must be in accordance with SAE J–1942 and may be installed only in vital and nonvital fresh and salt water systems, nonvital pneumatic systems, lube oil and fuel systems, and fluid power systems.

(2) Nonmetallic flexible hose may be used in vital fresh and salt water systems at a maximum service pressure of 150 psi. Nonmetallic flexible hose may be used in lengths not exceeding 30 inches where flexibility is required subject to the limitations of paragraphs (a) (1) through (6) of this section. Nonmetallic flexible hose may be used for plastic pipe in duplicate installations in accordance with paragraph (b) of this section.

(3) Nonmetallic flexible hose may be used for plastic pipe in nonvital fresh and salt water systems and nonvital pneumatic systems subject to the limitations of paragraphs (a) (1) through (6) of this section. Unreinforced hoses are limited to a maximum service pressure of 50 psi, reinforced hoses are limited to a maximum service pressure of 150 psi.

(4) Nonmetallic flexible hose may be used in lube oil, fuel oil and fluid power systems only where flexibility is required and in lengths not exceeding 30 inches.

(5) Nonmetallic flexible hose must be complete with factory-assembled end fittings requiring no further adjustment of the fittings on the hose, except that field attachable type fittings may be used. Hose and fittings must comply with SAE J–1475. Field attachable fittings must be installed following the manufacturer's recommended practice. If special equipment is required, such as crimping machines, it must be of the type and design specified by the manufacturer. A hydrostatic test of each hose assembly must be conducted in accordance with § 56.97–5 of this part.

* * * * *

PART 57—[AMENDED]

33. The authority citation for part 57 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

34. Subpart 57.02 is amended by redesignating §§ 57.02–1 through 57.02–4 as §§ 57.02–2 through 57.02–5, respectively, and adding a new § 57.02–1 to read as follows:

§ 57.02–1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S.Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH–2), 2100 Second Street SW, Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017:

Boiler and Pressure Vessel Code, section IX, Welding and Brazing Qualifications (ASME sec. IX), July 1989 with addendal	§ 57.01–1; § 57.02–2; § 57.02–3; § 57.02–4; § 57.03–1; § 57.04–1; § 57.05–1; § 57.06–1; § 57.06–3; § 57.06–4

PART 58—[AMENDED]

35. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

36. Subpart 58.03, consisting of § 58.03–1, is revised to read as follows:

Subpart 58.03—Incorporation of Standards

Sec.

58.03–1 Incorporation by reference.

Subpart 58.03—Incorporation of Standards

§ 58.03–1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH–2), 2100 Second Street SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Boat and Yacht Council (ABYC), P.O. Box 747, 405 Headquarters Drive, Suite 3, Millersville, MD 21108:	
P–1–73, Safe Installation of Exhaust Systems for Propulsion and Auxiliary Machinery, 1973	§ 58.10–5
American Bureau of Shipping (ABS), 45 Eisenhower Drive, Paramus, NJ 07653:	
Rules for Building and Classing Steel Vessels, 1989	§ 58.01–5; § 58.05–1; § 58.10–15; § 58.20–5; § 58.25–5
American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018:	
ANSI B31.3, Chemical Plant and petroleum Refinery Piping, 1987	§ 58.60–7
ANSI B31.5, Refrigeration Piping, 1987	§ 58.20–5; § 58.20–20
ANSI B93.5, Recommended practice for the use of Fire Resistant Fluids for Fluid Power Systems, 1987	§ 58.30–10
American Petroleum Institute (API), 1201 L Street, Washington, DC 20037:	

API RP 14C, Analysis, Design, Installation and Testing of Basic Surface Safety Systems on Offshore Production Platforms, 1987 ..... § 58.60–9
API RP 53, Recommended Practice for Blowout Protection Equipment Systems, 1976 ..... § 58.60–7
American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017:
Boiler and Pressure Vessel Codes, 1989 with addenda:
Section I, Power Boilers ..... § 58.30–15
Section III, Nuclear Power Plant Components, ... § 58.30–15
Section VIII, Pressure Vessels, ... § 58.30–15
American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:
A–193–84a, Specification for Alloy-Steel and Stainless Steel Bolting Materials for High-Temperature Service, 1984 ..... § 58.30–15
B–122–85, Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver) and Copper-Nickel Alloy Plate, Sheet, Strip and Rolled Bar, 1985 ..... § 58.50–5
B–127–80a, Nickel-Copper Alloy (UNS No. 4400) Plate, Sheet and Strip, 1980 ..... § 58.50–2; § 58.50–10
B–152–84, Copper Sheet, Strip, Plate and Rolled Bar, 1984 ..... § 58.50–5
B–209–83, Aluminum-Alloy Sheet and Plate, 1983 ..... § 58.50–5; § 58.50–10
D–92–78, Test method for flash and fire points by Cleveland Open Cup, 1978 ..... § 58.30–10
D–93–80, Flash Point by Pensky-Martens Closed Tester, 1980 ..... § 58.01–10; § 58.01–15; § 58.30–10
D–323–82, Method of test for vapor pressure of petroleum products (Reid Method), 1982 ..... § 58.16–5
Military Specifications (MIL-SPEC), Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120:
MIL–S–901, Requirements for High Impact Shock Tests of Shipboard Machinery Equipment and Systems, 1963 ..... § 58.30–17
National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269:
NFPA 302–89, Fire Protection Standard for Pleasure and Commercial Craft, 1989 ..... § 58.10–5
Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096:
SAE J–1928, Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, 1989 ..... § 58.10–5
Underwriters Laboratories, Inc. (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709:
UL 1111, Marine Carburetor Flame Arrestors, 1988 ..... § 58.10–5

37. Section 58.10–5 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 58.10–5 Gasoline engine installations.

* * * * *

(b) * * *

(2) All gasoline engines must be equipped with an acceptable means of backfire flame control. Installations of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet the applicable requirements of this section.

(3) The following are acceptable means of backfire flame control for gasoline engines:

(i) A backfire flame arrester complying with SAE J–1928 or UL 1111 and marked accordingly. The flame arrester must be suitably secured to the air intake with a flametight connection.

(ii) An engine air and fuel induction system which provides adequate protection from propagation of backfire flame to the atmosphere equivalent to that provided by an acceptable backfire flame arrester. A gasoline engine utilizing an air and fuel induction system, and operated without an approved backfire flame arrester, must either include a reed valve assembly or be installed in accordance with SAE J–1928.

(iii) An arrangement of the carburetor or engine air induction system that will disperse any flames caused by engine backfire. The flames must be dispersed to the atmosphere outside the vessel in such a manner that the flames will not endanger the vessel, persons on board, or nearby vessels and structures. Flame dispersion may be achieved by attachments to the carburetor or location of the engine air induction system. All attachments must be of metallic construction with flametight connections and firmly secured to withstand vibration, shock, and engine backfire. Such installations do not require formal approval and labeling but must comply with this subpart.

* * * * *

PART 59—[AMENDED]

38. The authority citation for part 59 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

39. Section 59.01–2 is added to read as follows:

§ 59.01–2 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH–2), 2100 Second Street SW, Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017:
Boiler and Pressure Vessel (B&PV) Code Section I, Power Boilers (ASME sec. I), July 1989 with addenda ..... § 59.10–5
Boiler and Pressure Vessel Code Section VII, Recommended Guidelines for the Care of Power Boilers (ASME sec. VII), July 1989 with addenda ..... § 59.01–5
Boiler and Pressure Vessel Code Section VIII, Division 1, Pressure Vessels (ASME sec. VIII), July 1989 with addenda ..... § 59.10–5; § 59.10–10
Boiler and Pressure Vessel Code Section IX, Welding and Brazing qualifications (ASME sec. IX), July 1989 with addenda ..... § 59.10–5

PART 71—[AMENDED]

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p.

277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

41. Section 71.65–5 is amended by revising paragraph (b)(11) to read as follows:

§ 71.65–5 Plans and specifications required for new construction.

* * * * *

(b) * * *

(11) *Details of Hinged Subdivision Watertight Doors and Operating Gear.

* * * * *

PART 76—[AMENDED]

42. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 58801, 3 CFR, 1980 Comp., P. 277; 49 CFR 1.46.

43. Section 76.01–2 is added to read as follows:

§ 76.01–2 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous materials Division (G–MTH–2), 2100 Second Street, SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:
ASTM F–1121, International Shore Connections for Marine Applications, 1988 ..... § 76.10–10

44. Section 76.10–10 is amended by revising paragraph (c) to read as follows:

§ 76.10–10 Fire hydrants and hose.

* * * * *

(c) On vessels of 500 gross tons and over there must be at least one shore connection to the fire main available to each side of the vessel in an accessible location. Suitable cut-out valves and check valves must be provided. Suitable adaptors also must be provided for furnishing the vessel's shore connections with couplings mating those on the shore fire lines. Vessels of 500 gross tons and over on an international voyage, must be provided with at least one international shore connection complying with ASTM F–1121. Facilities must be available enabling an international shore connection to be used on either side of the vessel.

* * * * *

PART 91—[AMENDED]

45. The authority citation for part 91 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., P. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., P. 793; 49 CFR 1.46.

46. Section 91.55–5 is amended by revising paragraph (b)(11) to read as follows:

§ 91.55–5 Plans and specifications required for new construction.

* * * * *

(b) * * *

(11) *Details of hinged subdivision watertight doors and operating gear.

* * * * *

PART 92—[AMENDED]

47. The authority citation for part 92 continues to read as follows:

Authority: 46 U.S.C. 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

48. Section 92.01–2 is added to read as follows:

§ 92.01–2 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH–2), 2100 Second Street SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:
ASTM F–1196, Sliding Watertight Door Assemblies, 1989 .. § 92.01–13
ASTM F–1197, Sliding Watertight Door Control Systems, 1989 ..... § 92.01–13

49. Section 92.01–13 is revised to read as follows:

§ 92.01–13 Sliding watertight door assemblies.

(a) Sliding watertight door assemblies, where fitted, must:

(1) Be designed, constructed, built, tested, and marked in accordance with ASTM F–1196;

(2) Have controls in accordance with ASTM F–1197; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements S1 and S3 of ASTM F–1196, unless the watertight door assemblies are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F–1196 must be met. In either case, the operating systems must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F–1197.

(b) Installations of watertight door assemblies must be in accordance with the following:

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations may be submitted for consideration by the Commanding Officer, Marine Safety Center, 400 7th Street SW., Washington, DC, 20590–0001. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames may be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating must be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

PART 95—[AMENDED]

50. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

51. Section 95.01–2 is added to read as follows:

§ 95.01–2 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH–2), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:	
ASTM F–1121, International Shore Connections for Marine Applications, 1988	§ 95.10–10

52. Section 95.10–10 is amended by revising paragraph (c) to read as follows:

§ 95.10–10 Fire hydrants and hose.

* * * * *

(c) On vessels of 500 gross tons and over there must be at least one shore connection to the fire main available to each side of the vessel in an accessible location. Suitable cut-out valves and check valves must be provided. Suitable adapters also must be provided for furnishing the vessel's shore connections with couplings mating those on the shore fire lines. Vessels of 500 gross tons and over on an international voyage, must be provided with at least one international shore connection complying with ASTM F–1121. Facilities must be available enabling an international connection to be used on either side of the vessel.

* * * * *

PART 107—[AMENDED]

53. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

54. Section 107.305 is amended by revising paragraph (m) to read as follows:

§ 107.305 Plans and information.

* * * * *

(m) *Details of hinged subdivision watertight doors and operating gear.

* * * * *

PART 108—[AMENDED]

55. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306, 5115; 49 CFR 1.46.

56. Section 108.101 is revised to read as follows:

§ 108.101 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH–2), 2100 Second Street SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:	
ASTM F–1014, Standard Specification for Flashlights on Vessels, 1986	§ 108.497
ASTM F–1121, International Shore Connections for Marine Applications, 1988	§ 108.427

Note: All other documents referenced in this part are still in effect.

57. Section 108.427 is amended by revising paragraph (a) to read as follows:

§ 108.427 International shore connection.

* * * * *

(a) At least one international shore connection that meets ASTM F–1121.

* * * * *

PART 150—[AMENDED]

58. The authority citation for part 150 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; § 150.105 also issued under the authority of 44 U.S.C. 3507.

59. Section 150.210 is revised to read as follows:

§ 150.210 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH–2), 2100 Second Street SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018:	
ANSI B16.5, Pipe Flanges and Flanged Fittings, 1981	§ 150.480
ANSI B16.24, Bronze Pipe Flanges and Flanged Fittings, 1979	§ 150.480
ANSI B16.31, Non-Ferrous Pipe Flanges, 1971	§ 150.480
ANSI Z87.1, Practice for Occupational and Educational Eye and Face Protection, 1979	§ 150.395; § 150.457
ANSI Z88.2, Practices for Respiratory Protection, 1980	§ 150.395; § 150.457; § 150.460

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103
ASTM F-1122, Quick Disconnect Couplings for Marine Applications, 1988 ..... § 150.480
National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269:
NFPA 306, Control of Gas Hazards on Vessels, 1984 ..... § 150.460

60. Section 150.480 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 150.480 Standards for marking of cargo hose carried onboard.

(a) * * *

(2) Flanges that meet ANSI B16.5, B16.24, or B16.31; or

(3) Class 1 quick-disconnect couplings that meet ASTM F-1122 and are marked "Cl-1."

* * * * *

PART 153—[AMENDED]

61. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804; §§ 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

62. Section 153.4 is added to read as follows:

§ 153.4 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington, DC, 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018:
ANSI B16.5, Pipe Flanges and Flanged Fittings, 1988 ..... § 153.940
ANSI B16.24, Bronze Pipe Flanges and Flanged Fittings, 1979 ..... § 153.940
ANSI B16.31, Non-Ferrous Flanges, 1971 ..... § 153.940
American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:
ASTM F-1271, Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications, 1990 ..... § 153.365

63. Section 153.365 is amended by revising paragraph (b)(1) to read as follows:

§ 153.365 Liquid overpressurization protection.

* * * * *

(b) * * *

(1) Meets ASTM F-1271; and

* * * * *

64. Section 153.940 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 153.940 Standards for marking of cargo hose.

* * * * *

(a) * * *

(2) Flanges that meet ANSI B16.5, B16.24, or B16.31; or

(3) Class 1 quick-disconnect couplings that comply with ASTM F-1122, and are marked "C1-1."

* * * * *

PART 162—[AMENDED]

65. The authority citation for part 162 is revised to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

66. Part 162 is amended by removing and reserving subparts 162.016, 162.034, 162.041, 162.042, and 162.043.

67. The heading of subpart 162.017 is revised to read as follows:

Subpart 162.017—Valves, Pressure-Vacuum Relief, for Tank Vessels

68. Section 162.017-2 is revised to read as follows:

§ 162.017-2 Type.

(a) This specification covers the design and construction of pressure-vacuum relief valves intended for use in venting systems on all tank vessels transporting inflammable or combustible liquids.

69. Section 162.017-3 is amended by revising paragraph (b) to read as follows:

§ 162.017-3 Materials, construction, and workmanship.

* * * * *

(b) Bodies of pressure-vacuum relief valves must be made of bronze or such corrosion-resistant material as may be approved by the Commandant (G-MTH).

* * * * *

70. Section 162.017-4 is revised to read as follows:

§ 162.017-4 Inspections and testing.

(a) Pressure-vacuum relief valves may be inspected and tested at the plant of the manufacturer. An inspector may conduct such tests and examinations as may be necessary to determine compliance with this specification.

71. Section 162.017-6 is revised to read as follows:

§ 162.017-6 Procedure for approval.

(a) *General.* Pressure-vacuum relief valves intended for use on tank vessels must be approved for such use by the Commandant (G-MTH), U.S. Coast Guard, Washington, DC 20593-0001.

(b) *Drawings and specifications.* Manufacturers desiring approval of a new design or type of pressure-vacuum relief valve shall submit drawings in quadruplicate showing the design of the valve, the sizes for which approval is requested, method of operation, thickness and material specification of component parts, diameter of seat opening and lift of discs, mesh and size of wire of flame screen.

(c) *Pre-approval tests.* Before approval is granted, the manufacturer shall have tests conducted, or submit evidence that such tests have been conducted, by the Underwriters' Laboratories, the Factory Mutual Laboratories, or by a properly supervised and inspected test laboratory acceptable to the Commandant (G-MTH), relative to determining the lift, relieving pressure and vacuum, and flow capacity of a representative sample of the pressure-vacuum relief valve in each size for which approval is desired. Test reports including flow capacity curves must be submitted to the Commandant (G-MTH).

PART 163—[AMENDED]

72. The authority citation for part 163 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

73. Part 163 is amended by removing and reserving subpart 163.001.

PART 169—[AMENDED]

74. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

75. Section 169.611 is amended by revising paragraph (c) and removing paragraph (d) to read as follows:

§ 169.611 Carburetors.

* * * * *

(c) All gasoline engines must be equipped with an acceptable means of backfire flame control. Installations of backfire flame arresters bearing basic Approval No. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval No. 162.015 or 165.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet the applicable requirements of subpart 58.10 of subchapter F (Marine Engineering) of this chapter.

PART 170—[AMENDED]

76. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

77. Section 170.015 is revised to read as follows:

§ 170.015 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH–2), 2100 Second Street SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the section affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:	
ASTM F–1196, Sliding Watertight Door Assemblies, 1989	§ 170.270
ASTM F–1197, Sliding Watertight Door Control Systems, 1989	§ 170.270
Military Specification, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120:	
MIL–P–21929B, Plastic Material, Cellular Polyurethane, Foam in Place, Rigid, 1970	§ 170.245
International Maritime Organization (IMO), IMO Sales, New York Nautical Instrument and Service Corp., 140 W. Broadway, New York, NY 10013:	
Resolution A.265 (VIII)	§ 170.135

78. Section 170.270 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 170.270 Door design, operation, installation, and testing.

* * * * *

(c) Each Class 2 and Class 3 door must:

(1) Be designed, constructed, tested, and marked in accordance with ASTM F–1196;

(2) Have controls in accordance with ASTM F–1197; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements Nos. S1 and S3 of ASTM F–1196, unless the watertight doors are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F–1196 must be met. In either case, control systems for watertight doors must have power supplies power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F–1197.

(d) Installations of watertight door assemblies must be in accordance with the following.

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations will be considered by the Marine Safety Center. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames may be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating must be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

* * * * *

PART 174—[AMENDED]

79. The authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

80. Section 174.007 is added to read as follows:

§ 174.007 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH–2), 2100 Second Street SW., Washington, DC 200593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:	
ASTM F–1196, Sliding Watertight Door Assemblies, 1989	§ 174.100

ASTM F-1197, Sliding Watertight Door control systems, 1989	§ 174.100

81. Section 174.100 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 174.100 Appliances for watertight and weathertight integrity.

* * * * *

(e) If a unit is equipped with sliding watertight doors, each sliding watertight door must:

(1) Be designed, constructed, tested, and marked in accordance with ASTM F-1196;

(2) Have controls in accordance with ASTM F-1197, except that a remote manual means of closure, as specified in paragraphs 7.1 and 7.5.1, and a remote mechanical indicator, as specified in paragraph 7.5.2, will not be required; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements Nos. S1 and S3 of ASTM F-1196, unless the watertight doors are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F-1196 must be met. In either case, control systems for watertight doors must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F-1197.

(f) Installations of watertight door assemblies must be in accordance with the following:

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations will be considered by the Marine Safety Center. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames may be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating shall be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

PART 182—[AMENDED]

82. The authority citation for part 182 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

83. Section 182.01-10 is added to read as follows:

§ 182.01-10 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096:	
SAE J-1928, Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, August 1989	§ 182.15-7
Underwriter's Laboratories (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709:	
UL-1111, Marine Carburetor Flame Arrestors, 1988	§ 182.15-7

84. Section 182.15.7 is amended by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 182.15-7 Carburetors.

* * * * *

(b) All gasoline engines must be equipped with an acceptable means of backfire flame control. Installations of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet the applicable requirements of subpart 58.10 of subchapter F (Marine Engineering) of this chapter.

PART 189—[AMENDED]

85. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

86. Section 189.55-5 is amended by revising paragraph (b)(11) to read as follows:

§ 189.55-5 Plans and specifications required for new construction.

* * * * *

(b) * * *

(11) *Details of hinged subdivision watertight doors and operating gear.

* * * * *

PART 190—[AMENDED]

87. The authority citation for part 190 continues to read as follows:

Authority: 46 U.S.C. 2213, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

88. Section 190.01-3 is added to read as follows:

§ 190.01-3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:
ASTM F-1196, Sliding Watertight Door Assemblies, 1989.. § 190.01-13
ASTM F-1197, Sliding Watertight Door Control Systems, 1989..... § 190.01-13

89. Section 190.01-13 is revised to read as follows:

§ 190.01-13 Sliding watertight doors.

(a) Sliding watertight door assemblies, where fitted, must:

(1) Be designed, constructed, tested, and marked in accordance with ASTM F-1196;

(2) Have control in accordance with ASTM F-1197; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements Nos. S1 and S3 of ASTM F-1196, unless the watertight door assemblies are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F-1196 must be met. In either case, control systems for watertight door assemblies must have power supplies, power sources, installation tests and inspection, and additional operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F-1197.

(b) Installations of watertight door assemblies must be in accordance with the following.

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installation will be considered by the Marine Safety Center. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames may be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating must be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

PART 193—[AMENDED]

90. The authority citation for part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

91. Section 193.01-3 is added to read as follows:

§ 193.01-3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street SW., Washington, DC, 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approval for incorporation by reference in this part, and the sections affected are:

American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103:
ASTM F-1121, International Shore Connections for Marine Applications, 1988..... § 193.10-10

92. Section 193.10-10 is amended by revising paragraph (c) to read as follows:

§ 193.10-10 Fire hydrants and hose.

* * * * *

(c) On vessels of 500 gross tons and over there must be at least one shore connection to the fire main available to each side of the vessel in an accessible location. Suitable cutout valves and check valves must be provided for furnishing the vessel's shore connections with couplings mating those on the shore fire lines. Vessels of 500 gross tons and over on an International voyage, must be provided with at least one international shore connection complying with ASTM F-1121. Facilities must be available enabling an international shore connection to be used on either side of the vessel.

* * * * *

Dated: July 16, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rule; Supplemental

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1990–91 late-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks or outer limits for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for proposed late-season frameworks will end on August 27, 1990.

ADDRESSES: Comments should be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1990

On March 14, 1990, the Service published for public comment in the **Federal Register** (55 FR 9618) a proposal to amend 50 CFR 20, with comments periods ending July 20, 1990, for early-season proposals; and August 27, 1990, for late-season proposals. On June 6, 1990, the Service published in the **Federal Register** (55 FR 23178) a second document consisting of a supplemental proposed rulemaking dealing with both early- and late-season frameworks. On June 21, 1990, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 14 (55 FR 9618), June 6 (55 FR 23178), and June 8 (55 FR 23487), 1990, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 10, 1990, the Service published in the **Federal Register** (55 FR 28352) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 2, 1990, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 14 (55 FR 9618), June 6 (55 FR 23178), and July 10 (55 FR 28352), 1990, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 14, 1990, the Service published a fourth document (55 FR 33264) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1990–91.

This document is the fifth in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for the 1990–91 late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1990–91 season. All pertinent comments on the March 14 proposals received through July 27, 1990, have been considered in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. Final regulatory frameworks for migratory game bird hunting seasons for late seasons are scheduled for publication in the **Federal Register** on or about September 17, 1990.

Special Assessments

The use of special regulations first proliferated during the 1960's when low populations of most species of ducks precipitated reductions in bag limits and season lengths. In the 1970's, duck populations rebounded and the Service, States, and Flyways further expanded the use of special regulations in an attempt to meet the rapidly growing demand for harvest opportunities. In the 1980's, duck populations declined and several species reached all time lows. Annual frameworks became progressively more restrictive and, in 1988, the point system, bonus bag limits for teal and scaup, special seasons for teal and scaup, and shooting hours were either modified or suspended. Also in 1988, the Service completed a programmatic Supplemental Environmental Impact Statement (SEIS) on the "Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)." In the SEIS, the Service selected as the preferred alternative stabilized framework regulations and controlled use of special regulations. As a result, the Service decided to evaluate the special regulations which were suspended or modified, and at the same time to evaluate zones and split seasons for ducks, which had been operating under a moratorium since 1986. The Service requested information and new data from the Flyway Councils, prepared draft reports on these issues in 1989, and circulated these to the Flyway Councils in January 1990. After analyzing the comments received on the draft reports, the Service prepared final reports which were mailed to the Flyway Councils and other interested parties in July 1990. The Service also developed long-term strategies to guide our future management decisions for these issues.

Two of these issues, shooting hours and September teal seasons, pertain to early-season regulations, while special scaup seasons, bonus teal and scaup bag limits, the point system, and zones and split seasons for ducks pertain to late seasons only. Comments received and long-term strategies for the issues that also pertained to early seasons—shooting hours and September teal seasons—were already covered in previous **Federal Register** documents (55 FR 28352 and 55 FR 33264). The strategies for shooting hours and September teal seasons have been finalized. They are repeated here to facilitate current comparison with late-season issues, illustrating the continuity in reasoning the Service has followed in developing these long-term strategies. Repeating the early-seasons strategies will also assist in future reference work, as only one document will be needed for this information.

Comments received on the draft reports are summarized below for the late-season issues. Public comment is solicited on the proposed strategies pertaining to late seasons at this time. The Service will respond to comments and publish final strategies for these issues in the late-season final frameworks document scheduled for publication on or about September 17, 1990.

Shooting Hours

Comments Received

The Central and Atlantic Flyway Councils and the Florida Game and Fresh Water Fish Commission recommended shooting hours beginning at one-half hour before sunrise for regular and special duck seasons. The Mississippi Flyway Council Regulations Committees recommended that shooting hours begin at one-half hour before sunrise for regular seasons, but at sunrise during special duck seasons or where special circumstances exist. The Maryland Department of Natural Resources commented that a sunrise opening may have contributed to a decline in their State duck harvest in 1988 and overly restricted the opportunity to harvest wood ducks.

Final Service Strategy

The Service proposes to allow shooting hours to begin at one-half hour before sunrise during the regular duck season. For species-specific duck seasons, shooting hours will begin at sunrise. Currently, shooting hours begin at one-half hour before sunrise for September wood duck seasons; and States will be required to provide information to assess the impact of such shooting hours on non-target species, otherwise, shooting hours will be changed to sunrise. Shooting hours during all seasons shall end at sunset.

Rationale

The Service believes that there is sufficient evidence to show that, for the regular duck seasons, shooting hours beginning at one-half hour before sunrise do not contribute significantly to the harvest of non-target species or illegal kill. Compared to the remainder of the day, the proportion of the daily duck kill occurring before sunrise is relatively small.

However, no evidence has been presented to assess the impact of presunrise shooting during special seasons in which only limited numbers of species may be harvested legally. Until studies are initiated or evidence is available, shooting hours for these seasons should begin at sunrise. Currently, shooting hours begin at one-half hour before sunrise for September wood duck seasons. States will be required to conduct studies or provide information to assess the impact of such shooting hours on non-target species. Otherwise, shooting hours for September wood duck seasons will be changed to sunrise.

The evening twilight period is associated with rapidly decreasing illumination. Birds shot near the end of the twilight period could be difficult to find. A sunset closing provides ample time with adequate light to find and retrieve downed birds.

Special September Teal Seasons

Comments Received

The Lower Region Regulations Committee of the Mississippi Flyway Council and the Central Flyway Council recommended continued use of September teal seasons. The Upper Region Regulations Committee of the Mississippi Flyway Council recommended the continued use of these seasons with additional requirements that would reinstate the season when teal populations increased, but would require improved information gathering for monitoring populations during periods of low duck abundance. The Maryland Department of Natural Resources and the Florida Game and Fresh Water Fish Commission recommended allowing special seasons for teal when population levels are determined to be satisfactory and the States can adequately evaluate the harvest.

Final Service Strategy

The Service considers September teal seasons to be an acceptable harvest management strategy. September teal regulations (i.e., season length and bag limits) should be compatible with the Service's policy of permitting harvest opportunity consistent with duck population levels. September teal seasons in the Central and Mississippi Flyways must follow the geographic and framework criteria that were operational during the last year they were offered by the Service.

Rationale

The Service believes that September teal seasons have been thoroughly evaluated and modified in the Central and Mississippi Flyways to provide harvest opportunity on a segment of the bluewinged teal population that is generally unavailable during the regular duck seasons. The Service's review of available evidence suggests that September teal season are not responsible for the recent decline of blue-winged teal populations. Furthermore, the harvest of species other than teal during September seasons is low.

Special Scaup Seasons

Written Comments on the Draft Report

The Upper and Lower Region Regulations Committees of the Mississippi Flyway Council and the Atlantic Flyway Council supported continued use with additional restrictions. The Atlantic Flyway Council suggested reinstatement when populations are adequate, the Lower Region Regulations Committee of the Mississippi Flyway Council remarked that low harvest rates indicated that this management option had not adversely affected scaup, while the Upper Region Regulations Committee of the Mississippi Flyway Council requested continuing the special scaup season when populations show a sustained increasing trend and further requested improved data bases in order to more efficiently monitor key population parameters if seasons were to continue to low population levels. The Central Flyway Council requested that the special scaup season be reinstated.

The Maryland Department of Natural Resources commented that special seasons should be permitted when the population status of the target species is considered to be at a satisfactory level and States can meet the requirements to evaluate the impact of harvest resulting from such seasons. The Florida Game and Fresh Water Fish Commission supported continued use when population levels (three-year running average) allow; but noted that obtaining additional information to conclusively evaluate these seasons may be cost-prohibitive and not an efficient use of limited natural resource funds. The New Jersey Department of Environmental Protection supported continued use because the derivation of birds hunted in New Jersey is primarily from eastern Canada and current restrictions are discouraging hunters. The New York State Department of Environmental Conservation supported the comments of the Atlantic Flyway Council to reinstate the option when population levels are adequate.

Proposed Service Strategy

The Service proposes to continue the suspension of special scaup seasons. Special scaup seasons have not been adequately evaluated at this time. Lesser scaup are currently at record low population levels and do not warrant increased harvest.

Rationale

Since 1966, special seasons have been used to provide additional harvest opportunities on species considered lightly harvested and able to withstand greater harvest pressure. The Service considers special seasons to be an acceptable harvest management strategy, if the seasons have been carefully designed, evaluated, and refined. The Service concludes that

certain groups of birds, populations, or segments of populations—due to their unique biological circumstances, temporal or spatial distributions, and population status—can provide additional harvest opportunities outside of those which are available during the regular hunting seasons. Special season regulations (i.e., season length and bag limits) should be compatible with the Services policy on controlled use of special seasons and consistent with population status. Evaluation procedures and design criteria for special seasons should be devloped cooperatively between the Service and Flyway Councils. After thorough evaluation, the Service and Councils would cooperate to establish the implementation criteria and review schedule for each special season.

Despite various efforts, special scaup seasons have not received a thorough and extensive evaluation, primarily due to information shortages. Nevertheless, additional information can be obtained and a comprehensive evaluation of this season is feasible and necessary. Consideration of the species composition (e.g., proportion of lesser scaup, greater scaup, ring-necked duck, and goldeneyes) in the special season harvest and their population status should be included in any evaluation. The Service's review of available evidence suggests that special scaup seasons are not responsible for the decline in scaup numbers; however, existing data bases are weak.

Bonus Teal and Scaup Bag Limits

Written Comments on the Draft Report

The Upper and Lower Region Regulations Committees of the Mississippi Flyway Council and the Atlantic Flyway Council supported continued use with additional restrictions. The Atlantic Flyway Council suggested reinstatement when populations are adequate. The Upper Region Regulations Committee of the Mississippi Flyway Council requested continuing the bonus options when populations have sustained an upward trend for several years. The Central Flyway Council requested that the bonus option be reinstated for teal.

The Florida Game and Fresh Water Fish Commission noted that bonus bag limits have a much greater impact on non-target species than do special seasons. They request that populations of target species and all ducks be considered before reinstatement of these options. The New Jersey Department of Environmental Protection supported continued use because green-winged teal populations are at favorable levels. New York State Department of Environmental Conservation supported the comments of the Atlantic Flyway Council to continue use with additional restrictions.

Proposed Service Strategy

The Service proposes to discontinue the use of all bonus bag limits because bonus limits have not been adequately evaluated and offer limited potential for adequate evaluation of effects on target and non-target species.

Rationale

Bonus bag limits have been used to provide additional harvest opportunity on a few species during the regular duck season. These species were generally considered lightly harvested and capable of withstanding additional harvest pressure. However, bonus bag limits increased harvest of all species, not just the bonus species. The Service concludes that the effects of bonus limits cannot be adequately evaluated; therefore, the Service does not consider the use of bonus bag limits to be an acceptable harvest management strategy.

Point System

Written Comments on the Draft Report

The Atlantic Flyway Council suggested offering a point system which is as restrictive in terms of bag limits as the conventional bag limit, pending further measures to make the point system acceptable in select areas. They cite that the long-term evaluations have suggested that the point system has not been effective at redirecting harvest pressure. The objective of the point system should be to provide regulatory flexibility rather than to create opportunity to increase the size of the daily bag. Maintaining a point system would also allow States the ability to direct additional protection to high-point birds beyond that afforded by fixed species restrictions under the conventional bag limit. The Upper Region Regulations Committee of the Mississippi Flyway Council commented that the draft report did not adequately address hunter perceptions of the point system. They noted that many problems identified with the point system are also attributable to the conventional bag limit and recommended further evauation and study. The Lower Region Regulations Committee supported the use of the point system with additional restrictions. They suggested using comparable point values for species of concern and a "comparability+1" for species in favorable status. The Central Flyway continued to endorse the point system.

The Maryland Department of Natural Resources noted that the point system gave greater protection to high-point birds and requested that values should not be such that the point system bag limit could be greater than under the conventional bag limit. They recognized that reordering was an inherent problem of the point system that is virtually unenforceable. The Florida Game and Fresh Water Fish Commission noted that the point system has many attributes and most of it's drawbacks apply equally to conventional bag limits. They also recognized the potential for reordering violations, but stated that the point system is effective at redistributing harvest. Florida supported continued use at "comparability+1", pending clarification of the impact of illegal activity associated with this option. The New Jersey Department of Environmental Protection remarked that there seemed little reason to support a system that no longer provided additional hunting opportunity, but supported the Atlantic Flyway Council request that comparability continue pending further measures to make the system acceptable in select areas. The New York State Department of Environmental Conservation also supported the comments of the Atlantic Flyway Council.

Proposed Service Strategy

The Service proposes to continue use of the point system as a bag limit option, provided the point system offered is at least as restrictive as the conventional system in terms of total bag and species/sex restrictions.

Rationale

Since 1918, the conventional bag limit has been the system most commonly used to regulate the daily limit on ducks. Alternatives to the conventional system will be considered but should meet certain criteria: (1) Have well-defined objectives that are relevant to harvest-management goals; (2) be subject to practical evaluation; and (3) realize clear advantages, based on intent, over the conventional system. Any future systems will be evaluated against the conventional bag system. The Service has been unable to demonstrate that the point system has clear advantages over the conventional bag system relative to the point system's original objectives, which were (1) To reduce bag-limit violations by providing the hunter with a system which does not require in-flight identification of ducks, and (2) to direct harvest toward certain species or sexes

of ducks and away from others. A major problem with the point system is the potential for reordering of the bag. When reordering occurs, it negates the potential advantage of the point system and compromises a fundamental purpose for which it was intended. The conventional bag-limit system is flexible, allows a variety of harvest opportunities, and can be directed at certain duck species or sexes.

Zones and Split-Seasons for Ducks

Written Comments on the Draft Report

The Atlantic Flyway Council suggested maintaining existing zone and split options, granting operational status to experimental zones that have successfully met Service criteria, and applying the same criteria to future zoning proposals. They remarked that States should not be held accountable for perceived inadequacies in evaluation criteria. Virtually all evaluations have concluded that zoning had little impact on duck populations. Zones and split have not prevented the Atlantic Flyway from accomplishing harvest management objectives. They commented that zones and splits are intended to increase hunger satisfaction and should not be used as a mechanism for controlling harvest. The Upper Region Regulations Committee of the Mississippi Flyway Council commented that because the data are deficient to accommodate any effective evaluation of the aspects of splits and zones and because it is unlikely that more reliable information will be generated in the near future, the Committee recommended continued use with uniform guidelines. Guidelines would govern the establishment and amendment of zones and split seasons. For example, the number of zones allowed within a State could be based on criteria which considered latitudinal and altitudinal gradients and whether coastal and inland habitats are involved. The Lower Region Regulations Committee suggested restricted use and that criteria that allows for zoning and split season options should apply throughout the flyway. The Central Flyway Council suggested continued use with the option being available to all States willing to meet reasonable evaluation criteria. The Central Flyway Technical Committee remarked that the Service did not attempt to evaluate the cumulative impact of zones on duck populations, that the report erroneously implied rigorous experiments were feasible, and that the Service should not assume that hunting mortality is additive when the relationship between harvest rate and survival is unclear.

The Maryland Department of Natural Resources commented that these options have been primarily used to improve hunter satisfaction and that harvest objectives, including reductions, can and have been accomplished using other regulatory tools while maintaining zones and split seasons. The Florida Game and Fresh Water Fish Commission believes that zones and splits are intended to benefit hunter satisfaction rather than hunter success. They agree that proliferation of these options has exceeded our ability to assess their impact and suggest restricted use within limits. They further suggest that zones and split seasons not be used together and that the number of zones or splits permissible be based on geographic criteria. The Pennsylvania Game Commission added that zones and split seasons have functioned quite well in their State and without increases in hunting pressure or harvest. The New Jersey Department of Environmental Protection supported continued use but felt that further evaluations were unnecessary. They commented that returning to a continuous statewide season would be unacceptable due to the spatial and temporal distribution of ducks within the State. The New York Department of Environmental Conservation remarked that this regulatory option provides needed flexibility in a large and ecologically diverse State such as New York. Without zones and split seasons, it would be impossible to provide satisfactory hunting opportunity for most New York waterfowlers. They further noted that precise estimates of the effects of zoning and split seasons are unlikely because the potential effects are highly variable depending on the season dates selected and other factors.

Proposed Service Strategy

The Service proposes to continue the use of zones and splits for duck hunting. These are considered acceptable means by which States can redistribute harvest opportunities. However, the Service proposes to limit both the number of options available and the frequency with which modifications can be made. These controls are deemed necessary to preserve and enhance the Service's ability to regulate and evaluate overall harvest pressure on ducks.

Beginning in 1991, States may select to zone or split their duck hunting seasons using the following guidelines:

1. *"Grandfather Clause":* Those States that currently have an operational zoning plan, or those that have experimented zoning plans and have successfully met the Service's 1977 evaluation criteria for zoning experiments, will be allowed to continue those zoning plans. States that have not fulfilled obligations for evaluation as specified in Memoranda of Agreement will be subject to the new guidelines. States with zoning plans that can be "grandfathered-in," but that wish to make major modifications in these zoning plans, will also be subject to the new guidelines. Eligible States that wish to take advantage of this grandfather clause must do so in 1991.

2. *Basic:* The Basic Option, available at any time to any State, would allow the regular duck season to be split into 2 segments with no zones.

3. *Alternatives:* Where the Basic Option is deemed undesirable, States could choose either:

a. no more than 3 zones with no splits,

b. a 3-way split season with no zones, or

c. 2 zones with the option for 2-way split seasons in one or both zones.

4. *Changes:* The Service will consider requests from States who wish to change from the Basic Option to an Alternative Option, change among Alternative Options, or change zone boundaries, at 5-year intervals (i.e., during "open seasons" in 1991, 1996, 2001, etc.). States would be allowed to change to the Basic Option at any time. States retain the option of making annual modifications to season date selections.

5. *Review:* States will be required to provide the Service with a review of pertinent data (e.g., estimates of harvest, hunter numbers, success, etc.) at the end of 5 years after any changes in splits or zones (except conversions to the Basic Option). This review does not have to be the result of a rigorous experimental design, but nonetheless should assist the Service in ascertaining whether major changes in hunter activity or harvest occurred as a result of split and zone regulations.

6. States may not zone or 3-way split simultaneously within a special management unit and the remainder of the State.

Rationale

There is evidence that suggests the nationwide proliferation of zones and split seasons has not increased overall harvest pressure on ducks. However, our ability to predict the impact of additional zones and split-season combinations is poor, suggesting that some limits must be imposed. Limiting substantive changes to 5-year "open seasons" is intended to minimize efforts at fine-tuning, reduce complexity in the regulations-setting process, and enhance

the Service's ability to monitor regulatory effects. The "Grandfather Clause" acknowledges that the Service is willing to share responsibility for the inadequate criteria under which States were required to evaluate their original zoning plans. The Service will allow States the option of continuing these zoning plans because they did not appear to have cumulative effects on duck harvest pressure.

Presentations at Public Hearing

A number of reports were given on the status of waterfowl. These reports are briefly reviewed as a matter of public information. Unless otherwise noted, persons making the presentations are Service employees.

Mr. Ron Reynolds presented habitat conditions, population status, and production and fall flight estimates for populations of geese across North America. In general, he reported that the forecast for most populations of geese calls for average to above average production this year. Notable exceptions to this are below average production for the Atlantic, Tennessee Valley, Mississippi Valley, and Tall Grass Prairie populations of Canada geese. Less than average production is also predicted for the eastern segment of the Mid-Continent white-fronted goose population, Mid-Continent and western Canadian Arctic populations of snow geese, and for Atlantic brant. Recent concern over goose populations nesting in western Alaska have been alleviated somewhat by improved production prospects from that area. Fall flights of Canada goose populations will be equal to or greater than last year for all populations except the Tennessee Valley and Tall Grass Prairie populations. For snow geese, white-fronted geese, and Pacific brant, fall flights will exceed last year's with the exception of western Canadian Arctic snow geese which will have a fall flight slightly less than in 1989. Both the eastern and western populations of swans will have fall flights greater than last year.

Mr. Fred Johnson reported on the status of habitat conditions and duck numbers as of May 1990. He reported that across prairie Canada, the sequence of weather events since last year's survey produced marked improvement in pond numbers, but numbers remained below long-term averages, reflecting the extent and severity of drought conditions during the 1980's. In the northcentral United States, pond numbers fell significantly from last year and remain well below the long-term average. The Dakotas, in particular, were extremely dry. In northern areas, water levels improved in northern Saskatchewan, nothern Manitoba, and western Ontario, but spring break-up was late in these survey units. Westward, habitat conditions were good to excellent over most of northern Alberta at the time of the survey, but were drier in the Northwest Territories. Spring came early in Alaska and few flooding problems were observed. In the eastern production areas of North America, habitat conditions were mixed. Cool wet weather in April and May likely delayed early nesting activities in parts of Ontario and Quebec. However, southern Ontario reported excellent habitat and very successful nesting efforts. Spring conditions were also cool and wet further to the east—in Atlantic Canada and the Northeast United States.

Mr. Johnson further reported that duck numbers in 1990 remained essentially unchanged (+1%) from 1989 and were well below (−22%) the long-term average. Of the 100 major species monitored each spring, only gadwall, canvasback, northern shoveler, and green-winged teal showed marked increases in numbers since 1989. Additionally, only green-winged teal and gadwall were substantially above their long-term averages. Mallard and pintail numbers changed little from last year and remain well below historic levels. Blue-winged teal and scaup reached all-time lows again in 1990. Generally, ducks responded to the improved water conditions in prairie Canada and numbers of many species increased. However, the lack of adequate water in the U.S. prairies was evident, as estimates of most species dropped significantly in that area. In northern areas, duck numbers changed little from last year. Overall, there was no change in breeding populations from the previous year.

Mr. Brad Bortner presented information on habitat conditions since the May surveys, duck population, and the predicted fall flight forecast. In summary, late spring and early summer rains across most of the prairie has brought good vegetative growth, replenished depleted soil moisture levels, but did little to help wetland numbers. July production surveys showed increases in brood indices in Prairie Canada and decreases in the northcentral U.S. These brood indices were well below the long-term averages for most areas. The late nesting indices increased dramatically in South Dakota, and were significantly below the long-term averages in all other units. Rains did foster growth of wetland and upland vegetation across most of the prairie. Production from Alaska should be improved by increased breeding populations and favorable habitat conditions. In northern Canada, the outlook for production is fair to poor. In 1990, an unchanged breeding population and only minor improvements to production will result in an unchanged fall flight. The 1990 mallard fall flight is predicted to be 9.7 million, a 13 percent increase from last year. Canvasback production is expected to be higher than 1989 due to an increased breeding population and general improvements in habitat across southern Canada. For the northern pintail, increased breeding populations should result in a slight increase in the fall flight. Finally, black duck production will be poorer than last year.

Review of Comments Received at Public Hearing

Eleven individuals presented statements at the August 2, 1990, public hearing. Each statement is summarized below and was considered in the development of these proposed late-seasons frameworks. Responses to the public hearing comments are deferred and will be incorporated into responses to written comments. Responses will be published with the final frameworks for late seasons.

Steve Wendt, spokesperson for the Canadian Wildlife Service, highlighted aspects of information contained in his agency's report "1990 Migratory Game Bird Hunting in Canada," dated August 2, 1990. He characterized trends in harvests and number of hunters in Canada, discussed favorable changes in the harvest rates for certain duck populations during recent periods, identified generally restrictive changes in regulations affecting migratory bird hunting in Canada during the 1990–91 season, and described some of the agency's efforts to collect information on waterfowl populations in both eastern and western Canada. He made no recommendation on the proposed frameworks for seasons in the United States.

John Grandy, representing the Humane Society of the United States, presented his views on the process of setting annual hunting regulations for Migratory Birds and claimed that views of many groups and individuals receive less consideration than others. He questioned the database on such species as ruddy ducks, goldeneyes, and buffleheads, and cited the Service for after-the-fact management and further, called for a closure of waterfowl hunting. He expressed his view that seasons on mergansers and coots were

"special" seasons and of little purpose other than for target practice. He suggested the Service delay black duck seasons 1–2 weeks and use a mid-week opening to give local ducks more protection. He urged the Service to develop a way in which the views of non-hunters could be integrated into the process.

Bob Creeden, representing several waterfowl organizations in the mid-Atlantic and northeast portion of the Atlantic Flyway, supported recommendations by the Atlantic Flyway Council and the Service for a 30 day season and 3 bird daily bag, and expressed appreciation for the initiation of coordinated breeding population surveys across eastern Canada and northeastern U.S. in 1990. He regarded this action as historic and commended the Black Duck Joint Venture of the North American Waterfowl Management Plan for making it possible. He believed efforts to reduce the black duck harvest over the last 6 years has saved thousands of birds. He asked the Service to consider a system that would allow additional hunting days to account for the prohibition on Sunday hunting in several States. Also, he supported a special season on green-winged teal for 5 days from the late October to mid November in States from Virginia northward. He supported the Service's strategy on zones and split and for a "grandfather clause" and referred to the 1990's as the beginning of a new era for the Atlantic Flyway.

John M. Anderson, speaking on behalf of the National Audubon Society, urged maintaining nearly the same regulations that were in effect in 1989 because the status of ducks is similar to that of last year. He asked for continued use of the point system as an alternative option to the conventional bag limit for ducks, saying that it is a viable harvest management option that encourages hunters to identify ducks, but has an inherent reordering problem. He believes that the harvest rates on mallards have been reduced about as far as possible, and commended the States and Service for their efforts to do so. He said goose hunting regulations were generally appropriate but that some fine-tuning may be needed. He endorsed the special 9-day season on Tall Grass Prairie Canada geese in Louisiana and noted that tundra swan populations are nearing carrying capacity levels on breeding areas and current harvest levels appear appropriate.

Vernon Bevill, representing the Mississippi Flyway Council, supported the recommendations of the Council for the 1990–91 waterfowl hunting regulations. He commended the Service for stabilizing shooting hours and encouraged a similar review of framework dates. He supported the "point system" as a viable baglimit option and recommended the establishment of a joint State-Federal technical task force to review past studies and other pertinent information. He recommended that the Service work more closely with the Canadian Wildlife Service and the Province of Ontario to achieve greater consistency in harvest management actions for the Tennessee Valley Population of Canada geese throughout its range. He stated that the Council recognized that habitat improvement is a critical need in waterfowl management and looks forward to working with the Service on the North American Waterfowl Management Plan. He further advised the Service that the Council strongly opposes both the release of hand-reared mallards and other waterfowl and the expenditure of funds for research related to that practice.

Bill Montoya, representing the Central Flyway Council, expressed appreciation of the Council's input into the regulation-setting process, including consideration given to changes in frameworks for goose seasons and limits. He offered strong support for the "point system" option as a means of directing harvest at green-winged teal, gadwall, and shovelers. He asked the Service to investigate the return to the bag of an additional male mallard that was taken away in 1987. He stated that framework dates should not be used as a regulatory tool and asked the Service to work with the Flyway Councils to review the matter.

Larry Marcum, representing the Tennessee Wildlife Resources Agency, commented about proposed restrictions on the harvest of Tennessee Valley Population (TVP) Canada geese this year. He stated that the information indicating a need for restriction became available only recently, and that Tennessee felt the proposal to limit the Canada goose bag to one bird was too restrictive. He indicated that the TVP population has increased somewhat, that the most recent midwinter survey index was high, and that the production model for the TVP indicated a fall flight only about 10 percent lower than last year. He stated that Tennessee is concerned about TVP Canada geese, but felt the decision to restrict harvest was made too hurriedly. He said that the State's first recommendation was for no change in regulations from last year, but if a change was required, they recommended an option of either 60 days with 2 birds daily or 70 days with 1 bird daily.

Joseph Rowan, representing Ducks Unlimited, presented his group's appraisal of habitat conditions, the status of breeding duck populations, and the fall flight in portions of Alaska, Canada, and the contiguous United States. He applauded efforts to improve data bases on ducks in the "unsurveyed" areas, supported restrictions on blue-winged teal, lesser scaup, and pintails, and announced the availability of the document "SPRIG" which is intended to advise managers how to better enhance habitats for pintails. With respect to the North American Waterfowl Management Plan, he urged that consideration should be given to reducing predation so as to improve recruitment among ducks that the stocking of hand-reared mallards not be a part of this international program.

Wayne Pacelle, representing The Fund for Animals, echoed the comments of John Grandy that the views of many groups receive less consideration than others. He stated that the hunting public is a tiny group yet dominates the management of waterfowl. He commented that swan seasons only catered to a small special interest group and called for a complete closure of waterfowl hunting.

Jim Phillips, a duck hunter, gave his perception of wildlife and waterfowl management, mainly since the 1930's, in light of the current status of ducks. He philosophized about the morality of waterfowl managers and wildlife administrators allowing hunting to continue while so many species of ducks are at or near record-low levels. He recommended closing the season until attaining a fall flight of 100 million ducks, an objective level in the "North American Waterfowl Management Plan."

Bob Jungman, representing the Wetland Habitat Alliance of Texas, noted that some species of ducks and most goose population levels are high. However, it was indicated that the long-term overall downward trend of ducks is a concern. In response to these levels, there has been a shortened duck season and a very low bag limit. This has caused a tremendous decrease in the number of waterfowl stamps sold and lower revenues for the procurement and development of waterfowl habitat. It was suggested that overly conservative bag limits severely limit federal and State stamp revenues and excise taxes which results in less habitat protection and development and contributes to lower population levels. He suggested

consideration of a 45-day, 5 duck bag, point system be offered. In this system the season would be closed for pintails, mottled ducks, mallard hens, and canvasback hens; 100 points for blue-winged teal, mallard drakes, canvasback drakes, and scaup; 50 points for wood ducks, wigeon, and redheads; the remainder—including green-winged teal, gadwalls, and shovelers—would have a point value of 20. For geese, the season would be 100 days with a bag of 7 snow geese, 2 white-fronted geese, and 1 Canada goose. It was also recommended that an early season be offered, as this season has benefits for ducks by encouraging habitat development. In dry years, habitat created by pumping water is a deterrent to the outbreak of disease. Also, because of that fact that male blue-winged teal migrate before females, the early teal season should be moved forward to provide additional protection to the female component. Wood ducks and black-bellied whistling ducks could be added to the early season bag because of their good population status. He encouraged continued enforcement of waterfowl regulations be done near the time of the offense, but opposed any further "sting" operations as were conducted during the 1988–89 season in Texas. Finally, it was suggested that the moratorium on the establishment of separate zones within a State and splits within its migratory waterfowl season should be abolished.

Written Comments Received

The preliminary proposed rulemaking which appeared in the **Federal Register** dated March 14, 1990 (55 FR 9618), opened the public comment period for late-season migratory game bird hunting regulations. As of July 27, 1990, the Service had received 61 comments, 31 of these specifically addressed late-season related issues. These late-season comments are summarized below and numbered in the order used in the March 14, 1990, **Federal Register**. Only the numbered items pertaining to late-season written comments are included.

1. Shooting Hours.

Written Comments: All four Flyway Councils, the State of Arkansas, a local organization from Massachusetts, and an individual from California supported the proposed shooting hours for ducks. An individual from Nevada recommended beginning shooting hours at 15 minutes before sunrise.

2. Frameworks for ducks in the conterminous United States—oustide dates, season length and bag limits.

a. *Harvest Strategy*—Two local organizations from Massachusetts, one local organization from New York, two individuals from New York, and two individuals from New Jersey remarked that regulations were overly restrictive in the Atlantic Flyway. They believe the derivation of Atlantic Flyway harvest justifies separating the flyway's regulations from the conditions on the Prairie breeding grounds. One individual from California supported the proposed regulations for ducks, but asked that the Service not restrict harvest any further.

b. *Framework Dates*—The Upper Region Regulations Committee of the Mississippi Flyway Council and the Pacific Flyway Council recommended October 6 through January 6, the Lower Region Regulations Committee of the Mississippi Flyway Council recommended October 6 through January 13, the Atlantic Flyway Council recommended October 1 through January 12, while the Central Flyway Council recommended a floating framework of the Saturday nearest October 1 through the Sunday nearest January 20; which would be September 29 through January 20 during the 1990–91 season. The Councils stated that framework dates should not be used to control harvest and that the Service and Flyway Councils should investigate the possibility of standardizing framework dates during the coming year. The Atlantic Flyway Council stated that the earlier opening framework date would allow northern Atlantic Flyway States to open early to target ducks that are produced in the northeast United States and eastern Canada and would not impact ducks derived from the Prairie breeding grounds. The Service proposal is currently October 6 through January 6 for the 1990–91 duck season. This is a one-day, calendar related shift from 1989–90.

c. *Season Length*—The Atlantic Flyway Council, the Central Flyway Council, and the Upper and Lower Regulations Committees of the Mississippi Flyway Council recommended no change in season length for 1990–91. The Pacific Flyway Council recommended an additional day to accommodate split seasons that could open on Saturdays and close on Sundays. They cited that this would have no biological impact but would reduce hunter confusion. The Arkansas Game and Fish Commission requested that States be able to forfeit afternoons in exchange for additional mornings of duck hunting. Two local organizations from Massachusetts requested 40-day seasons; and one local organization and two individuals from New York remarked that the current 30-day season is unfair because they believe that most birds in the Atlantic Flyway originate from eastern Canada. One individual from California and another individual from Wisconsin supported the proposed season lengths.

In a separate recommendation, the Atlantic Flyway recommended 5 additional days for green-winged teal only. This proposal came in the form of a special greenwing season with unspecified bag limits and season dates, in an unspecified portion of the Atlantic Flyway. The Council also recommended that the Service cooperate with the Council in developing more specific parameters by next year.

d. *Closed Season*—One individual from Texas preferred closure for the 1990–91 duck season.

e. *Bag Limits*—The Atlantic Flyway Council and the Upper Region Regulations Committee of the Mississippi Flyway Council recommended no change in bag limits. The Lower Region Regulations Committee of the Mississippi Flyway Council recommended no change in total ducks but recommended limiting the bag to include no more than one hen mallard or one black duck. The Central Flyway Council recommended no change in total ducks but recommended lifting the 2 drake mallard restriction in that flyway and allowing one canvasback in the bag. The Pacific Flyway also recommended no change in total ducks, but requested an additional pintail drake and an additional canvasback in the bag. One individual from New York supported the proposed bag limits and remarked that if adjustments were made he preferred additional days of hunting rather than an additional bird in the bag. An individual from California recommended a 5-bird bag with the only restriction being a limit of one pintail, while an individual from Oregon recommended that 2 pintail drakes be allowed. An individual from Wisconsin recommended that the bag limit be determined by the production anticipated.

Point System—There was no specific recommendation from the Mississippi Flyway Council's Committees, although they expect that the Service will continue to offer the same point values as were offered in 1989–90. The Central Flyway Council recommended a point system that would be more liberal than the conventional bag limit and more liberal than the point system of 1989–90. Their recommendation removed mergansers from the point system; added a canvasback as a 100-point-bird; changed the male mallard from a 50-point-bird to a 35-point-bird; and changed gadwall, northern shovelers, and green-winged teal from 35-point-

birds to 25-point-birds. One individual from Wisconsin recommended discounting the point system as an option.

7. *Extra Teal Option:* Two local organizations from Massachusetts and a local organization from New York recommended reinstatement of these bonus bags and a local organization from New Jersey recommended that the bonus be reinitiated during the last part of the early split-season. These local organizations believed that reinstatement was appropriate because greenwings are currently numerous.

9. *Special Scaup Season:* Two local organizations from Massachusetts requested reinstatement when population levels warrant. An individual from New York requested reinstatement claiming that there was no justification to discontinue these special seasons. One individual from Wisconsin opposed reinstatement of these special seasons due to the shortage of scaup.

10. *Extra Scaup Option:* Two local organizations from Massachusetts requested reinstatement when population levels warrant. One individual from Wisconsin opposed reinstatement of these special seasons due to the shortage of scaup.

11. *Mergansers:* Two local organizations from Massachusetts recommended that the merganser seasons be concurrent with the 107-day sea duck seasons.

12. *Canvasback and Redheads:* The Central Flyway Council recommended allowing a canvasback in both conventional and point system bags. The Pacific Flyway Council recommended increasing the bag from one to two canvasbacks for the majority of the Pacific Flyway, returning to the bag limit prior to the closed season in 1988. The Pacific Flyway Council further recommended no restrictions within the bag limit for Alaska, as was the case prior to the closed season in 1988. The Council cited the high population level for the Western Population of canvasbacks. One individual from Wisconsin recommended that the canvasback season be closed across the United States.

13. *Duck Zones:* The Pacific Flyway Council recommended a zone boundary change for the Northeast Zone of California and the creation of a new zone in Idaho. The Idaho Fish and Game Department supported the creation of another zone in Idaho. Two local organizations from Massachusetts, one local organization and four individuals from New Jersey, and two individuals from New York supported the proposal to maintain zoning as an option. They cite different migratory patterns, varied ecological conditions, and different weather patterns within States. They further state that hunters have developed traditions associated with different zones and believe these are effective management tools. One individual from Oregon recommended north and south zones for that State. The Wisconsin Department of Natural Resources opposed a partial lift of the moratorium in 1990–91. The current proposal is for no change in zones for 1990–91 with changes being allowed in 1991–92 so long as they conform to Service guidelines.

The Delaware Department of Natural Resources recommended continuing the option of 3-way splits for those States that are currently either zoning or splitting their duck season into 3 segments. Two local organizations from Massachusetts, one local organization and two individuals from New Jersey, and one individual from New York supported the proposal to continue split seasons. An individual from Nevada recommended limiting hunting to Saturdays, Sundays, Wednesdays, and Holidays; while two local organizations from Massachusetts recommended allowing compensatory days for States that do not allow hunting on Sundays. One individual from Wisconsin opposed the proposal to allow split seasons.

14. *Frameworks for Geese and Brant in the Conterminous United States—Outside Dates, Season Length and Bag Limits*—a. *Atlantic flyway*—(1) Dark Geese. i. The Atlantic Flyway Council recommended extending the closing framework date in the Central Zone of Massachusetts from January 20 to January 31.

ii. The Atlantic Flyway Council recommended increasing the quota for the Georgia special season from 1150 to 2280 and allowing the 8-day season to be split into 2 equal segments.

iii. The Atlantic Flyway Council and the Pennsylvania Game Commission recommended increasing the bag limit for Canada geese in several western counties from 2 to 3 birds. The Service currently proposes to decrease the bag limit from two to one Canada goose in Erie, Mercer, Crawford, and Butler Counties due to concern about the Tennessee Valley Population of Canada geese.

(2) White Geese. i. The Atlantic Flyway Council recommended extending the white goose closing framework from January 31 to February 10 and increasing the season length from 90 to 107 days.

(3) Brant. i. The Atlantic Flyway Council recommended extending the closing framework date for brant from January 20 to January 31 and increasing the bag limit from 2 to 4 brant.

b. *Mississippi Flyway*—(1) Dark Geese. i. The Lower Region Regulations Committee of the Mississippi Flyway Council recommended a 9-day special Canada goose season for Louisiana, which was also supported by the Arkansas Fish and Game Commission.

ii. The Upper and Lower Region Regulations Committee of the Mississippi recommended several liberalizations for the Mississippi Valley and Eastern Prairie Populations and several restrictions for the Tennessee Valley Population. The Service proposes additional restrictions for the Tennessee Valley Population which affect Alabama and a portion of Tennessee.

iii. The Arkansas Game and Fish Commission requested a boundary change for the special Canada goose area.

iv. An individual from California recommended increasing the quota for the Swan Lake Zone of Missouri.

(2) Light Geese. i. The Lower Region Regulation Committee of the Mississippi Flyway Council recommended extending the light goose closing framework from January 20 to February 14.

c. *Central Flyway*—(1) Dark Geese. i. The Central Flyway Council recommended extending the framework closing date to January 31 for western tier dark geese.

ii. The Central Flyway Council also recommended increasing the season length for western tier dark geese from 95 to 107 days, increasing the bag limit by one, and discontinuing the aggregate light/dark goose bag limit in three States. As an alternative, the Council recommended increasing the season length to 100 days, and increasing the bag limit by one, while retaining the aggregate light/dark goose bag limit in the three States.

(2) Light Geese. i. The Central Flyway Council recommended extending the western tier light goose closing framework from a floating date of the Sunday nearest February 15 to a fixed date of February 28.

ii. The Central Flyway Council also recommended increasing the season length for western tier light geese from 95 days to 107 days, increasing the bag limit to 5 for all areas, and discontinuing the aggregate light/dark goose bag limit in three States. As an alternative, they recommended increasing the season length to 100 days, increasing the bag limit to 5 for all areas, but retaining the aggregate light/dark goose bag limit in three States.

d. *Pacific Flyway*—(1) Dark Geese. i. The Pacific Flyway Council recommended increasing the season length for Rocky Mountain Population of Canada geese from 88 to 93 days while retaining the 93-day season for the Pacific Population of Canada geese.

ii. The Pacific Flyway Council and the California Fish and Game Department recommended modifying the boundaries of the goose closure zones in California to accommodate a limited season on western Canada geese in the southeast portion of the Sacramento Valley Area and a realignment of the boundaries in the San Joaquin Valley Area.

iii. The Pacific Flyway Council recommended a zone boundary change for the Northeast Zone of California.

15. *Tundra Swans:* An individual from Alaska and another from Ontario, Canada, supported the swan seasons, but recommended increased fees for permits and using the collected funds for increased research and habitat efforts. They further recommend that tissue samples be collected by permittees from each swan harvested for analysis of diet, disease, parasites, physical condition, and contaminants. One individual from Pennsylvania opposed swan hunting in that State.

17. *Coots:* The Pacific Flyway Council recommended that the frameworks be modified to allow hunting of coots, and moorhens and gallinules during the splits between duck seasons. Currently the coot, and moorhen and gallinule season must be concurrent with the duck season.

18. *Common Moorhens and Purple Gallinules:* The Pacific Flyway Council recommended that the frameworks be modified to allow hunting of coots, and moorhens and gallinules during the splits between duck seasons. Currently the coot, and moorhen and gallinule season must be concurrent with the duck season.

30 *Other:* Two local organizations from Massachusetts recommended initiating hunting seasons for cormorants to control depredation on fishery stocks.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

Nontoxic Shot Regulations

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations, those are developed annually. The annual regulations and options were considered in the Environmental Assessment, Waterfowl Hunting Regulations for 1990. Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

On July 12, 1990, the Division of Habitat Conservation concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. On July 23, 1990, the Office of Migratory Bird Management requested reinitiation to further consider the effects of the increasing population of Aleutian Canada geese and the variable nature of incidental take of this species. On August 2, 1990, the Division of Habitat Conservation issued another biological opinion that addressed this issue. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Division of Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634, Arlington Square, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 14, 1990 (55 FR 9618), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis. In the August 14, 1990, **Federal Register** (55 FR 33264), the Service published a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are

available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634-Arlington Square, Department of the Interior, Washington, DC 20240. These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated August 14, 1990 (55 FR 33264).

Authorship

The primary author of this proposed rule is William O. Vogel, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1990–91 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–711), and the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712).

Dated: August 10, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

Proposed Regulations Frameworks for 1990–91 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below.

General

Zoning: Seasons may be selected independently in existing zones. Zones are described for ducks and coots and for geese and brant in a later portion of this document.

Split season: Unless otherwise specified, States in all Flyways may split their season for ducks, geese, or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split the seasons into three segments. States in the Atlantic, Central, and Pacific Flyways, and identified States in the Mississippi Flyway, may split seasons into 2 segments in conjunction with zoning. Exceptions are noted in appropriate sections.

Shooting and hawking hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

Deferred season selections: States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules, and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Coots, and Mergansers

Hunting season: Not more than 30 days.

Outside dates: Between October 6, 1990, and January 6, 1991.

Duck limits: The daily bag limit is 3 and may include no more than 1 hen mallard, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Canvasbacks: The season on canvasbacks is closed.

Harlequin ducks: The season on harlequin ducks is closed.

Sea ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck season daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck bag and possession limits may be in addition to the regular duck bag and possession limits.

Merganser limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is twice the daily bag limit.

Coot limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Canada Geese

Season lengths, outside dates, and limits: Seasons in States, and independently in described goose management units within States, may be as follows: (unless otherwise specified, possession limits are twice the daily bag limit).

Connecticut: North Zone—90 days between October 1 and January 31 with a bag limit of 3.

South Zone—a 90-day experimental season between October 1 and February 5 with a bag limit of 3 through January 14 and 5 thereafter.

Delaware: 60 days between October 31 and January 20 with a bag limit of 2.

Florida: Closed season.

Georgia: In specific areas, an 8-day experimental season may be split into 2 segments of 4 days each between November 15 and February 5 with a limit of one Canada goose per season.

Maine: 70 days between October 1 and January 20 with a bag limit of 3.

Maryland: 60 days between October 31 and January 20 with a bag limit of 2.

Massachusetts: 70 days between October 1 and January 20 in the Berkshire and Coastal Zones, and between October 1 and January 31 in the Central Zone, with a bag limit of 3. In addition, a special 16-day season for resident Canada geese may be held in the Coastal Zone during January 21 to February 5 with a daily bag limit of 5.

New Hampshire: 70 days between October 1 and January 20 with a bag limit of 3.

New Jersey: 90 days between October 1 and January 31 with a bag limit of 1 through October 15 and 3 thereafter.

New York: 90 days between October 1 and January 31 with a bag limit of 1 through October 15 and 3 thereafter.

North Carolina: East of I–95—11 days between January 20 and January 31 with a bag limit of 1.

West of I–95—Closed.

Pennsylvania: Southeast Zone—90 days between October 1 and January 31 with a bag limit of 1 through October 15 and 3 thereafter.

Remainder of State—70 days between October 1 and January 20 with a bag limit of 3, except in Erie, Mercer, Butler, and Crawford Counties in which the bag limit is 1.

Rhode Island: 90 days between October 1 and January 31 with a bag limit of 3.

South Carolina: 11 days between January 20 and January 31 with a bag limit of 1.

Vermont: 70 days between October 1 and January 20 with a bag limit of 3.

Virginia: Back Bay—11 days between January 20 and January 31 with a bag limit of 1.

Remainder—60 days between October 31 and January 20 with a bag limit of 2.

West Virginia: 70 days between October 1 and January 20 with a bag limit of 3.

White Geese

Definition: For purpose of hunting regulations listed below, the collective term "white" geese includes lesser snow (include blue) geese, greater snow geese, and Ross' geese.

Season lengths, outside dates, and limits: States may select a 107-day season between October 1, 1990, and February 10, 1991, with daily bag and possession limits of 5 and 10, respectively.

Atlantic Brant

Season lengths, outside dates, and limits: States may select a 50-day season between October 1, 1990, and January 20, 1991, with daily bag and possession limits of 2 and 4, respectively.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Coots, and Mergansers

Hunting seasons: Not more than 30 days.

Outside dates: Between October 6, 1990, and January 6, 1991.

Duck limits: The daily bag limit is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead. The possession limit is twice the daily bag limit.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, black duck, redhead, hooded merganser
50 points—male mallard, wood duck
35 points—all other ducks and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Canvasbacks: The season on canvasbacks is closed.

Merganser limits: Under the conventional bag limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser. The possession limit is twice the daily bag limit.

Coot limits: The daily bag and possession limits are 15 and 30, respectively.

Zoning: Alabama, Illinois, Indiana, Iowa, Louisiana, Michigan, Missouri, Ohio, Tennessee, and *Wisconsin* may select hunting seasons for ducks, coots and mergansers by zones. The season may be split into 2 segments in each zone in *Indiana, Iowa, Louisiana, Michigan, Missouri, Ohio,* and *Tennessee* and in the south zones of *Alabama* and *Wisconsin.*

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania.

Lower St. Francis River Area, Missouri: The waterfowl seasons, limits, and shooting hours shall be the same as those selected by Arkansas.

Geese

Definition: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese—Canada geese, white-fronted geese, and brant.
Light geese—lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Season lengths, outside dates, and limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (September 29, 1990), and the Sunday nearest January 20 (January 20, 1991), except in Kentucky, Arkansas, Tennessee, Mississippi, and Alabama where the closing date is January 31, and 80 days for light geese between the Saturday nearest October 1 (September 29, 1990), and February 14, 1991. The daily bag limit is 7 geese, to include no more than 3 Canada and 2 white-fronted geese. The possession limit is twice the daily bag limit. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: Seasons for geese may be selected by zones established for duck hunting seasons. The season for Canada geese may extend for 50 days. Canada goose limits are 2 daily and 4 in possession.

Arkansas: The season for Canada geese may extend for 23 days. Limits are 1 Canada goose daily and 2 in possession.

Illinois: The total harvest of Canada geese in the State will be limited to 142,200 birds. In the:

(a) *Southern Illinois Quota Zone*—The season for Canada geese may continue to January 24 and will close after 70 days or when 71,100 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 10 in possession. If any of the following conditions exist after December 20, 1990, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover. 3 inches or more in depth.

2. 10 consecutive days of daily high temperatures less than 20 degree F.

3. Average body weights of adult female geese less than *3,200* grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 500 birds per day for 10 consecutive days, or a total mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) *Rend Lake Quota Zone*—The season for Canada geese will close after 70 days or when 21,300 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 10 in possession.

(c) *Tri-County Zone*—The season for Canada geese may not exceed 50 days. Limits are 2 Canada geese daily and 10 in possession.

(d) *Remainder of State*—Seasons for Canada geese up to 70 days may be selected by zones established for duck hunting seasons. Limits are 3 Canada geese daily and 10 in possession.

Indiana: The total harvest of Canada geese in the State will be limited to 54,550 birds. In:

(a) *Posey County*—The season for Canada geese will close after 70 days or when 15,900 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 6 in possession. The season for all geese may extend to January 31, 1991.

(b) *Remainder of the State*—The season for Canada geese may extend for 70 days. Limits are 2 Canada geese daily and 4 in possession.

Iowa: The season may extend for 70 days. Limits are 2 Canada geese daily and 4 in possession. The season for geese in the Southwest Goose Zone may be held at a different time than the season in the remainder of the State.

Kentucky: In the:

(a) *Western Zone*—The season for Canada geese may extend for 70 days, and the harvest will be limited to 43,200 birds. Of the 43,200-bird quota, 28,000 birds will be allocated to the Ballard Reporting Area and 8,200 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to

completion of the 70-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 70 days. The season in Fulton County may extend to February 15, 1991. Limits are 3 Canada geese daily and 6 in possession.

(b) *Remainder of the State*—The season may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession.

Louisiana: Louisiana may hold 80-day seasons on light geese and 70-day seasons on white-fronted geese and brant between the Saturday nearest October 1 (September 29, 1990), and February 14, 1991, by zones established for duck hunting seasons. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese, except as noted below. In the Southwest Zone, an experimental 9-day season for Canada geese may be held during January 23–31, 1991. During the experimental season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. In all seasons, the possession limit is twice the daily bag limit. Hunters participating in the experimental Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 140,000 birds. In the:

(A) *North Zone:* (1) *West of Forest Highway 13*—The framework opening date for all geese is September 22 and the season for Canada geese may extend for 70 days, except in the Superior Counties Goose Management Unit (GMU), where the season will close after 70 days or when 25,000 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 6 in possession.

(2) *Remainder of North Zone*—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession.

(b) *Middle Zone*—The season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession.

(c) *South Zone:* (1) *Allegan County GMU*—The season for Canada geese will close after 55 days or when 5,500 birds have been harvested, whichever occurs first. Limits are 1 Canada goose daily and 2 in possession.

(2) *Muskegon Wastewater GMU*—The season for Canada geese will close after 50 days or when 700 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 4 in possession.

(3) *Saginaw County GMU*—The season for Canada geese will close after 50 days or when 4,500 birds have been harvested, whichever occurs first. Limits are 1 Canada goose daily and 2 in possession.

(4) *Fish Point GMU*—The season for Canada geese will close after 50 days or when 2,500 birds have been harvested, whichever occurs first. Limits are 1 Canada goose daily and 2 in possession.

(5) *Remainder of South Zone:* (i) *West of U.S. Highway 27/127*—The season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession.

(ii) *East of U.S. Highway 27/127*—The season for Canada geese may extend for 40 days. Limits are 1 Canada goose daily and 2 in possession.

(d) *Southern Michigan GMU*—A late Canada goose season of up to 30 days may be held between January 5 and February 3, 1991. Limits are 2 Canada geese daily and 4 in possession.

Minnesota: In the:

(a) *West Central Goose Zone*—The season for Canada geese may extend for 40 days. In the Lac Qui Parle Goose Zone the season will close after 40 days or when a harvest of 6,000 birds has been achieved, whichever occurs first. Throughout the West-Central Zone, limits are 1 Canada goose daily and 2 in possession.

(b) *Southeast Goose Zone*—The season for Canada geese may extend for 70 consecutive days. Limits are 2 Canada geese daily and 4 in possession. In selected areas of the Metro Goose Management Block and in Olmsted County, experimental 10-day late seasons may be held during December to harvest Giant Canada geese. During these seasons, limits are 2 Canada geese daily and 4 in possession.

(c) *Remainder of the State*—The season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession.

Mississippi: The season for Canada geese may extend for 70 days. Limits are 3 Canada geese daily and 6 in possession.

Missouri: In the:

(a) *Swan Lake Zone*—The season for Canada geese closes after 50 days or when 10,000 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 4 in possession.

(b) *Southeast Zone*—A 50-day season on Canada geese may be selected, with limits of 2 Canada geese daily and 4 in possession.

(c) *Remainder of the State*—The season for Canada geese may extend for 50 days in the respective goose hunting zones. Limits are 2 Canada geese daily and 4 in possession.

Ohio: The season may extend for 70 days with limits of 2 Canada geese daily and 4 in possession, except in the counties of Ashtabula, Trumbull, Ottawa, and that portion of Lucas County east of the Maumee River, where the limits will be 1 Canada goose daily and 2 in possession.

Tennessee: In the:

(a) *Northwest Tennessee Zone*—The season for Canada geese may extend for 70 days, and the harvest will be limited to 16,500 birds. Of the 16,500 bird quota, 11,500 birds will be allocated to the Reelfoot Quota Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 70-day season, the season in the quota zone will be closed. If this occurs, the season in the remainder of the Northwest Tennessee Zone may continue for an additional 7 days, not to exceed to total of 70 days. The season may extend to February 15, 1991. Limits are 3 Canada geese daily and 6 in possession.

(b) *Southwest Tennessee Zone*—The season for Canada geese may extend for 30 days, and the harvest will be limited to 1,500 birds. Limits are 2 Canada geese daily and 4 in possession.

(c) *Kentucky Lake Zone*—The season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession.

(d) *Remainder of the State*—The season for Canada geese may extend for 70 days. Limits are 2 Canada geese daily and 4 in possession.

Wisconsin: The framework opening date for all geese is September 22. The total harvest of Canada geese in the State will be limited to 200,000 birds. In the:

(a) *Horicon Zone*—The harvest of Canada geese is limited to 144,800 birds. The season may not exceed 77 days. All Canada geese harvested must be tagged and the total number of tags issued will be limited so that the quota of 144,800 birds is not exceeded. Limits are 2 Canada geese daily and 10 in possession.

(b) *Theresa Zone*—The harvest of Canada geese is limited to 6,000 birds. The season may not exceed 70 days. Limits are 1 Canada goose per permittee per 5-day period and 6 for the entire season.

(c) *Pine Island Zone*—The harvest of Canada geese is limited to 1,000 birds. The season may not exceed 70 days. All

Canada geese harvested must be tagged. Limits are 2 Canada geese daily and 5 for the entire season.

(d) *Collins Zone*—The harvest of Canada geese is limited to 3,700 birds. The season may not exceed 70 days. All Canada geese harvested must be tagged. Limits are 2 Canada geese daily and 5 for the entire season.

(e) *Exterior Zone*—The harvest of Canada geese is limited to 40,000 birds. The season may not exceed 70 days, except as noted below. Limits are 1 Canada goose daily and 2 in possession through October 5, and 2 daily and 4 in possession thereafter, except as noted below. In the Mississippi River Subzone, the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through October 5, and 2 daily and 4 in possession thereafter. In the Brown County Subzone, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limits during this special season are 3 and 6 birds, respectively. In the Rock Prairie Subzone, a special late season to harvest giant Canada geese may be held between November 5 and December 9. During this late season, limits are 1 Canada goose daily and 2 in possession. The progress of the harvest in the Exterior Zone must be monitored, and the zone's season closed, if necessary, to insure that the harvest does not exceed the limit stated above.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,800 Canada geese in the Horicon Zone and 500 in the Theresa Zone may be taken under special agricultural permits.

Illinois, Indiana, Kentucky, Missouri, and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Swan Lake Zone in Missouri, and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Shipping restrictions: In Illinois and Missouri, and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks (Including Mergansers) and Coots

Hunting seasons: Seasons in the High Plains Mallard Management Unit, roughly defined as that portion of the Cental Flyway which lies west of the 100th meridian, may include no more than 51 days, provided that the last 12 days may start no earlier than the Saturday or Monday closest to December 10 (December 8, 1990). Seasons in the Low Plains Unit may include no more than 39 days.

Outside dates: October 6, 1990, through January 6, 1991.

Duck limits: The daily bag limit is 3, including no more than 2 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks. The possession limit is twice the daily bag limit.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, redhead, hooded merganser, mottled duck.

50 points—male mallard, wood duck.

35 points—All other ducks and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point value of all other birds already taken during that day, reaches or exceeds 10 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Canvasbacks: The season on canvasbacks is closed.

Merganser limits: Under the conventional bag limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser. The possession limit is twice the daily bag.

Coot limits: The daily bag and possession limits are 15 and 30, respectively.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" includes all others.

Season lengths, outside dates, and limits: The Saturday nearest October 1 (September 29, 1990), through January 20, 1991, for dark geese and the Saturday nearest October 1 (September 29, 1990), through the Sunday nearest February 15 (February 17, 1991), except in New Mexico where the closing date is February 28 for light geese. Seasons in States, and independently in described goose management units within States, may be as follows (unless otherwise specified, possession limits are twice the daily bag limit):

Colorado: No more than 100 days with a daily bag limit of 5 geese that may include no more than 8 dark geese.

Kansas: For dark geese, no more than 72 days with daily bag limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 25 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1, no more than 100 days with a daily bag limit of 5 or no more than 86 days with a daily bag of 7.

For Light Goose Unit 2, no more than 100 days with a daily bag limit of 5 or no more than 86 days with a daily bag of 7.

Montana: No more than 100 days with daily bag limits of 2 dark geese and 5 light geese in Sheridan County and 4 dark geese and 5 light geese in the remainder of the Central Flyway portion of the State.

Nebraska: For dark geese in the North Unit, no more than 79 days with daily bag limits of 1 Canada goose and 1 white-fronted goose through the Saturday nearest November 15 (November 17, 1990), and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the East Unit, no more than 72 days with daily bag limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 18 and no more than 1

Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the West Unit, no more than 72 days with daily bag limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 18 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 100 days with a daily bag limit of 5 or no more than 86 days with a daily bag of 7.

New Mexico: For dark geese, no more than 100 days with a daily bag limit of 3.

For light geese in the Rio Grande Valley Unit, no more than 107 days with a daily bag limit of 5 and a possession limit of 10.

For light geese in the remainder of the Central Flyway portion of New Mexico, no more than 100 days with a daily bag limit of 5.

North Dakota: For dark geese, no more than 72 days with daily bag limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese until the Saturday nearest October 30 (October 27, 1990), and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 100 days with a daily bag limit of 5 or no more than 86 days with a daily bag of 7.

Oklahoma: For dark geese, no more than 72 days with a daily bag limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 100 days with a daily bag limit of 5 or no more than 86 days with a daily bag of 7.

South Dakota: For dark geese in the Missouri River Unit, no more than 79 days with daily bag limits of 1 Canada goose and 1 white-fronted goose through the Saturday nearest November 15 (November 17, 1990), and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily bag limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 100 days with a daily bag limit of 5 or no more than 86 days with a daily bag of 7.

Texas: West of U.S. 81, no more than 100 days with a daily bag limit of 5 geese which may include no more than 3 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily bag limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 100 days with a daily bag limit of 5 or no more than 86 days with a daily bag of 7.

Wyoming No more than 100 days with a daily bag limit of 5.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Coots, and Common Moorhens

Hunting seasons: Concurrent 59-day seasons on ducks (including mergansers), coots, and common moorhens may be selected except as subsequently noted. In the Columbia Basin Mallard Management Unit the seasons may be an additional 7 days. In those States or zones that split their season on ducks, the season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Outside dates: Between October 6, 1990, and January 6, 1991.

Duck and merganser limits: The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, 1 pintail, and either 2 canvasbacks, 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

Coot and common moorhen limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Colorado River Zone, California: Duck, coot, and common moorhen season daes shall coincide with season dates selected by Arizona.

Geese (Including Brant)

Season lengths, outside dates, and limits: Except as subsequently noted, 93-day seasons may be selected, with outside dates between the Saturday closest to October 1 (September 29, 1990), and Sunday closest to January 20 (January 20, 1991), and the basic daily bag and possession limits are 6 geese, provided that the daily bag limit includes no more than 3 white geese (including snow, blue, and Ross') and 3 dark geese (all other species of geese including brant). In only California, Oregon, and Washington; limits for brant are 2 per day and 4 in possession and additional to dark goose limits; and the open season on brant in those States may differ from that for other geese.

Aleutian Canada goose closure: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Cackling Canada goose closure: There will be no open season on cackling Canada geese in California, Oregon, and Washington.

Arizona: The daily bag and possession limits for dark geese may not include more than 2 Canada geese.

California: Northeastern Zone—White-fronted geese may be taken only during the first 23 days of such season. Limits may not include more than 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily bag limits and not more than 2 white-fronted geese and 4 Canada geese shall be in possession.

Colorado River Zone—The season must be the same as that selected by Arizona. The daily bag and possession limits for dark geese may not include more than 2 Canada geese.

Southern Zone—The daily bag and possession limits for dark geese may not include more than 2 Canada geese, except in that portion of California Department of Fish and Game District 22 within the southern zone (i.e., Imperial Valley) where daily bag and possession limits for Canada geese are 1 and 2, respectively.

Balance-of-the-State Zone—A 79-day season may be selected, except that white-fronted geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese.

Three areas in the Balance-of-the-State Zone, described as follows, are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before November 30, 1990, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese. In the Western Canada Goose Hunt Area, the take of Canada geese other than Cackling and Aleutian Canada geese is allowed.

(3) In the *San Joaquin Valley Area,* the hunting season for Canada geese will close no later than November 23, 1990.

Brant Season: A statewide, 30-consecutive-day season on brant may be selected. *Colorado:* The season must end on or before the second Sunday in January (January 13, 1991). The daily bag and possession limits for dark geese

may not include more than 2 and 4 Canada geese, respectively.

Idaho: 10 Northern Counties Area—Daily bag and possession limits may not include more than 3 and 6 geese, respectively.

Southwestern Area—The season must end on or before the first Sunday in January (January 6, 1991) with bag and possession limits of 3 and 6 geese, respectively, and may not include more than 2 and 4 Canada geese, respectively.

Southeastern Area, including the Ft. Hall-American Falls Zone—The season must end on or before the second Sunday in January (January 13, 1991) and bag and possession limits oif 3 and 6 geese, respectively, to include no more than 2 and 4 Canada geese, respectively.

Montana: East of Divide Zone—The season must end on or before the second Sunday in January (January 13, 1991).

West of Divide Zone—The season must end on or before the first Sunday in January (January 6, 1991). Daily bag and possession limits on dark geese may may not include more than 2 and 4 Canada geese, respectively.

Nevada: Clark County Zone—Daily bag and possession limits of dark geese may not include more than 2 Canada geese.

Elko County, and that portion of Ruby Lake National Wildlife Refuge in White Pine County Zone and in the *Remainder-of-the-State Zone*—Daily bag and possession limits of dark geese may not include more than 2 and 4 Canada geese, respectively.

New Mexico: The daily bag and possession limits for dark geese may not include more than 2 Canada geese.

Oregon: Eastern Zone—In the Columbia Basin Goose Area, the season may be an additional 7 days.

Western Zone—In the Special Canada Goose Management Area except for designated areas, there shall be no open season on Canada geese. In those designated areas, seasons must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so.

Baker and Malheur Counties Zone—The season must end on or before the first Sunday in January (January 6, 1991). Bag and possession limits of dark geese may not include more than 2 and 4 Canada geese, respectively.

Lake and Klamath Counties Zone—White-fronted geese may not be taken before November 1 during the regular goose season.

Brant Season—A 16-consecutive-day season on brant may be selected.

Utah: Washington County Zone—The season must end on or before the Sunday closest to January 20 (January 20, 1991). The daily bag and possession limits for dark geese may not include more than 2 Canada geese.

Remainder-of-the-State Zone—The season must end on or before the second Sunday in January (Janunry 13, 1991). The daily bag and possession limits for dark geese may not include more than 2 and 4 Canada geese, respectively. In Cache County, the combined special September Canada goose season and the regular goose season shall not exceed 93 days.

Washington: Daily bag and possession limits are 3 and 6 geese.

Eastern Zone—In the Columbia Basin Goose Area, the season may be an additional 7 days.

Western Zone—In the Lower Columbia River Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so.

Brant Season—A 16-consecutive-day season on brant may be selected.

Wyoming: In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 93 days. The season must end on or before the second Sunday in January (January 13, 1991).

Tundra Swans

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia; an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, must occur during the white goose season, but may not extend beyond January 31.

—The States must obtain harvest and hunter participation data.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—In the Central Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.

—In North Dakota, no more than 1,000 permits may be issued. The season must run concurrently with the season for taking light geese.

—In South Dakota, no more than 500 permits may be issued. The season must run concurrently with the season for taking light geese.

In the Pacific Flyway:

—A 93-day season may be selected between the Saturday closest to October 1 (September 30, 1990), and the Sunday closest to January 20 (January 21, 1991). Seasons may be split into 2 segments.

—The States must obtain harvest and hunter participation data.

—In Utah, no more than 2,500 permits may be issued.

—In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, or Pershing Counties.

—In the Pacific Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, or Toole Counties.

Special Falconry Frameworks

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended seasons: For all hunting methods combined, the combined length for the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework dates: Seasons must fall between September 1, 1990 and March 10, 1991.

Daily bag and possession limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during exended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended season.

Regular seasons: General hunting regulations, including seasons and hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular season

bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Note: Total season length for all hunting methods combined shall not exceed 107 days for any species or group of species in one geographical area. The extension of this framework to include the period September 1, 1990–March 10, 1991, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative, and may be evaluated in cooperation with States offering such extensions after a period of several years.

Area, Unit and Zone Descriptions

Ducks

Atlantic Flyway

Connecticut—North Zone: That portion of the State north of I–95.

South Zone: That portion of the State south of I–95.

Maine—North Zone: Game Management Zones 1 through 5.

South Zone: Game Management Zones 6 through 8.

Massachusetts—Berkshire Zone: That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I–93, south on I–93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I–195, west to the Rhode Island line. Except the waters, and the lands 150 yards along the high-water mark, of the Assonet River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire—Coastal Zone: That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone: That portion of New Hampshire north and west of the above boundary.

New Jersey—Coastal Zone: That portion of the State seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone: That portion of New Jersey not within the North Zone or the Coastal Zone.

New York—Lake Champlain Zone: Includes the U.S. portion of Lake Champlain and that area east and north of a continuous line extending along Route 9B from the New York-Canadian boundary to Route 9, then south along Route 9 to Route 22 south of Keesville; then south along Route 22 to the west shore of South Bay, then along and around the shoreline of South Bay to Route 22 on the east shore of South Bay; then southeast along Route 22 to Route 4, then northeast along Route 4 to the New York-Vermont boundary.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of Interstate Route 95, and their tidal waters.

Western Zone: That area west of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate Route 81, and then south along Interstate Route 81 to the New York-Pennsylvania boundary.

Northeastern Zone: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate Route 81, then south along Interstate Route 81 to Route 49, then east along route 49 to Route 365, then east along Route 365 to Route 28, then east along Route 28 to Route 29, then east along Route 29 to Interstate Route 87, then north along Interstate Route 87 to Route 9 (at Exit 20), then north along Route 9 to Route 149, then east along Route 149 to Route 4, then north along Route 4 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

Southeastern Zone: That area east of Interstate Route 81, that is south of a continuous line extending from Interstate Route 81 east along Route 49 to Route 365, then east along Route 365 to Route 28, then east along Route 28 to Route 29, then east along Route 29 to Interstate Highway 87, then north along Interstate Highway 87 to Route 9 (at Exit 20), then north along Route 9 to Route 149, then east along Route 149 to Route 4, then north along Route 4 to the New York/Vermont boundary, and northwest of Interstate Route 95 in Westchester County.

Pennsylvania—Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone: That portion of the State north of I–80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I–80, then west on I–80 to its junction with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone: That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I–80, and on the west by the Ohio line.

South Zone: The remaining portion of Pennsylvania.

Vermont—Lake Champlain Zone: Includes the United States portion of Lake Champlain and that portion of Vermont lying north and west of the line extending from the New York border at U.S. Highway 4; along U.S. Highway 4 to Vermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

Interior Vermont Zone: The remaining portion of Vermont.

West Virginia—Zone 1 (Remainder of the State): That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State Route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I–65 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19.

The western boundary follows: Route 19 north to the intersection of I–79, and follows I–79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

Mississippi Flyway

Alabama—South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois—North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State between the North and South Zone boundaries.

South Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, then east along I–70 to the Indiana border.

Indiana—North Zone: That portion of the State north of a line extending east from the Illinois border along State Route 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa—North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Louisiana—West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Michigan—North Zone: The Upper Peninsula.

South Zone: That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the outh of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to Michigan Highway 20, east on Michigan 20 to U.S. Highway 10B.R. in the city of Midland, east on U.S. 10B.R. to U.S. 10, east on U.S. 10 and Michigan 25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, pasing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn Power Plant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron.

Middle Zone: The remainder of Michigan.

Missouri—North Zone: That portion of the State north of a line extending east from the Kansas border along U.S. Highway 54 to U.S. 65, south along U.S. 65 to State Highway 32, east along State 32 to State 72, east along State 72 to State 21, south along State 21 to U.S. 60, east along U.S. 60 to State 51, south along State 51 to State 53, south along State 53 to U.S. 62, east along U.S. 62 to Interstate Highway 55, north along I–55 to State 34, then east along State 34 to the Illinois border.

South Zone: The remainder of Missouri.

Lower St. Francis River Area: That part of the St. Francis River south of U.S. Highway 62 that is the boundary between Arkansas and Missouri, and all sloughs and chutes (but not tributaries) connected to it.

Ohio—North Zone: The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State 204, and on the east by State 13.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Tennessee—Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin—Northern Zone: That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State 35 to State 25, north along State 25 to U.S. Highway 10, east along U.S. 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan.

Southern Zone: The remainder of Wisconsin.

Central Flyway

Kansas—High Plains: That area west of US–283.

Low Plains: That area east of US–283.

Montana (Central Flyway Portion)—*Experimental Zone 1:* The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2: The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska—High Plains: West of Highways US–183 and US–20 from the northern State line to Ainsworth, N–7 and N–91 to Dunning, N–2 to Merna, N–92 to Arnold, N–40 and N–47 through Gothenburg to N–23, N–23 to Elwood, and US–283 to the southern State line.

Low Plains: East of the High Plains boundary.

Zone 1: Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2: The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N–67; north through Nemaha to U.S. 73–75; north to U.S. 34; west to N–63; north and west to U.S. 77; north to N–92; west to U.S. 81; south to N–66; west to N–14; south to I–80; west to U.S. 34; west to N–10; south to the State Line; west to U.S. 283; north to N–23; west to N–47; north to U.S. 30; east to N–14; north to N–52; northwesterly to N–91; west to U.S. 281;

north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N–70 from Wheeler County to N–14; south to N–39; southeast to N–22; east to U.S. 81; southeast to U.S. 30; east to U.S. 75; north to N–51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3: The area, excluding Zone 1, north of Zone 2.

Zone 4: The area south of Zone 2.

New Mexico (Central Flyway Portion)—Experimental Zone 1: The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Experimental Zone 2: The remainder of the Central Flyway portion of New Mexico.

North Dakota—High Plains: That portion of North Dakota west of the following line: beginning at the South Dakota border, then north on U.S. 83 and I–94 to ND 41, then north to ND 53, then west to U.S. 83, then north to ND 23, then west to ND 8, then north to U.S. 2, then west to U.S. 85, then north to the Candian border.

Low Plains: The remainder of North Dakota.

Oklahoma—High Plains: Beaver, Cimarron, and Texas Counties.

Low Plains:

Zone 1: That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I–40, I–40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I–35, I–35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas State line.

Zone 2: The remainder of the Low Plains portion of Oklahoma.

South Dakota—High Plains: West of highways and political boundaries starting at the State line north of Herreid: US–83 and US–14 to Blunt, Blunt-Canning Road to SD–34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I–90, and US–183 to the southern State line.

Low Plains:

South Zone: Bon Homme, Yankton and Clay Counties south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6189 and FAS 6516 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Union County south and west of S.D. Highway 50 and Interstate Highway 29.

North Zone: The remainder of the Low Plains portion of South Dakota.

Texas—High Plains: West of highways US–183 from the northern State line to Vernon, US–283 to Albany, T–6 and T–351 to Abilene, US–277 to Del Rio International Toll Bridge access road.

Low Plains: The remainder of Texas.

Pacific Flyway

California—Northeastern Zone: In that portion of the State lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with old Highway 99 at the town of Grenada; south along old Highway 99 to its junction with Interstate 5 just north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to the junction with Highway 49; east and north on Highway 49 to the junction of Highway 70; east on Highway 70 to Highway 395; south and east of Highway 395 to the point of intersection with the California-Nevada State line.

Colorado River Zone: In those portions of San Bernardino, Riverside, and Imperial counties lying east of the following lines: Beginning at the intersection of Highway 95 with the California-Nevada State line; south along Highway 45 to Vidal Junction; south through the town of Rice to the San Bernardino-Riverside county line on a road known as "Aqueduct Road" in San Bernardino County; south from the San Bernardino-Riverside county line on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on Interstate 10 to its intersection with the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on Blythe-Brawley paved road to its intersection with the Ogilby and Tumco Mine Road; south on this road to Highway 80; east seven miles on Highway 80 to its intersection with the Andrade-Algodones Road; south on this paved road to the intersection of the Mexican boundary line at Algodones, Mexico.

Southern Zone: In that portion of southern California (but excluding the Colorado River Zone) lying south and east of a line beginning at the mouth of the Santa Maria River at the Pacific Ocean; east along the Santa Maria River to where it crosses Highway 166 near the City of Santa Maria; east on Highway 166 to the junction of Highway 99; south on Highway 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to where it intersects Highway 178 at Walker Pass; east on Highway 178 to the junction of Highway 395 at the town of Inyokern; south on Highway 395 to the junction of Highway 58; east on Highway 58 to the junction of Interstate 15; east on Interstate 15 to the junction with Highway 127; north on Highway 127 to the point of intersection with the California-Nevada State line.

District 22 Defined: All of Imperial County, and those portions of Riverside and San Bernardino counties lying south and east of the following line: Starting at the intersection of Highway 86 and the north boundary of Imperial County, north along Highway 86 to Highway 111; north along Highway 111 to its junction with Interstate 10 in the town of Indio, east on Interstate 10 to its junction with the Cottonwood Springs road in Sec. 9, T6S, R11E; north along that road and the Mecca Dale Road to Amboy; east along Highway 66 to its intersection with Highway 95; north along Highway 95 to the California-Nevada boundary.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Idaho—Zone 1 (Ft. Hall-American Falls Zone): Includes all lands and waters within the Fort Hall Indian Reservation and Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Includes the remainder of Idaho.

Nevada—Clark County Zone: All of Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon—Columbia Basin Mallard Management Unit: Morrow and Umatilla Counties.

Washington—East (Columbia Basin Mallard Management Unit): Includes all areas lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

West: Includes all area lying to the west of Eastern Washington.

Geese

Atlantic Flyway

Connecticut: Same zones as for ducks.

Georgia: *Special Area for Canada Geese:* See State Regulations.

Massachsuetts: Same zones as for ducks.

New Hampshire: Same zones as for ducks.

New Jersey: Same zones as for ducks.

New York: Same zones as for ducks, but in addition:

Early-Season Goose Area: All or portions of St. Lawrence County; see State Hunting Regulations for area descriptions.

North Carolina—Canada Geese. East of I–95 Zone: That portion North Carolina east of I–95.

West of I–95 Zone: That portion of North Carolina west of I–95.

Pennsylvania: Same zones as for ducks but in addition:

Southeast Zone: That portion of the State lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I–80 to the New Jersey line and that portion of the Susquehannah River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river.

Virginia—Back Bay Area: Defined for Canada geese as those portions of the cities of Virginia Beach and Chesapeake lying east of U.S. Highway 17 and Intestate 64.

Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia: Same zones as for ducks.

Mississippi Flyway

Illinois: Same zones as for ducks but in addition:

North and Central Zones:

Tri-County Zone: The following counties or portions of counties; Fulton (Buckheart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, and Putnam Townships, and that portion of Banner Township bounded on the north by Illinois Highway 9 and on the east by U.S. Highway 24), and Knox Counties.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Early Canada Goose Seasons:

Northeastern Illinois Canada Goose Zone: Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry and Will Counties.

Iowa—Southwest Zone: That portion of the State lying south and west of a line extending north from the Missouri border along U.S. Highway 71 to Interstate Highway 80, west on I–80 to U.S. 59, north on U.S. 59 to State Highway 37, then northwest on State 37 to State 175, then west on State 175 to the Nebraska border.

Kentucky—Western Zone: That area west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to U.S. 41, then north along U.S. 41 to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Those portions of Henderson and Union Counties within the Western Zone.

Louisiana—Southwest Zone: That portion of the State bounded by a line extending east from the Texas border along Louisiana Highway 12 and U.S. Highway 190 to U.S. 167, south along U.S. 167 to Louisiana 82, then west along Louisiana 82 to the Texas border.

Michigan— Same zones as for ducks but in addition:

North Zone:

Superior Counties Goose Management Unit (GMU): The counties of Ontonagon, Houghton, Baraga, and Marquette.

South Zone:

Fish Point GMU: Those portions of Tuscola and Huron counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bayport Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay county line and a line extending directly north off the end of the Tuscola-Bay county line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of U.S. Highway 131 and 102nd Avenue in Ostego township, Allegan County, and extending westerly along 102nd Avenue, 101st Street, and again on 102nd Avenue to 42nd Street in Cheshire township, Allegan County, southerly along 42nd Street to 10th Avenue in the Village of Bloomingdale, Van Buren County, westerly along 10th Avenue to 46th Street, northerly along 46th Street to Phoenix Road, westerly along Phoenix Road, northerly along 150th Street and west again along Phoenix Road to 57th Street in Columbia township, Van Buren County, southerly along 57th Street to Phoenix Road, westerly on Phoenix Road to U.S. 31 at South Haven, northerly along U.S. 31 to Interstate Highway 196, northeasterly along I–196 to Adams Street in Holland township, Ottawa County, easterly along Adams Street and 100th Street to U.S. 131 in Byron township, Kent County, then southerly along U.S. 131 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Fergus, Bueche, and west Verne Roads on the south; and Michigan 13 on the east.

Muskegon County Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Intertate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Early Canada Goose Seasons:

Upper Peninsula—That area east of a line beginning at the Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. 2 to Interstate Highway 75, north along I–75 to Michigan Highway 28, west along Michigan 28 to Michigan 221, north along Michigan 221 to Brimley, then north to the Ontario border.

Lower Peninsula—All areas except the Shiawassee River, Allegan, Lapeer

and Muskegon State Game Areas (SGA), the Shiawassee National Wildlife Refuge, that portion of the Maple River SGA east of State Road, that portion of the Pointe Mouillee SGA south of the Huron River, Muskegon County Wastewater Areas, and the Fish Point and Nayaquing Point Wildlife Areas.

Minnesota—West Central Goose Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County Road 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac Qui Parle Goose Zone—That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County Road 65 to County Road 34 in Chippewa County, south along County Road 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Southeast Goose Zone: The Counties of Anoka, Carver, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Mower, Olmsted, Ramsey, Rice, Scott, Steele, Wabasha, Washington, and Winona.

Early Canada Goose Seasons:

Fergus Falls/Alexandria Canada Goose Zone: That are encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108, to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Southwest Border Canada Goose Zone: All of Martin County and that portion of Jackson County south and east of U.S. Highway 60.

Early and Late Canada Goose Seasons:

Twin Cities Metropolitan Goose Zone—All or portions of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties.

Missouri—North Goose Zone: That portion of the State north and west of a line extending south from Crystal City along U.S. Highway 67 to U.S. 60, west along U.S. 60 to Missouri Highway 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to the Kansas border.

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Southeast Goose Zone: That area lying east of U.S. Highway 67 and south of Crystal City.

Lower St. Francis River Area: That part of the St. Francis River south of U.S. Highway 62 that is the boundary between Arkansas and Missouri, and all sloughs and chutes (but not tributaries) connected to it.

South Goose Zone: The remainder of Missouri.

Ohio—Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Tennessee—South Tennessee Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Tennessee Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky Lake Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Tennessee Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin: See State Regulations.

Early Canada Goose Seasons:

Early Goose Hunt Subzone: That area bounded by a line beginning at Lake Michigan in Port Washington and extending west along Highway 33 to Highway 175, south along Highway 175 to Highway 83, south along Highway 83 to Highway 36, southwest along Highway 36 to Highway 120, south along Highway 120 to Highway 12, then southeast along Highway 12 to the Illinois State line.

Central Flyway

Colorado (Central Flyway Portion)—North Central Unit: Bounded by the Continental Divide, the northern State line, and highways US-85 to I-76, I-76 to I-25, I-25 to I-70, and I-70 to the Continental Divide.

South Park Unit: Chaffee, Fremont, Lake, Park, and Teller Counties.

San Luis Valley Unit: Alamosa, Conejos, Costilla, and Rio Grande Counties and the portion of Saguache County east of the Continental Divide.

North Park Unit: Jackson County.

Arkansas Valley Unit: Baca, Bent, Crowley, Kiowa, Otero and Prowers Counties.

Remainder: Remainder of the Central Flyway portion of Colorado.

Kansas—White Geese. Unit 1: That area east of US-75 and north of I-70.

Unit 2: The remainder of Kansas.

Dark Geese. Marais des Cygne Valley Unit: The area is bounded by the Missouri State Line to K-68, K-68 to U.S.-169, US.-169 to K-7, K-7 to K-31, K-31 to

U.S.-69, U.S.-69 to K-239, K-239 to the Missouri State Line.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to K-57, K-57 to U.S.-75, U.S.-75 to K-39, K-39, to K/96, K-96 to U.S.-77, U.S.-77 to U.S.-50.

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S.-75 to Interstate 35, Interstate 35 to U.S.-50, U.S.-50 to U.S.-77, U.S.-77 to Interstate 70, Interstate 70 to U.S.-75.

Strip Pits Unit: That area of southeast Kansas bounded by the Missouri State Line to U.S.-160, U.S.-160 to U.S.-69, U.S.-69, to K-39, K-39 to U.S.-169, U.S.-169 to the Oklahoma State Line, and the Oklahoma State Line to the Missouri State Line.

Montana (Central Flyway Portion)—Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central Flyway portion of Montana.

Nebraska—North Unit: Keya Paha County east of US-183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

East Unit: The area east of a line beginning at US-183 at the northern State line; south to N-2; east to US-281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

New Mexico (Central Flyway Portion)—White Geese:

Rio Grande Valley Unit: The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota—Missouri River Zone: The dark goose late-season zone is that portion of North Dakota encompassed by a line starting at the South Dakota border then north on U.S. 83 and I-94 to ND 41, then north to ND 53, then west to U.S. 83, then north to ND 23, then west to ND 37, then south to ND 1804, then south approximately 9 miles to Elbowoods Bay on lake Sakakawea, then south and west across the lake to ND 8, then south to ND 200, then east to ND 31, then south to ND 25, then south to I-94, then east to ND 6, then south to the South Dakota border, and then east to the point of origin.

Statewide: All of North Dakota.

South Dakota—Dark Geese: Missouri River Unit: The Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of highway SD–65), Dewey, Gregory, Haakon (north of Kirley Road and east of Plum Creek), Hughes, Hyde, Lyman (north and east of highways (I–90 and US–183), Potter, Stanley, Sully, Tripp (east of highway US–183), Walworth, and Yankton (west of highway US–81). *Remainder:* The remainder of South Dakota.

Texas—West: West of U.S. 81.

East: East of U.S. 81.

Wyoming (Central Flyway Portion) See State Reglations.

Pacific Flyway

Arizona—GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California—Same zones as for ducks but in addition:

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes Arbuckle road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale Bypass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to State Highway 20; and westerly along State Highway 20 to the Sacramento River.

San Joaquin Valley Area: That are a bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 165; then northerly on State Highway 165 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning.

Colorado (Pacific Flyway Portion)—Browns Park Zone: The Browns Park portion of Moffatt County.

Delta and Montrose Counties Zone: All of Delta and Montrose Counties.

Mesa County Zone: All of Mesa County.

Gunnison and Saguache Counties Zone (west of the Continental Divide): Those portions of Gunnison and Saguache Counties lying west of the Continental Divide.

Dolores, LaPlata, and Montezuma Counties Zone: All of Dolores, LaPlata, and Montezuma Counties.

Remainder of the State in the Pacific Flyway Zone: The remainder of the Pacific Flyway Portion of Colorado.

Idaho—Area 1 Zone: Bear Lake, Benewah, that portion of Bingham County within the Blackfoot Reservoir drainage, Blaine County north and west of U.S. Highway 93, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou County EXCEPT that portion within the Fort Hall Indian Reservation, Clark, Clearwater, Custer, that portion of Elmore County within the Camas Creek drainage, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nex Perce, Oneida, that portion of Power County west of State Highway 37 and State Highway 39, Shoshone, Teton, and Valley counties.

Area 2 Zone: Blaine County south and east of U.S. Highway 93, Cassie, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls counties.

Area 3 Zone: Ada, Adams, Canyon, Elmore County EXCEPT that portion within the Camas Creek drainage, Gem, Owyhee, Payette, and Washington counties.

Area 4 Zone (Ft. Hall-American Falls Zone): All lands, including private holdings, within the Fort Hall Indian Reservation, Bannock, Bingham EXCEPT that portion within the Blackfoot Reservoir drainage, Power County east of State Highway 37 and Highway 39.

In addition, goose frameworks are set by the following geographical areas:

10 Northern Counties Area: The counties of Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater, and Idaho.

Southwestern Area: That portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except the 10 Northern Counties Area).

Southeastern Area: That portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border.

Montana (Pacific Flyway Portion)—*East of Continental Divide Zone:* The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Continental Divide Zone: Includes the remainder of the Pacific Flyway portion of Montana.

Nevada—*Clark County Zone:* Clark County.

Elko County and that portion of Ruby Lake National Wildlife Refuge within White Pine County Zone: All of Elko County and that portion of Ruby Lake National Wildlife Refuge within White Pine County.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)—*North of I–40 Zone:* The Pacific Flyway portion of New Mexico located north of I–40.

South of I–40 Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon—*Western Zone:* Consists of all counties west of the summit of the Cascades excluding Klamath and Hood River Counties.

Special Canada Goose Management Area: Consists of those portions of Coos, Curry, Douglas and Lane Counties lying west of U.S. Highway 101, and that portion of western Oregon west and north of a line starting at the Columbia River at Portland, south on Interstate 5 to Hwy 22 at Salem, east on Hwy 22 to the Stayton Cutoff, south on the Stayton Cutoff to Stayton and straight south to the Santiam River, west (downstream) along the north shore of the Santiam River to Interstate 5, south on Interstate 5 to its junction with Hwy 126 at Eugene, and west on Hwy 126 to Highway 36, north on Highway 36 to forest road 5070 at Brickerville, west and south on forest road 5070 to Highway 126, west on Highway 126 to the Oregon Coast.

Northwest Oregon Special Permit Goose Area: Includes Sauvie Island Wildlife Area, only in designated areas but excluding North Unit and Columbia River Beaches, private lands of Sauvie Island and including Scappoose Flat and Deer Island, lower Columbia River Area, Ankeny NWR, private lands adjacent to William L. Finley NWR, and private lands adjacent to Baskett Slough NWR.

Early-Season Canada Goose Area: Starting in Portland at the Interstate Highway 5 bridge, south on I–5 to U.S. Highway 30, west on U.S. Highway 30, to the Astoria-Megler bridge, from the Astoria-Megler bridge along the Oregon-Washington State line to the point of beginning.

Eastern Zone: Consists of all counties east of the summit of the Cascades, including all of Klamath and Hood River Counties.

Columbia Basin Goose Area: Includes the counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco.

Lake and Klamath Counties Zone: All of Lake and Klamath counties.

Baker and Malheur Counties Zone: All of Baker and Malheur counties.

Utah—*Washington County Zone:* All of Washington County.

Reminder-of-the-State Zone: The remainder of Utah.

Early-Season Canada Goose Area: Cache County.

Washington—*Eastern Washington Zone:* Includes all areas lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Goose Area—Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Wall Counties and east of Satus Pass (U.S. Highway 97) in Klickitat County.

Western Washington Zone: Includes all areas lying to the west of Eastern Washington.

Lower Columbia River Special Goose Managment Area—Clark, Cowlitz, Pacific and Wahkiakum Counties.

Skagit Special Goose Management Area—Island, Skagit, Snohomish, and Whatcom Counties.

Early-Season Canada Goose Area—Starting in Vancouver at the Interstate Highway 5 bridge north on I–5 to Kelso, west on State Highway 4 from Kelso to State Highway 401, south and west on State Highway 401 to the Astoria-Megler bridge, from the Astoria-Megler bridge along the Washington-Oregon State line to the point of beginning.

Wyoming (Pacific Flyway Portion)—*Early Season Areas:* See State Regulations.

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federal register

Friday
August 17, 1990

Part V

Department of Health and Human Services

Alcohol, Drug Abuse, and Mental Health Administration

Drug Abuse Treatment Waiting Period Reduction Program; Request for Applications

DEPARTMENT OF HEALTH AND HUMAN SERVICES PUBLIC HEALTH SERVICE

Alcohol, Drug Abuse, and Mental Health Administration

Drug Abuse Treatment Waiting Period Reduction Grant Program; Request for Applications

OFFICE: Office for Treatment Improvement, HHS.

ACTION: Request for applications for Drug Abuse Treatment Waiting Period Reduction Grant Program.

Applications are invited under the Drug Abuse Treatment Waiting Period Reduction Amendments of 1990.* Applicants that previously submitted applications under the Drug Abuse Treatment Waiting List Reduction Grant Program announced in June 1990, are invited to *re-submit* their applications in order to comply with the new legislative requirements of this program. Applications submitted for the August 15, 1990 deadline will *not* be considered.

Note: The portions enclosed in arrows (►◄) in this RFA represent language added or changed from the June 1990 announcement.

I. Introduction

Community drug abuse treatment program directors and State drug abuse authorities have consistently reported in recent months and years that they are turning away many individuals who seek treatment because of lack of capacity to enroll and serve them. This is particularly true in many metropolitan areas, low-income communities and neighborhoods, and other areas with a high incidence of heroin or cocaine/crack use. Although no hard data exist on the true number of persons who would be in treatment if it were available, treatment experts believe that the number is in the thousands. Given the rapidly growing AIDS epidemic in the nation and the fact that approximately one-third of all new AIDS cases are contracted through use of contaminated intravenous drug needles, it is critical that the nation's ability to provide treatment to drug abusers be expanded.

II. Legal Authority/Contingency of Funding

Section 509E of the Public Health Service Act, as added by Public Law 100–690, the Anti-Drug Abuse Act of 1988, authorizes the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) to make grants to public and nonprofit private entities to reduce the drug abuse treatment waiting ►periods◄ by expanding the capacity of existing programs.

In FY 1989 the Congress authorized a $100 million ceiling for waiting list reduction grants and appropriated $75 million in 1989 and an additional $25 million in 1990 to implement the program. In a supplemental appropriation enacted for FY 1990, the Congress appropriated an additional $40 million for waiting list reduction grants subject to an increase in the previously enacted authorization level of $100 million. ►Subsequently, Congress set a deadline of September 10, 1990 for increasing the authorization ceiling. If the deadline was not to be met, the $40 million would become available for other agency purposes.◄

►In June of 1990, the Waiting List Reduction Grant Program was reannounced in order to solicit applications from eligible entities in the event that the Congress acted to increase the authorization level by the September 10 deadline. Applications solicited under this notice were due for receipt on August 15, 1990.◄

►Prior to receipt of applications under this announcement however, Congress passed the Drug Abuse Treatment Waiting Period Amendments of 1990. The Drug Abuse Treatment Waiting Period Amendments of 1990 increased the authorization ceiling to encompass the $40 million in appropriations, extended the availability of funds for 3 months (until December 31, 1990), *and* resulted in three key changes to pre-existing authority for the Waiting List Reduction Grant Program. Under the 1990 Amendments:

- Priority is given to applicants that will provide drug abuse treatment services for pregnant or postpartum women;
- Applicants may request funds for the provision of follow-up (aftercare) services that will help to prevent the relapse of patients who have successfully completed the intense (primary) phase of treatment; however, a grantee may expend not more than 50 percent of an award for follow-up services;
- Grantees that received awards previously under the Waiting List Reduction Grant Program *may* apply for additional funding.◄

►Applicants that previously submitted applications under the Drug Abuse Treatment Waiting List Reduction Grant Program Request for Announcements issued in June of 1990 are invited to re-submit their applications in order to address and/or comply with the above three requirements, as enacted in the Amendments of 1990. The new application receipt date is October 10, 1990 (see Application Receipt and Review Schedule section).◄

III. Purpose and Approach

This RFA requests applications for Drug Abuse Treatment Waiting Period Reduction Grants to help existing drug abuse treatment programs rapidly expand their capacity to serve drug abusers who want treatment but are not currently receiving it, i.e., they are on a waiting list. ►Programs willing to provide new treatment capacity designed specifically to meet the needs of pregnant or postpartum women are especially encouraged to apply. In recognition of the fact that addiction is a chronic relapsing disorder, applicants are encouraged to propose delivery of follow-up services designed to prevent the renewed abuse of drugs by individuals who have successfully completed a program of intense treatment provided by the grantee.◄

Grant awards may be used to cover all allowable startup and treatment delivery costs related to expanding a program's treatment capacity, ►including costs incurred for the provision of follow-up services. A grantee may expend *not more than 50* percent of the grant to develop and provide, directly or through arrangements with public and nonprofit private entities, follow-up services to prevent patient relapse.◄ The amount of a grant award, however, will be determined by multiplying the number of proposed new treatment slots by the current cost for each type of slot, ►plus the cost of any proposed enhancements to follow up services,◄ in an applicant's program, i.e., outpatient, residential, or other (see definition of slot under Application Characteristics, requirement 3).

Drug abuse treatment programs interested in applying for the waiting period reduction grants should consider not only whether they meet the minimum statutory eligibility requirements described below, but also how they potentially will score under the review criteria described in section VIII. All applications will initially be screened against the minimum requirements; those that meet these requirements will be evaluated further and ranked for funding consideration on the basis of additional evidence and

* Applications are invited based on the assumption that the Drug Abuse Treatment Waiting Period Reduction Amendments of 1990 will be signed by the President. Questions regarding the status of the Program should be directed to the program official listed on the last page of this announcement.

information they provide as described in the review criteria. Highest overall funding priority will be given to those applicants who have the greatest need to expand their programs (i.e., they have the longest average wait to enter treatment and the largest waiting lists); propose to create the most *new* treatment slots; are part of an overall State plan to expand drug abuse treatement capacity; provide State verification of their existing waiting lists; and provide the strongest assurances that funding for their expanded treatment slots will continue to be available after the grant expires.

Grants will be awarded on a competitive basis for one year and are not renewable. ►Programs that received an award under the FY 1989 announcement are eligible to receive a second award under this announcement, provided that new awards are utilized to create new treatment capacity, over and above the capacity that was created using grant funds received under the FY 1989 announcement.◄ Grants are not available under this announcement for programs treating alcoholism or alcohol abuse. However, drug abuse programs that address alcohol problems as part of drug abuse treatment are eligible. Inpatient hospital drug abuse programs are not eligible for funding.

IV. Minimum Statutory Eligibility Requirements

Any public or nonprofit private organization is eligible to apply for a Drug Abuse Treatment Waiting►Period◄Reduction Grant. Such an organization must meet the following four statutory requirements:

(1) Be experienced in delivering drug abuse treatment.

To be eligible for consideration for funding, applicants must show that their programs have been in operation for at least one year at the time of application.

(2) On the date the application is submitted, be successfully carrying out a program for the delivery of such services as approved by the State or Territory.[1]

To be eligible for consideration for funding, applicants must show evidence that they are licensed by an appropriate State authority to provide drug abuse services, or that they possess a "Certificate of Need" to establish a drug abuse treatment program/facility where that is required. In States that do not require either a license or a Certificate of Need, the applicant must secure and submit a letter from the State indicating that the applicant is "successfully carrying out a program for delivery of drug abuse services."

(3) Be unable, as a result of the number of requests for admission, to admit individuals any earlier than a month after the individual's request for admission.

In order to be considered eligible for funding, an applicant must show evidence that a waiting list has been maintained for a minimum of 30 days prior to the date of application, and that treatment cannot be provided to individuals on the list for at least 30 days after they applied for admission. *The waiting list must be verified by an independent source* (e.g., the State or a private auditor), *who also must certify that the waiting list meets the following criteria:*

- Only individuals who have been screened to determine eligibility for admissions are on the waiting list;
- There is a roster, log, file, or equivalent record with names, addresses, and telephone numbers of qualified applicants for admission, date of application, and dates and nature of follow-up contacts;
- There is a policy defining what individuals on waiting lists must do to remain eligible for admission and/or how the provider will go about ensuring tht applicants for admission remain interested in entering treatment; and
- There are criteria defining when an individual's name is to be removed from the waiting list because of a loss of eligibility for admission or a failure to keep in contact with the provider.

Potential applicants who do not now have such a systematic procedure for documenting requests for admission and for administering a waiting list should develop these immediately.

(4) Provide assurances that the program will have access to financial resources sufficient to continue the program after the ►grant◄ terminates.

To be eligible for consideration for funding, an applicant ►must provide◄ (at a minimum) an assurance from its primary funding source(s) that the applicant is eligible for, and will receive, ►top priority◄ for receipt of available financial resources needed to continue the expanded treatment capacity once the grant period ends. For public programs, a letter from the head of the State drug abuse authority will meet this requirement. For private non-profit programs, a copy of a letter from the chief executive officer(s) of the primary funding source(s), such as a corporation or foundation to the treatment organization's Board of Directors will meet the requirement. ►Applicants that submit documented, unconditional assurances of future funding to sustain their programs following the grant period will receive preferential treatment during the review process (see Review Criteria).◄

►Applicants that provide no assurance of access to financial resources sufficient to continue the program following the Federal grant will be deemed ineligible to apply for funding.◄

V. "Umbrella" Applications

A State or a federally recognized Indian tribal governmental body may submit an "umbrella" application to coordinate distribution of funds to local ►public and nonprofit private◄ provider organizations. Umbrella applications must contain all required information for each program for which funds are being sought. The State or Indian tribal government must submit assurrances (in a cover letter) that:

- The data pertaining to all local treatment programs included in the umbrella application are accurate;
- The waiting lists of all the local programs are valid and that the waiting list system of each meets the criteria under Section IV–3;
- The current cost data provided by the local programs on residential, outpatient, or other treatment slots are valid and realistic; and
- The expansion plans of the local programs are sound and the programs have appropriate managerial capacity to handle the added capacity.

Each individual treatment program in an umbrella application will be ranked separately in the review process. Programs will be funded principally in rank order, irrespective of whether they are included in an umbrella application or have applied independently. Only one award will be made to each umbrella applicant, which may include funds for all or only some of the treatment programs covered by the application. Umbrella applicants may not use a grant award to support any projects other than those named on the Notice of Grant Award. Umbrella applicants will be legally and financially responsible for all aspects of the grant.

If a local treatment program is seeking support under an umbrella application, it may not also apply independently.

VI. Application Characteristics

Applicants should use form PHS 5161–1 (Rev. 3/89). The title of this RFA, "Drug Abuse Treatment Waiting ►Period◄ Reduction Grant," should be typed in ►item 10◄ on the face page of the Application for Federal Assistance (Standard Form 424) in PHS 5161–1.

[1] Hereafter, "State" is meant to include Territory.

Instructions are provided in the application kit for filling out the PHS 5161-1 application form. The information itemized in 1-8 below must be included in the program narrative.

An umbrella applicant must submit a cover letter designating it as an umbrella application and listing all programs covered by the application. Umbrella applicants should file only one form PHS 5161-1 (Rev. 3/89), with consolidated budget information for all programs in the umbrella application. However, umbrella applicants also must submit separate budget ►pages with detailed justified categorical (i.e., personnel, equipment, supplies, contractual agreements, minor alternations and renovations, etc.) information◄ and a separate Program Narrative for each program.

ALL INFORMATION PROVIDED IN APPLICATIONS MUST BE ACCURATE AND TRUTHFUL TO THE BEST OF THE APPLICANT'S KNOWLEDGE, UNDER PENALTY OF ALL APPLICABLE FEDERAL LAWS AND REGULATIONS.

Program Description (maximum of 5 pages)

1. A description of the treatment program
a. Name, address, and telephone number of program
b. When it was established
c. Ownership and governance
d. Drug abuse incidence and prevalence data for area served
e. Admission and discharge patterns
f. Demographic characteristics of patient population (e.g., sex, age, and ethnicity)
g. Name and telephone number of program contact person

2. A description of how the program will establish and operate new treatment slots, including rental or leasing of additional space, staffing plans, development of new program components, etc. ►In the context of the description, applicants should delineate between the staffing, supplies, etc. that will be utilized to provide primary versus follow-up services.◄

Data

3. Current number of treatment slots

A slot is a unit of measure of treatment capacity, the maximum number of persons that can be treated or carried on program's rolls at one time, given the program's physical characteristics, size and composition of staff, and financial and other resources. For example, if an outpatient program has set a policy that there must be one counselor for every 20 patients and it has five full-time counselors, then the program has a capacity of 100 slots. In other words, the program should not keep more than 100 persons on its active patient rolls, given its current resources. Because patients are regularly being discharged and new patients admitted, a single slot, in the course of a year can be filled by more than one person. A 20 bed facility designed to provide inpatient detoxification in a standard course of treatment of one month can serve at least 240 persons a year (20 beds x 12 months), but it still only has 20 slots. Slots and persons served are not synonymous. Treatment costs may also be calculated using the concept of slots. The annual average cost per treatment slot is equal to a program's total cost of providing treatment over one year divided by the average treatment capacity, expressed as slots, for that year.

a. outpatient _____
b. residential _____
c. other (specify) _____

4. Current annual cost per slot for each modality in program:
a. outpatient _____
b. residential _____
c. other (specify) _____

Describe how costs were determined.

5. Proposed number of treatment slots to be created with grant funds:
a. outpatient _____
b. residential _____
c. other (specify) _____

6. Quarterly schedule for bringing new treatment slots into operation (All new slots must be operational by the end of the one-year grant period.)

NEW SLOTS IN OPERATION

Quarter	Outpatient	Residential	Other (specify)
1			
2			
3			
4			
Totals			

7. Estimates of number of slots (outpatient, residential, other) to be used for treatment of users of heroin, cocaine/crack, marijuana, amphetamines, and drug/alcohol combination, and other (specify).

NUMBER OF SLOTS

Primary drug of abuse	Outpatient	Residential	Other (specify)
Heroin			
Cocaine/Crack			
Marijuana			
Amphetamines			
Drug/alcohol combination			
Other (specify)			

8. Waiting list information: Size and length of wait.
a. total number of persons on waiting list for one month or more of time of application _____
b. average number of days these persons have been on waiting list _____

Documentation To Establish Minimum Eligibility

9. Attach documentation specified below to demonstrate minimum eligibility by complying with four statutory criteria (see Section IV for statutory eligibility requirements); and additional documents needed for rating purposes (see Section VIII). Mark documents "Eligibility", "Rating," or both, as appropriate.

Requirement 1—Verification of at least one year's experience in delivering drug abuse treatment: Copies of individual program's charter, past licenses, etc.

Requirement 2—Verification that the applicant is successfully carrying out a drug abuse treatment program that is approved by the State: Copies of appropriate current licensure, certification, or accreditation. If the program is operating in a State which does not require any of these, attach a letter from the State drug abuse authority saying that the applicant is "successfully providing a program of drug abuse treatment."

Requirement 3—Demonstration that the applicant is unable, as a result of the number of requests for admission, to admit individuals any earlier than one month after a request for admission: Copies of waiting lists, independent verification of waiting list accuracy and integrity, and certification that waiting list procedures described in Section IV-3 are in place. (In order to assure confidentiality to persons on waiting lists, obscure all last names, last four digits of telephone numbers, and street numbers. Also obscure any other notations that could identify a specific individual. First names, telephone exchanges, street names, demographic and eligibility information, follow-up information, dates, and other notations should be left intact.)

Requirement 4—Assurances that the program will have access to financial resources sufficient to continue the program after the grant terminates: Letters from primary funding source(s) providing assurance of access to continued support for expanded treatment capacity beyond the grant period, as described in Section IV-4.

An inventory of the above documents (see checklist in application kit) should be completed by every program, whether part of an umbrella application or applying independently, to help assure that all relevant documents have been provided.

VII. Application Process

Application kits containing all necessary forms and instructions to apply for a Drug Abuse Treatment Waiting ►Period◄ Reduction Grant may be obtained from:

Waiting ►Period◄ Program

Technical Resources, Inc.
P.O. Box 409,
Rockville, Maryland 20848-0409
301-230-4764

The signed original and two permanent, legible copies of the completed application, and all supporting materials, should be sent to:

Waiting ►Period◄ Program,
Technical Resources, Inc.,
P.O. Box 409,
Rockville, Maryland 20848-0409

Express Mail Address:
Waiting ►Period◄ Program,
Technical Resources, Inc.,
Suite 200,
3202 Tower Oaks Boulevard,
Rockville, Maryland 20852

IMPORTANT: The exterior of the envelope, package, or express delivery pouch should be clearly marked: "WAITING ►PERIOD◄."

Additional copies of applications will need to be made in order to have enough copies for review. Accordingly, one copy of the application must be provided unbound with no staples, paper clips, fasteners, or heavy or lightweight paper stock within the document itself. Refrain from attaching or including anything that cannot be photocopied using automatic processes. Use only 8½" x 11" white paper, with printing only on one side. Pages must be numbered consecutively from beginning to end, including any attachments.

Applicants must be complete and contain all information needed for review, and be self-explanatory to reviewers who are unfamiliar with the current treatment program of the applicant. No addenda will be accepted later than the Receipt Date unless specifically requested by ADAMHA.

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through the Department of Health and Human Services regulations at 45 CFR part 100. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. A current listing of SPOCs will be included in the application kit. SPOC comments are due one month after application Receipt Date. Send to: Waiting ►Period◄ Program, Technical Resources, Inc., P.O. Box 409, Rockville, Maryland 20848-0409. ►States not included in the listing of SPOCs need not submit comments.◄

Application Receipt and Review Schedule

Receipt Date

►October 10, 1990◄

Estimated Funding Date

►December, 1990◄

Applications received after the above Receipt Date will not be reviewed or be eligible for funding.

VIII. Review Process

Applications submitted in response to this RFA will be reviewed by the Office for Treatment Improvement (OTI) to determine if they meet the minimum statutory eligibility requirements (see Section IV).

Applications that are ineligible, incomplete for review, or nonresponsive to this RFA will be screened out by OTI upon receipt without further consideration and the applicants notified.

Eligible applications will be reviewed for rating on the basis of the Review Criteria specified below by a panel of persons from inside and outside the Federal government who are knowledgeable about drug abuse treatment programs.

Review Criteria

Applications will be rated as follows. A total of 100 points is available.

Requirement 1: Experience in delivering drug abuse treatment. Applications will be evaluated on this requirement only to determine if they meet minimum eligibility, not for rating.

Requirement 2: The applicant, on the date the application is submitted, is successfully carrying out a program for the delivery of such services approved by the State. (Total possible points = 20)

If an independent treatment program files an application directly (not under an umbrella), ten (10) points will be given if a letter is included from the State drug abuse authority *endorsing* the applicant's services.

Twenty (20) points will be given to applicants that provide evidence that their request for funds to reduce waiting lists is part of an overall State effort to expand drug abuse treatment capacity. Submission of the applicant's request under a State umbrella application will qualify the applicant for these points. *For programs applying independently, including a copy of appropriate State capacity expansion plans that name the applicant agency will qualify the applicant for these points.*

Requirement 3: As a result of the number of requests for admission to the program, the applicant is unable to admit any individual into the program any earlier than one month after the date on which the individual makes a request for such admission. ►Total possible points = 50)◄

On this requirement, points will be assigned on three different measures:

Length of Wait for Admission

Up to ►15◄ points will be given based on the average number of days persons seeking treatment have been on the program's waiting list.

Size of Waiting List

Up to ►*15*◄ points will be given on the basis of the total number of individuals who have been on a program's waiting list for a month or more.

In order to earn points on either of the two above measures, applicants must be certain to submit documents that clearly demonstrate the ►integrity◄ of the waiting list, the *size* of the list of drug abusers who have been waiting for treatment more than 30 days, and the *average length of the wait* (i.e., the waiting list itself, with personal identifiers removed, and a calculation of the average length of wait in days).

Number of Treatment Slots To Be Established

Up to ►*20*◄ points will be assigned based on the number of *new* treatment slots to be established with grant funds, i.e., the more *new* slots, the more points awarded.

Requirement 4: An applicant must provide satisfactory assurances that, after Federal funding is no longer available, the applicant will have access to financial resources sufficient to continue the program. (Total possible points = 20)

Ten (10) points will be given to applicants that include, as part of the application, documents from the chief official(s) of funding source(s) (e.g., State drug abuse director, foundation board chairman, corporate chief finanical officer) indicating that funding for continuation of expanded treatment capacity beyond the grant period is a *top priority* of the appropriate funding source. ►For publicly-funded programs, State drug abuse directors must assert that a request for resources for continuation of expanded capacity will be included in their budget submissions to the supervisory agency of the State drug treatment authority. For private non-profit applicants, assurances must be made that any funding requests made to corporate or foundation boards will make continuation of new treatment capacity the first priority.◄

Twenty (20) points will be given to applicants that include a letter(s) from funding source(s) assuring that funds to continue the expanded treatment capacity after Federal funding terminates ►will be unconditionally guaranteed.◄

►*Requirement 5:* The applicant provides treatment services, whether directly or through arrangements with public or non-profit private entities, that address the specific needs of pregnant or postpartum women. (Total possible points = 10)◄

►Under this requirement, points will be given to applicants proposing to create new treatment capacity designed to serve the unique needs of pregnant or postpartum women.◄

►Five (5) points will be awarded to applicants that: 1) provide data which indicate that local demand for treatment of pregnant and postpartum women is sufficient to warrant creation of the new capacity being proposed, and 2) propose to provide at least four (4) of the services listed below, one of which must be the provision of primary medical care. Applicants that satisfy these two requirements will be awarded 5 points regardless of whether they are presently providing treatment services specifically for pregnant or postpartum women.◄

►*Services for Pregnant or Postpartum Women:*

- Primary medical care services which address common medical complications seen in pregnant and postpartum women who suffer from addiction-related health disorders, including anemia, poor nutrition, pneumonia, hepatitis, tuberculosis, urinary tract infections, HIV, retroviral (HTLVI, HTLVII, HHV), and other sexually transmitted diseases, amnionitis, abruptio placentae, etc. These services must be delivered by qualified physicians and physician extendors.
- High-risk pernatal care. By definition, these services must be delivered by an obstetrician.
- Access to neonatal intensive care units for the infant children of adult patients.
- HIV/AIDS testing, education, prevention, and counseling.
- Parenting, health and sex education classes.
- Family and collateral counseling provided by a trained professional who is certified to provide family therapy.
- Psychological and/or psychiatric counseling provided by licensed professionals.
- Peer support groups focusing upon women's issues.◄

►Ten (10) points will be given to those applicants that can: (1) demonstrate at least one year of prior experience delivering treatment services that are responsive to the unique needs of pregnant and postpartum women, (2) demonstrate that at least 50 percent of their existing patient population, as well as the majority of individuals waiting to receive treatment, are pregnant and postpartum women, and (3) propose to provide four (4) of the services for pregnant or postpartum women listed above, one of which must be the provision of primary medical care services.◄

IX. Award Procedure

Upon completion of the review, each program, whether submitted independently or as part of an umbrella application, will be assigned a composite score based on the above review criteria. Composite scores will be used to place applications in rank order for consideration for grant awards. All or only some of the programs included in an umbrella application may receive support. State umbrella applications will receive a Notice of Grant Award specifying which projects are being funded. The State will be responsible for notifying the individual programs. ADAMHA will send a Notice of Grant Award to independent applicants who have been approved for funding, and a letter to other independent applicants regarding the final action on their application.

Funding decisions will be based primarily on the ranking of independent applications and of programs within umbrella applications, according to the review process described above. However, overall program and geographic balance and public health needs, ►including the provision of follow-up services to enhance the continuum of patient care,◄ may also be considered in selecting applications and programs for support.

Period of Support

Support may be requested for a period of up to 12 months.

Terms and Conditions of Support

Allowable Costs

Grant funds may be used to cover all allowable costs clearly related and necessary to creating the new treatment capacity to ►reduce the waiting period and◄ eliminate a portion of or all of the waiting list as constituted on the date of the application. The budget should be based on the number of *new* treatment slots scheduled to be created by the program, multiplied by the current annual cost ►(including aftercare)◄ of each specific type of slot created (outpatient, residential, or other). After multiplying current slot costs by the number of slots to be created, the figures on the budget sheets contained in form PHS 5161–1 should be broken down and an explanation for each line item included. The explanation should include line items for each position proposed, line items for equipment, ►minor alterations/renovations,◄ supplies, etc. The line item for fringe benefits should indicate which benefits are included ►in the fringe benefit rate.◄ If indirect costs are proposed, a copy of an indirect cost agreement either with the Federal, State or local government should be included with the submission. If no agreement exists, a complete explanation of the indirect costs proposed should be submitted ►to assure that there is no duplication of costs in the direct and indirect line items.◄

A State or Indian tribal government awarded an umbrella grant may use up to two percent of the awarded grant funds to cover the administrative costs of managing the grant. No additional funds will be given for this purpose.

All new slots must be operational by the end of the grant period. No grant funds may be expended after the 12-month grant period ends.

►All funds requested must be for new treatment capacity over and above the capacity that was established using prior Waiting List Reduction Grant awards.◄

Grant funds must be used to supplement, not supplant, existing treatment service delivery activities.

Grant funds may not be used to defray the direct treatment costs for any individual who has been in treatment within 30 days in another program operated by the same applicant, except where the individual had previously been enrolled in the expanded program and is being readmitted. The provision of limited services to a waiting individual as a means of keeping him or her engaged, however, does not constitute treatment and does not affect eligibility for reimbursement of that individual's treatment under the grant.

Umbrella awards may be used only to fund those programs approved in the Notice of Grant Award to the applicant. Funds may be shifted among ►funded◄ programs.

Nonallowable Costs

Applicants must provide a written assurance that grant funds will not be used to:

- Provide inpatient hospital services.

• Make cash payments to intended recipients of services under the program involved.

• Purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

• Satisfy any requirement for the expenditure of non-Federal funds.

• Provide financial assistance to any entity other than a public or nonprofit private entity.

Availability of Funds

►Approximately $39 million will be available to award grants under this announcement.◄

X. Grant Administration

Grants must be administered in accordance with the *PHS Grants Policy Statement* (Rev. January 1, 1987).

Federal regulations at title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

Confidentiality of Drug Abuse Patient Records

Grantees must agree to maintain the confidentiality of drug abuse client data in accordance with Federal regulations governing "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR part 2).

Final Reports

Programmatic Performance Reports of the progress made in meeting expansion goals must be submitted to the Office for Treatment Improvement within 90 days after completion or termination of the grant. The reports should include the following information:

1. Activities undertaken to expand treatment availability.
2. Number of new slots established, by type of slot.
3. Number of persons served, by type of drug problem and treatment modality.
4. Total number of persons currently on waiting list.
5. Average length of wait for each person currently on waiting list.
6. Problems and solutions.
7. Progress made in ensuring future funding for the grant-initiated program.

Grantees are also required to submit a Financial Status Report, which presents actual outlays and obligations of funds in a manner consistent with the official accounting practices of the State or independent treatment program.

An original and two copies of the final reports must be submitted to the ADAMHA Grants Management Officer within 90 days of the expiration or termination of the grant.

Site Visits

Although no site visits to applicant programs or grantees are planned, the Federal Government reserves the right to make such site visits or inspections.

XI. Further Information

Contact for Application Information

Waiting Period Reduction Program
Technical Resources, Inc.
P.O. Box 409
Rockville, MD 20848-0409
Telephone:
Dave Porter 230-4797
Grace Greenlee 230-4771

Contact for Programmatic Information

Address:
Office for Treatment Improvement
Alcohol, Drug Abuse, and Mental Health Administration
Rockwall II, 10th Floor
5600 Fishers Lane
Rockville, MD 20857
Telephone: Rebecca Ashery, Chief, Special Populations Branch, OTI: (301) 443-6533

Contacts for Grants Management Information

Address:
Grants Management Branch
National Institute of Mental Health
5600 Fishers Lane, Room 7C-05
Rockville, MD 20857
Telephone: Bruce Ringler, Chief, Grants Management Branch, NIMH: (301) 443-3065
Diana Trunnell, Assistant Chief, Grants Management Branch, NIMH: (301) 443-3065

The Catalog of Federal Domestic Assistance Number for this program is 13.175.

Dated: August 15, 1990.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-19506 Filed 8-16-90; 8:45 am]
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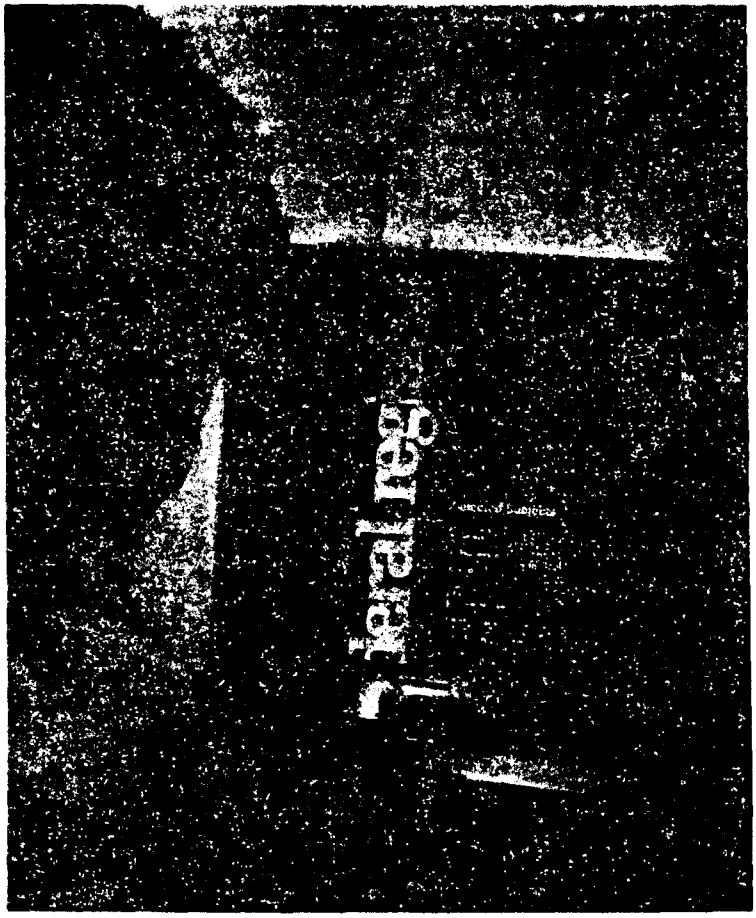

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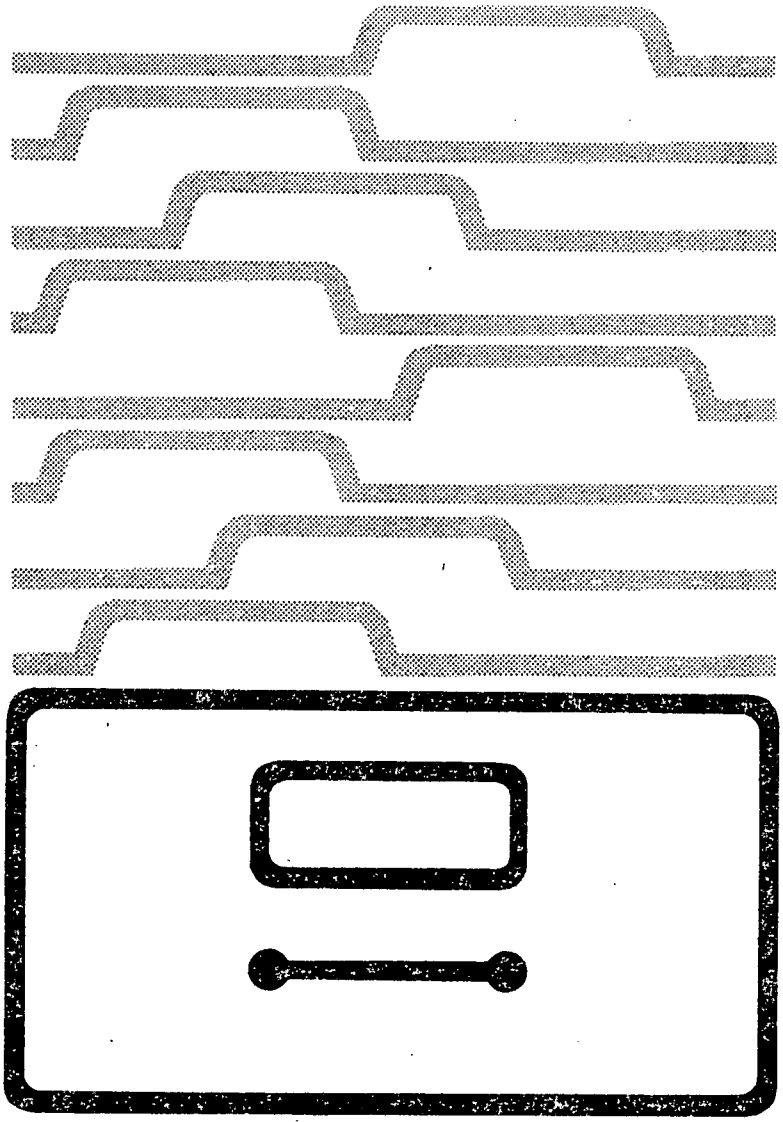

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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