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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1210

RIN 3124-AA20

Debt Management

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: This final rule implements the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982. This rule will enhance the Merit Systems Protection Board's (MSPB) ability to collect debts by providing guidance to its officers and employees charged with debt collection responsibilities. This final rule authorizes the Federal Government to collect debts owed by a Federal employee to the United States through salary offset. In addition, the rule provides notice to those with delinquent accounts of MSPB's claims collection practices.

DATE: December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Robert W. Lawshe, (202) 653-7263.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a Federal agency determines that an employee of an agency is indebted to the United States or is notified by a head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin. As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management of July 3, 1984, 49 FR 27470, codified in 5 CFR part 550, subpart K.

List of Subjects in 5 CFR Part 1210

Debt Management; Government employees.

Accordingly, the Merit Systems Protection Board amends 5 CFR by adding part 1210 as follows:

PART 1210—DEBT MANAGEMENT

Subpart A—Salary Offset

Sec.

Subpart B—Claims Collection

Subpart A—Salary Offset

Authority: 5 U.S.C. 5514, Executive Order 11809 (redesignated Executive Order 12107), and 5 CFR 550 subpart K.

§ 1210.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal Government. These regulations apply to all Federal employees who owe debts to the MSPB and to current employees of the MSPB who owe debts to other Federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 et seq.;

(2) The Social Security Act, 42 U.S.C. 301 et seq.;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 et seq. 4 CFR parts 101 through 105; 5 CFR part 1210.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount of validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 et seq.

§ 1210.2 Definitions.

(a) *Agency.* An executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

(b) *Chairman.* The Chairman of the MSPB or the Chairman's designee.

(c) *Creditor agency.* The agency to which the debt is owed.

(d) *Debt.* An amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales or real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(e) *Disposable pay.* The amount that remains from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) *Hearing official.* An individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chairman of the MSPB.

(g) *Paying Agency.* The agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

(h) *Salary offset.* An administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

§ 1210.3 Applicability.

(a) These regulations are to be followed when:

(1) The MSPB is owed a debt by an individual currently employed by another Federal agency;

(2) The MSPB is owed a debt by an individual who is a current employee of the MSPB; or

(3) The MSPB employs an individual who owes a debt to another Federal agency.

§ 1210.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice signed by the Chairman of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 et seq.;

(5) The employee's right to inspect, request, or receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 1210.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the Chairman of the MSPB stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the Chairman no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1210.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: A statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 1210.7 Coordinating offset with another Federal agency.

(a) *The MSPB as the creditor agency.* (1) When the Chairman determines that an employee of a Federal agency owes a delinquent debt to the MSPB, the Chairman shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that MSPB regulations for salary offset have been approved by the Office of Personnel Management;

(iii) Advise the paying agency of the amount or percentage of disposable pay to be collected in each installment, if collection is to be made in installments;

(iv) Adivse the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(v) If the employee is in the process of separating, MSPB must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the creditor agency. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of this part have been followed; and

(vi) If the employee has already separated and all payments due from the paying agency have been paid, the Chairman may request unless otherwise prohibited, that money payable to the employee from the Civil Service

Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *MSPB as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the MSPB has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The MSPB shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the MSPB and before the debt is collected completely, the MSPB must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished the creditor agency with notice of the employee's transfer.

§ 1210.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Chairman's notice of intention to offset as provided in § 1210.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15 percent of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary payment or leave in accordance with 31 U.S.C. 3716.

§ 1210.9 Refunds.

(a) The MSPB will refund promptly any amounts deducted to satisfy debts owed to the MSPB when the debt is waived, found not owed to the MSPB, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by MSPB to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1210.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1210.11 Nonwaiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract law unless there are statutes or contract(s) to the contrary.

§ 1210.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated: July 24, 1987.

Subpart B—Claims Collection

Authority: The authority for this part is the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3711 and 3716–3719; the Federal Claims Collection Standards at 4 CFR parts 101–105, as amended by 49 FR 8889, 5 U.S.C. 552a, and Office of Management and Budget Circular A–129.

§ 1210.21 Purpose and scope.

This part prescribes standards and procedures for officers and employees of the MSPB who are responsible for the collection and disposition of debts owed to the United States. The activities covered include: collecting claims in any amount; compromising claims, or suspending or terminating the collection of claims that do not exceed $20,000 exclusive of interest and charges, and referring debts that cannot be disposed of by the MSPB to the Department of Justice or to the General Accounting Office for further administrative action or litigation.

§ 1210.22 Definitions.

(a) *Claim* or *debt.* An amount or property owed to the United States which includes, but is not limited to: Overpayments to program beneficiaries; overpayments to contractors and grantees, including overpayments arising from audit disallowances; excessive cash advances to grantees and contractors; and civil penalties and assessments. A debt is overdue or delinquent if it is not paid by the due date specified in the initial notice of the debt (see § 1210.26) or if the debtor fails to satisfy his or her obligation under a repayment agreement.

(b) *Debtor.* An individual, organization, group, association, partnership, or corporation indebted to the United States, or the person or entity with legal responsibility for assuming the debtor's obligation.

(c) *MSPB.* The Merit Systems Protection Board.

(d) *Administrative offset.* Satisfying a debt by withholding money payable by the United States to or held by the United States for a debtor.

§ 1210.23 Other remedies.

The remedies and sanctions available to the MSPB under this part are not intended to be exclusive. The Chairman of the MSPB or his designee may impose other appropriate sanctions upon a debtor for prolonged or repeated failure to pay a debt. For example, the Chairman or his designee may place the debtor's name on a list of debarred, suspended, or ineligible contractors. In such cases the debtor will be advised of the MSPB's action.

§ 1210.24 Claims involving criminal activity or misconduct.

(a) A debtor whose indebtedness involves criminal activity such as fraud, embezzlement, theft, or misuse of government funds or property is subject to punishment by fine or imprisonment as well as to a civil claim by the United States for compensation for the misappropriated funds. The MSPB will refer these cases to the appropriate law enforcement agency for prosecution.

(b) Debts involving fraud, false claims, or misrepresentation shall not be compromised, terminated, suspended, or otherwise disposed of under this rule. Only the Department of Justice is authorized to compromise, terminate, suspend, or otherwise dispose of such debts.

§ 1210.25 Collection.

(a) The MSPB will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall include sending to the debtor's last known address a total of three progressively stronger written demands for payment at not more than 30 day intervals. When necessary to protect the

Government's interest, written demand may be preceded by other appropriate action, including immediate referral for litigation. Other contact with the debtor or his or her representative or guarantor by telephone, in person and/or in writing may be appropriate to demand prompt payment, to discuss the debtor's position regarding the existence, amount and repayment of the debt, and to inform the debtor of his or her rights and effect of nonpayment or delayed payment. A debtor who disputes a debt must promptly provide available supporting evidence.

(b) If a debtor is involved in insolvency proceedings, the debt will be referred to the appropriate United States Attorney to file a claim. The United States may have a priority over other creditors under 31 U.S.C. 3713.

§ 1210.26 Notices to debtor.

The first written demand for payment must inform the debtor of the following:

(a) The amount and nature of the debt;

(b) The date payment is due, which will generally be 30 days from the date the notice was mailed;

(c) The assessment of interest under § 1210.27 from the date the notice was mailed if payment is not received within the 30 days;

(d) The right to dispute the debt;

(e) The office, address and telephone number that the debtor should contact to discuss repayment and reconsideration of the debt; and

(f) The sanctions available to the MSPB to collect a delinquent debt including, but not limited to, referral of the debt to a credit reporting agency, a private collection bureau, or the Department of Justice for litigation.

§ 1210.27 Interest, penalties, and administrative costs.

(a) Interest will accrue on all debts from the date when the first notice of the debt and the interest requirement is mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date the first notice was mailed. The MSPB will charge an annual rate of interest that is equal to the average investment rate for the Treasury tax and loan accounts on September 30 of each year, rounded to the nearest whole per centum. This rate, which represents the current value of funds to the United States Treasury, may be revised quarterly by the Secretary of the Treasury and is published by the Secretary of the Treasury annually or quarterly in the **Federal Register** and the Treasury Financial Manual Bulletins.

(b) The rate of interest initially assessed will remain fixed for the duration of the indebtedness, except that if a debtor defaults on a repayment agreement interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(c) The MSPB shall charge debtors for administrative costs incurred in handling overdue debts.

(d) Interest will not be charged on administrative costs.

(e) The MSPB shall assess a penalty charge, not to exceed 6 percent per year on debts which have been delinquent for more than 90 days. This change shall accrue from the date that the debt became delinquent.

(f) The Chairman or his designee may waive in whole or in part the collection of interest and administrative and penalty charges if determined that collection would be against equity or not in the best interests of the United States. The MSPB shall waive the collection of interest on the debt or any part of the debt which is paid within 30 days after the date on which interest began to accrue.

§ 1210.28 Administrative offset.

(a) The MSPB may collect debts owed by administrative offset if:

(1) The debt is certain in amount;

(2) Efforts to obtain direct payment have been, or would most likely be unsuccessful, or the MSPB and the debtor agree to the offset;

(3) Offset is cost effective or has significant deterrent value; and

(4) Offset is best suited to further and protect the Government's interest.

(b) The MSPB may offset a debt owed to another Federal agency from amounts due or payable by the MSPB to the debtor or request another Federal agency to offset a debt owed to the MSPB;

(c) Prior to initiating administrative offset, the MSPB will send the debtor written notice of the following:

(1) The nature and amount of the debt and the agency's intention to collect the debt by offset 30 days from the date the notice was mailed if neither payment nor a satisfactory response is received by that date;

(2) The debtor's right to an opportunity to submit a good faith alternative repayment schedule to inspect and copy agency records pertaining to the debt, to request a review of the determination of indebtedness; and to enter into a written agreement to repay the debt; and

(3) The applicable interest.

(d) The MSPB may effect an administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (c) of this section if:

(1) Failure of offset would substantially prejudice the Government's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit completion of those procedures.

§ 1210.29 Use of credit reporting agencies.

(a) The MSPB may report delinquent accounts to credit reporting agencies consistent with the notice requirements contained in the § 1210.26. Individual debtors must be given at least 60 days written notice that the debt is overdue and will be reported to a credit reporting agency.

(b) Debts may be reported to consumer or commercial reporting agencies. Consumer reporting agencies are defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The MSPB may disclose only an individual's name, address, Social Security number, and the nature, amount, status and history of the debt and the program under which the claim arose.

§ 1210.30 Collection services.

(a) The MSPB may contract for collection services to recover outstanding debts. The MSPB may refer delinquent debts to private collection agencies listed on the schedule compiled by the General Services Administration. In such contracts, the MSPB will retain the authority to resolve disputes, compromise claims, terminate or suspend collection, and refer the matter to the Department of Justice or the General Accounting Office.

(b) The contractor shall be subject to the disclosure provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(m)), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. The contractor shall be strictly accountable for all amounts collected.

(c) The contractor shall be required to provide to the MSPB any data contained in its files relating to the debt account upon agency request or upon returning an account to the MSPB for referral to the Department of Justice for litigation.

§ 1210.31 Referral to the Department of Justice or the General Accounting Office.

Debts over $600 but less than $100,000 which the MSPB determines can neither be collected nor otherwise disposed of will be referred for litigation to the United States Attorney in whose judicial district the debtor is located. Claims for amounts exceeding $100,000 shall be

referred for litigation to the Commercial Litigation Branch, Civil Division of the Department of Justice.

§ 1210.32 Compromise, suspension and termination.

(a) The Chairman of the MSPB or his designee may compromise, suspend or terminate the collection of debts where the outstanding principal is not greater than $20,000. MSPB procedures for writing off outstanding accounts are available to the public.

(b) The Chairman of the MSPB may compromise, suspend or terminate collection of debts where the outstanding principal is greater than $20,000 only with the approval of, or by referral to the United States Attorney or the Department of Justice.

(c) The Chairman of the MSPB will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

§ 1210.33 Omissions not a defense.

Failure to comply with any provisions of this rule may not serve as a defense to any debtor.

Dated: December 5, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-28706 Filed 12-7-89; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 422

[Docket No. 7694S]

Potato Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule, correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published an interim rule with request for comment in the Federal Register on Tuesday, October 24, 1989, at 54 FR 43276, amending the Potato Crop Insurance Regulations (7 CFR 422) by changing the end of insurance period for potatoes in Delaware, Maryland, and New Jersey. In that publication the heading to the document was inadvertently titled as the General Crop Insurance Regulations. This notice is published to correct that error.

ADDRESS: Written comments on this correction may be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. No. 89-24986, appearing at page 43276, is corrected by amending the title of the document to read as follows: "Potato Crop Insurance Regulations".

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

Done in Washington, DC on November 29, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-28649 Filed 12-7-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 697]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 8 through December 14, 1989. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 697 (7 CFR part 907) is effective for the period from December 8 through December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-8139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988-89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988-89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989-90 production is 79,800 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988-89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets.

The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 62 percent of the 1989–90 crop of 79,800 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (9 percent) or processed (29 percent). This compares with the 1988–89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989–90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Schlatter. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** (54 FR 42966). The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Three comments were received. The Department is continuing its analysis of the comments received and the analysis will be made available to interested persons. That analysis will assist the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on December 5, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of eight to one with one abstention, that 2,050,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections set forth in its 1989–90 marketing policy. This recommended amount is the same as that estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 2,050,000 cartons, 1,988,500 are allotted for District 1, and 61,500 are allotted for District 3. Districts 2 and 4 are not regulated as they do not have a sufficient quantity of fruit available for current shipment.

During the week ending on November 30, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,586,000 cartons compared with 1,259,000 cartons shipped during the week ending on December 1, 1988. Export shipments totaled 166,000 cartons compared with 135,000 cartons shipped during the week ending on December 1, 1988, and processing and other uses accounted for 321,000 cartons compared with 239,000 cartons shipped during the week ending on December 1, 1988.

Fresh domestic shipments to date this season total 6,734,000 cartons compared with 4,015,000 cartons shipped by this time last season. Export shipments total 950,000 cartons compared with 347,000 cartons shipped by this time last season. Processing and other use shipments total 1,687,000 cartons compared with 1,055,000 cartons shipped by this time last season.

For the week ending on November 30, 1989, handlers in District 1 had net undershipments of 98,000 cartons and handlers in District 3 had net undershipments of 3,000 cartons. Thus, undershipments of 101,000 cartons will be carried over into the week ending on December 7, 1989. Preliminary adjusted allotment for the week ending on December 7, 1989, is 1,723,000 cartons.

The average f.o.b. shipping point price for the week ending on November 30, 1989, was $7.38 per carton based on a reported sales volume of 1,342,000 cartons compared with last week's average of $7.89 per carton on a reported sales volume of 826,000 cartons. The season average f.o.b. shipping point price to date is $8.47 per carton. The average f.o.b. shipping point price for the week ending on December 1, 1988, was $8.73 per carton; the season average f.o.b. shipping point price at this time last season was $9.81 per carton.

The Committee reports that overall demand for navel oranges has improved and now ranges from good to excellent.

According to the National Agricultural Statistics Service, the 1988–89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.86 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989–90 season average fresh on-tree price would be $4.33 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989–90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 8 through December 14, 1989, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 5, 1989, and this action needs to be effective for the regulatory week which begins on December 8, 1989. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers have been apprised of the provisions of this rule and the effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

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

PART 90—[AMENDED]

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

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

2. Section 907.997 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regualtions.

§ 907.997 Navel Orange Regulation 697.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 8 through December 14, 1989, is established as follows:

(a) District 1: 1,988,500 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 61,500 cartons;
(d) District 4: unlimited cartons.

Dated: December 6, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–28883 Filed 12–7–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Regulation 695]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 695 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period from December 10 through December 16, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 695 (7 CFR part 910) is effective for the period from December 10 through December 16, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

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

Pursuant to requirements set forth in the Regulation Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on December 5, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demands for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the

Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

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

2. Section 910.995 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.995 Lemon Regulation 695.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 10, 1989, through December 16, 1989, is established at 300,000 cartons.

Dated: December 6, 1989.

Charles R. Brader,

Director Fruit and Vegetable Division.

[FR Doc. 89–28882 Filed 12–7–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Policy and Procedures for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: modification.

SUMMARY: The NRC is publishing a modification to its Enforcement Policy to add an additional civil penalty adjustment factor for violations involving maintenance deficiencies. This policy is codified as Appendix C to 10 CFR part 2.

EFFECTIVE DATE: December 8, 1989. However, it will only be applied for violations which occur after March 8, 1990. Comments submitted on or before February 6, 1990, will be considered.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m., weekdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–0741.

SUPPLEMENTARY INFORMATION: On March 23, 1988, the Commission issued a Policy Statement on Maintenance of Nuclear Power Plants (53 FR 9430) which stated the Commission's expectations in the area of maintenance and its intention to proceed with a rulemaking on maintenance. Subsequently, on November 28, 1988, the Commission published a Notice of Proposed Rulemaking (53 FR 47822) directed toward improving the effectiveness of maintenance programs. The Commission recognizes that the industry and individual licensees have made improvements in their maintenance programs. Indeed, the Commission has seen noticeable progress by the industry over the past four years in the area of nuclear power plant maintenance. The Commission also recognizes that the industry is committed to continue to improve maintenance. Nevertheless, NRC maintenance team inspections have confirmed that further improvements are necessary, especially with regard to effective implementation of maintenance programs. In view of the progress made to date, as well as the industry's expressed commitment to continue to improve maintenance, the Commission has decided to hold rulemaking in abeyance for a period of 18 months from the effective date of the Revised Policy Statement on Maintenance of Nuclear Power Plants which was published elsewhere in this issue. The Commission will assess the need for rulemaking at the conclusion of this 18 month period, based upon industry initiatives and progress in improving maintenance.

The Commission believes that a strong maintenance program can make a significant contribution to safety. In the Revised Policy Statement on the Maintenance of Nuclear Power Plants, the Commission stated its intention to emphasize maintenance in enforcing existing requirements for power reactors. Consistent with that position, the Enforcement Policy is being revised to provide such emphasis by adding maintenance failures as an escalating factor in assessing civil penalties where it has been concluded that the violation involves a significant regulatory concern. The Commission acknowledges that inclusion of the root cause of a violation as an escalation factor when considering a civil penalty is a change from past practice. Further, the Commission recognizes that consideration of only one root cause (maintenance) as a specific escalating factor focuses on only a fraction of the possible casual factors that may be involved in a particular violation.

By this change, the Commission is not establishing a new group of civil penalty actions. Consistent with current practice, a violation will be considered for escalated action (Severity Level I, II, or III violations) based on the violation, including its impact, circumstances, and root causes. Special escalation will only apply if the violation or problem area (aggregated violations) has a maintenance root cause.

The Commission concludes that modifying the Enforcement Policy to permit increased civil penalties for Severity Level I, II, or III violations which occur 90 days or later after the date of this notice and which result from maintenance deficiencies may provide a further incentive to ensure that all licensees place appropriate attention on maintenance of equipment whose failure could significantly impact safety. Use of the Commission's enforcement program in this manner to emphasize the importance of meeting existing requirements related to maintenance is warranted because of the varying quality of licensee maintenance programs, including implementation, and the decision to hold in abeyance the rulemaking on maintenance. By this revision to the Enforcement Policy, the Commission is putting licensees on notice that the decision to defer a maintenance rule does not mean the Commission does not expect a serious licensee effort in the maintenance area. It is expected that the revision to the Enforcement Policy will remain effective at least until the Commission reconsiders the need for rulemaking in the maintenance area.

Since this action concerns a general statement of policy, no prior notice is required and, hence, this modification to the Enforcement Policy is effective upon issuance. However, the modification for maintenance will only be applied for violations which occur 90 days or later after the date of publication.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Civil

penalty, Enforcement, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Violations, and Waste treatment and disposal.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 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. Appendix C, section V.B is amended by adding section V.B.7 directly after paragraph 3 of section V.B.6 to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

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V. Enforcement Actions. * * *

B. Civil Penalty * * *

7. Maintenance-Related Cause

The base civil penalty may be increased as much as 50% for cases where a cause of a maintenance-related violation at a power reactor is a programmatic failure. For the purposes of application of this factor, a cause of the violation shall be considered to be maintenance-related if the violation could have been prevented by implementing a maintenance program consistent with the scope and activities defined by the Revised Policy Statement on the Maintenance of Nuclear Power Plants. In assessing this factor, consideration will be given to, among other things, whether a failure to perform maintenance or improperly performed maintenance was a programmatic failure. The degree of the programmatic failure will be considered in applying this factor.

* * * * *

Dated at Rockville, Maryland, this 5th day of December 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-28742 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 50

Maintenance of Nuclear Power Plants; Revised Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised policy statement.

SUMMARY: The Commission believes safety can be enhanced by improving nuclear power plant maintenance across the nuclear industry. Consistent with this belief, the Commission previously published a final policy statement on maintenance on March 23, 1988 (53 FR 9430), and a proposed rule on November 28, 1988 (53 FR 47822). The Commission recognizes that the industry and individual licensees have made improvements in their maintenance programs. Indeed, the Commission has seen noticeable progress by the industry over the past four years in the area of nuclear power plant maintenance. The Commission also recognizes that the industry is committed to continue to improve maintenance. Nevertheless, NRC maintenance team inspections have confirmed that further improvements are necessary, especially with regard to effective implementation of maintenance programs. In view of the progress made to date, as well as the industry's expressed commitment to continue to improve maintenance, the Commission has decided to hold rulemaking in abeyance for an 18 month period to monitor industry initiatives and progress and, at the end of this 18 month period, to assess the need for rulemaking in this area. This revised policy statement is being issued to describe the Commission's expectations during this 18 month period, as well as the Commission's planned actions during and at the conclusion of this period. This policy statement contains a voluntary solicitation of reporting and record keeping that is subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). It will be submitted to the Office of Management and Budget for review and approval of the information collections.

EFFECTIVE DATE: This revised policy statement is effective December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Moni Day, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-3730.

Background

On March 23, 1988 (53 FR 9430), the Commission published a Policy Statement on Maintenance of Nuclear Power Plants which stated the Commission's expectations in the area of maintenance and the intention to proceed with a rulemaking on maintenance. Subsequently, on November 28, 1988, the Commission published a notice of proposed rulemaking (53 FR 47822) directed toward improving the effectiveness of maintenance programs.

NRC's rulemaking initiative served to increase industry attention on this important aspect of nuclear power plant safety. The Commission acknowledges industry's effort and progress directed toward improvements in maintenance and endorses industry maintenance initiatives; however, recent NRC inspections of licensee maintenance programs and their implementation, and evaluations of plant operational data indicate that many licensee maintenance programs need further improvement. For example, there remains a wide variation across the industry in the effectiveness of the implementation of maintenance programs. Areas of weakness include engineering support, root cause analysis, trending, and recordkeeping.

The Commission believes that good maintenance is a key factor in achieving and maintaining a high level of safety in plant operations throughout the life of a nuclear power plant by helping to ensure that equipment will perform its intended function when required. In addition, a well-documented and executed maintenance program is expected to be significant in plant life extension decisions. Because maintenance plays such an important and integral role with plant operations in assuring public safety, the Commission is convinced that continued industry attention and improvement in the maintenance area is needed not only to improve maintenance at some nuclear power plants today, but to ensure performance of effective maintenance at all nuclear power plants in the future. Therefore, the Commission has decided to hold rulemaking in abeyance for a period of 18 months from the effective date of this revised policy statement to permit the Commission to monitor industry initiatives and progress in improving maintenance and to evaluate the need for additional rulemaking.

The Commission is issuing this revised policy statement to describe the Commission's expectations and future actions planned in the maintenance area, and to restate the Commission's views with respect to what constitutes an effective maintenance program.

Revised Policy Statement

The Commission desires to have in place an industry-wide program that will ensure effective maintenance is achieved and maintained over the life of each plant. The Commission expects each licensee to assume responsibility for assuring that an effective maintenance program is or has been developed, implemented and maintained at his facility. The Commission recognizes that the Nuclear Management and Resources Council (NUMARC) and the Institute for Nuclear Power Operations (INPO) can contribute, through their leadership, to an industry-wide program for improving

and maintaining effective maintenance and encourages such leadership.

During the next 18 months, the Commission intends to closely monitor individual licensees and the industry as a whole and assess the need for additional rulemaking in the area of maintenance. This monitoring will include completion of the ongoing Maintenance Team Inspections (including some selected reinspections) and review of other inspection results, and performance indicators; and industry's and individual licensee's performance, commitments, and progress toward improvement. Industry groups and individual licensees are encouraged to provide information to document their commitments and to demonstrate their performance and improvement in maintenance. In addition, the Commission intends to continue development of a rule on maintenance so that at the end of the 18 month period, if rulemaking is determined to be necessary, the Commission will be in a position to promulgate such a rule.

In enforcing existing requirements over this time period, the Commission intends to emphasize maintenance by assessing whether a safety significant violation (i.e., Severity Level III or higher) of license conditions or regulations could have been prevented if an effective maintenance program had been implemented. Accordingly, the Commission, by separate action, is modifying its enforcement policy to provide that, for safety-significant violations where a civil penalty is appropriate, the amount of the penalty for such a violation may be escalated where a programmatic inadequacy in maintenance is a root cause. Furthermore, plant specific orders or letters requesting information pursuant to 10 CFR 50.54(f) may be issued where poor or declining maintenance performance raises safety issues. Additional Commission actions and expectations are discussed below.

The Commission believes that the development and use of a comprehensive performance-based standard for maintenance, which provides guidance and requirements on the scope, goals, performance and activities associated with an effective maintenance program, is important in assuring that maintenance is improved, where necessary, and remains effective over the life of each plant. Therefore, during the next 18 months, the Commission intends to continue to develop, on a cooperative basis with the industry and public, a maintenance standard for commercial nuclear power plants. In this regard, the Commission has issued for comment a standard for maintenance in the form of a draft regulatory guide and announced its availability in the **Federal Register** (54 FR 33988; August 17, 1989). The Commission also intends to hold a workshop early in 1990 to promote further dialogue on the standard. The industry and the public are encouraged to assist in the refinement of this standard or propose a suitable alternative standard for NRC endorsement (to be considered, any alternative standard would need to be proposed to the Commission by March 1, 1990). The Commission intends to have a standard available for use in approximately 1 year and will encourage voluntary industry use and adoption of this standard. Adoption and use of an acceptable standard will be a consideration in evaluating industry's and individual licensee's commitment to achieving and sustaining effective maintenance.

An integral part of an effective maintenance program is the monitoring and feedback of results. The Commission believes that such programs should utilize quantitative information regarding operational history, especially component failures and system reliability/availability to monitor and adjust the maintenance program. Performance indicators that are based upon actual component reliability, system reliability/availability and failure history provide a useful indication of maintenance effectiveness. Such measures are most effective when they are based on a well-structured and component-oriented system, e.g., the Nuclear Plant Reliability Data System (NPRDS), to capture and track equipment history data. The Commission encourages the use of the industry-wide NPRDS data for this purpose, including improved industry use of and participation in the NPRDS to gauge the effectiveness of maintenance. Licensee reporting of such data to the system in a timely and complete manner and licensee use of such data to monitor component failures and system reliability/availability for comparison with overall plant goals or standards, represents one acceptable element of maintenance monitoring.

The Commission intends to develop, validate, and use maintenance effectiveness indicators. The Commission also encourages development and use of such indicators by licensees and the industry such that the progress of improvement in maintenance can be closely monitored. To that effect, the Commission has solicited industry participation in a joint NRC/licensee project with the objective of sharing and comparing development work on maintenance effectiveness indicators.

Finally, the Commission reemphasizes its previous views with respect to elements of an effective maintenance program. Specifically, the Commission expects the scope of each licensee's maintenance program to include all systems, structures and components addressed by existing regulations and licensee commitments and described in the documents (e.g., Final Safety Analysis Report) required by 10 CFR 50.34, whose failure could significantly impact the safety or security of the facility. This includes systems, structures, and components in the balance of plant, since experience has shown that failures in many balance of plant systems, structures, and components can and do have an impact on plant safety or security.

In addition, the Commission defines maintenance as the aggregate of those actions which prevent the degradation or failure of, and which promptly restore the intended function of, structures, systems, and components. As such, maintenance includes not only the activities traditionally associated with identifying and correcting actual or potential degraded conditions (i.e., repair, surveillance, diagnostic examinations, and preventive measures) but extends to include all supporting functions for the conduct of these activities. Accordingly, each commercial nuclear power plant should either have in place or develop and implement a well-defined maintenance program to assure that the above is accomplished. Activities and supporting functions that should be considered in a maintenance program, as defined in this policy statement, are listed below:

(1) Maintenance Management and Technology

Corrective and preventive maintenance programs (the latter may include reliability-centered and predictive maintenance activities) to integrate and focus these activities on structures, systems, and components whose failure could significantly impact safety and to prioritize preventive maintenance tasks. Maintenance management and technology should include consideration of:

(i) Planning.

(ii) Scheduling.

(iii) Staffing.

(iv) Shift Coverage.

(v) Resource Allocation.

(vi) Control of Contracted Maintenance Services.

(vii) Availability of Parts, Tools, and Facilities.

(viii) Measures of Maintenance Program Effectiveness.

(ix) Internal communications between the maintenance organization and plant operations and support groups, as well as communications between plant and corporate management and the plant maintenance organization.

(x) External communications between the plant maintenance organization and individual vendors to consider their recommendations or requirements.

(2) Engineering

Ensure engineering support to maintenance, including root cause analysis and updating the maintenance program as a result of plant modifications.

(3) Radiation Exposure Control

Ensure radiological exposure control including ALARA during maintenance activities.

(4) Maintenance Personnel Qualification and Training

Develop and apply maintenance personnel qualifications and training requirements.

(5) Quality Assurance

Ensure use of quality assurance and quality control to maintenance-related activities.

(6) Documentation

Develop equipment history and trending, maintenance record-keeping, and maintenance procedures.

(7) Testing and Return to Service

Develop and use post-maintenance testing and return to service procedures.

In accordance with the above, the Commission intends to monitor individual licensee and industry commitments, performance, and improvement in maintenance over the next 18 months, and to evaluate the need for additional rulemaking to ensure that effective maintenance is achieved and maintained over the life of each nuclear power plant.

Dated at Rockville, MD, this 5th day of December 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-28741 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 545

[No. 89-358]

RIN 1550-AA06

Agency Offices

Date: October 31, 1989.

AGENCY: Office of Thrift Superivision, Tresaury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("Office") is amending its regulations at 12 CFR part 545 to remove the current restriction banning Federal savings associations from establishing agency offices to originate and service loans outside the same state as the home office of the savings association or the same state of any association's branch office. This change affords Federal savings associations the flexibility required to effectively and efficiently service and manage their multi-state operations. Additionally, the Office is amending 12 CFR 545.96(d) to require notification in writing of agency openings and closings

EFFECTIVE DATE: January 8, 1990.

FOR FURTHER INFORMATION CONTACT: Cindy L. Hausch, Financial Analyst, (202) 906-7488; or Cheryl Martin, Regional Director, (202) 906-7869; or Kathleen Willard, Deputy Director, (202) 906-6789; or Patrick G. Berkakos, Director, Corporate Activities, Supervision (Operations), Office of Thrift Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: In order to allow Federal savings associations to operate more efficiently and to complete more effectively in existing markets, the Federal Home Loan Bank Board ("Board"), predecessor to the Office, proposed to amend 12 CFR 545.96 to remove the restriction that Federal savings associations may not establish agency offices to originate and service loans outside the same state as the home office of the savings association or the same state of any association's branch office. The Board proposed to remove the restriction, thereby allowing Federal savings associations to establish agency offices on a nationwide basis without regard to the location of the home or branch office(s). Board Res. No. 89-1768, 54 FR 30555 (July 21, 1989). The comment period expired on September 19, 1989. The Office received sixteen comments in response to this proposal. Ten were submitted by savings associations, one by a savings association and its nondiversified savings and loan holding company, two by trade associations, one by a service corporation of a savings association involved in out-of-state mortgage banking activities, and two by law firms on behalf of clients.

All of the commenters supported the proposal and strongly favored the adoption of a final rule. None of the commenters expressed any concern about the proposal to expand the geograpical area in which lending offices can be established. Several commenters raised questions about the activities and operations of these offices including state authority over such offices, operation of such offices under a trade name, exportation of interest rates, and the extent of activities to which they can engage. The proposed rule was limited to the question of location of such offices and not to the expansion or modification of the range of activities that such offices could engage in on a more limited geographic basis. Consequently, the Office does not believe it is appropriate to respond to such inquiries at this time. To the extent that commenters have legal questions about the activities of such offices, legal opinions may be requested from the Chief Counsel's office. The commenters noted that allowing agency offices (also referred to as loan production offices) to operate outside an association's branching territory would have numerous benefits, such as:

(1) Increasing the efficiency of Federal savings associations by eliminating the need to create a subsidiary mortgage organization and thus reducing loan origination costs;

(2) Benefiting consumers as a result of increased competition among lending institutions and reduced origination costs;

(3) Eliminating separate recordkeeping, issuance of stock, and formal borrowing arrangements between parent and service corporation, thereby reducing costs and increasing competitiveness;

(4) Permitting Federal savings associations to offer the same lending services as national banks;

(5) Assisting Federal savings associations to originate high quality residential mortgage loans;

(6) Permitting Federal savings associations to open an office in strong lending markets more quickly; and

(7) Assisting Federal savings associations to increase profits, in light of changes due to the Financial Institutions Reform, Recovery and

Enforcement Act of 1989 and the Office's risk-based capital rule.

Having considered the comments summarized above, the Office is adopting an amendment to 12 CFR 545.96 to remove the restriction that Federal savings associations may not establish agency offices to originate and service mortgage loans outside the same state as the home office or any branch office of the savings association. The Office is also amending the section to require notification in writing of agency openings and closings.

Executive Order 12291

It is certified that this final rule does not constitute a "major rule" and, therefore, does not require the preparation of a final regulatory impact analysis.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Office is providing the following final regulatory flexibility analysis.

1. *Need for and objectives of the rule.* These elements are incorporated in the **SUPPLEMENTARY INFORMATION** section.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated in the **SUPPLEMENTARY INFORMATION** section.

3. *Significant alternatives minimizing small-entity impact and agency response.* The rule would have no disportionate impact on small institutions or other entities. Small institutions as well as large ones will benefit from the rule.

List of Subjects in 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office hereby amends part 545, subchapter C, chapter V, title 12, *Code of Federal Regulations*, as set forth below.

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 267 (12 U.S.C. 1828).

2. Amend § 545.96 by revising paragraphs (a) and (d) to read as follows:

§ 545.96 Agency.

(a) *General.* A Federal savings association may, without approval of the Office, to the extent authorized by its board of directors, establish or maintain agencies that only service and originate (but do not approve) loans and contracts or manage or sell real estate owned by the Federal savings association.

* * * * *

(d) *Notice.* A Federal savings association shall notify the District Director in writing when it opens or closes an agency.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-28648 Filed 12-7-89; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Section 7(a)(16) of the Small Business Act (15 U.S.C. 636(a)(16)) (Act) authorities the Small Business Administration (SBA) to guaranty an international trade loan up through $1,000,000, plus a working capital loan of up through $250,000. Final regulations were published on June 5, 1989 (54 FR 23960). Section 7(a)(12) of the Act authorizes SBA to guaranty a pollution control loan up through $1,000,000. Final regulations were published on September 27, 1989 (54 FR 39519). This final rule increases the delegated approval authority of designated SBA officials to reflect these larger guaranty amounts for the two programs.

EFFECTIVE DATE: December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Room 804–D, Washington, DC 20416, telephone (202) 653–6574.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to SBA's organization and procedures; therefore, notice of proposed rulemaking, public participation, analysis under Executive Orders 12291 and 12612 and a regulatory flexibility review, 5 U.S.C. 601, *et seq.*, are not required and this amendment is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegation (Government agencies), Administrative practice and procedure, Organization and functions (Government agencies).

PART 101—[AMENDED]

Accordingly, part 101 of title 13, chapter I of the Code of Federal Regulations, is hereby amended as follows:

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

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

§ 101.3–2 [Amended]

2. In § 101.3–2, part I, section A, the introductory text of item 1.b is revised and a paragraph is added after the table as follows:

Section A—Loan Approval Authority

1. * * *

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

* * * * *

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

(Catalog of Federal Domestic Assistance, No. 59.012 Small Business Loans)

Dated: October 31, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-28697 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Epsiprantel Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect

approval of a new animal drug application (NADA) filed by Beecham Laboratories. The NADA provides for use of epsiprantel tablets as canine and feline anthelmintics.

EFFECTIVE DATE: December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., 501 Fifth St., Bristol, TN 37620, filed NADA 140–893 which provides for use of 12.5-, 25-, 50-, and 100-milligram (mg) Cestex® (epsiprantel) Tablets as an anthelmintic for dogs.

The 12.5–mg tablet is also indicated for use as an anthelmintic in cats. The drug is used for removal of canine and feline cestodes (*Dipylidium caninum* and *Taenia pisiformis* in dogs and *D. caninum* and *T. taeniaeformis* in cats). The NADA is approved and the regulations are amended by adding a new 21 CFR 520.816 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 520

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 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. New § 520.816 is added to read as follows:

§ 520.816 Epsiprantel tablets.

(a) *Specifications.* Each tablet contains either 12.5, 25, 50, or 100 milligrams of epsiprantel.

(b) *Sponsor.* See No. 000029 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 2.5 milligrams per pound of body weight.

(ii) *Indications for use.* Removal of canine cestodes *Dipylidium caninum* and *Taenia pisiformis.*

(2) *Cats*—(i) *Amount.* 1.25 milligrams per pound of body weight.

(ii) *Indications for use.* Removal of feline cestodes *D. caninum* and *T. taeniaeformis.*

(3) *Limitations.* For oral use only as a single dose. Do not use in animals less than 7 weeks of age. Safety of use in pregnant or breeding animals has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 1, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–28667 Filed 12–7–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218, 250, 251, 252, and 256

Collection of Royalties, Rentals, Bonuses and Other Monies Due the Federal Government; Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf; Outer Continental Shelf (OCS) Oil and Gas Information Program; and Outer Continental Shelf Minerals and Rights-of-Way Management, General

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule; technical amendments.

SUMMARY: This rule corrects a number of inadvertent errors that appear in the regulations of the Minerals Management Service (MMS). In addition, several addresses are changed due to a recent consolidation of many of the Washington, DC, area MMS employees. This action is required to notify the public of the errors and changes of addresses referred to above. This rule will facilitate public access to MMS and its regulatory program.

EFFECTIVE DATE: December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION: The final rule published by MMS in the **Federal Register** on April 1, 1988 (53 FR 10596), consolidated and restructured various existing rules contained in regulations, OCS Orders, and Notices to Lessees and Operators. That rule contained, or created, a number of errors that are being corrected by this action. These errors are technical in nature and are primarily inadvertent omissions, typographical errors, and changes in references. Additional changes are being made to notify the public of a change of address for several offices of MMS that occurred in April and May 1989.

The MMS is issuing this technical amendment of 30 CFR parts 218, 250, 251, 252, and 256 as a final rule under the authority of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) for the following reasons:

(1) The changes in the rules are determined to be "technical amendments" or attributable to changes made by the rules published on April 1, 1988, or as the result of the relocation of several offices of MMS in April and May 1989.

(2) The final rules have already been subject to public review and comment.

(3) The substance of the final rules has not changed.

This final rule is being made effective upon publication under the authority conferred by 5 U.S.C. 553(d) for the reasons set forth in the preceding paragraph.

This notice makes technical corrections to 30 CFR Part 218—Collection of Royalties, Rentals, Bonuses and Other Monies Due the Federal Government; 30 CFR Part 250—Oil and Gas and Sulphur Operations in the Outer Continental Shelf, as published by MMS on April 1, 1988 (53 FR 10596); 30 CFR Part 251—Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf; 30 CFR Part 252—Outer Continental Shelf (OCS) Oil and Gas Information Program; and 30 CFR 256—Outer Continental Shelf

Minerals and Rights-of-Way Management, General.

This rule does not establish any new information collection and reporting requirements nor does it change the substance of the subject regulations.

This amendment is not a major rule for the purposes of Executive Order 12291; therefore, a regulatory impact analysis is not required. The Department of the Interior (DOI) has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

The rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Thus a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

The DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

Author: This document was prepared by Jeff Wiese, Offshore Rules and Operations Division, MMS.

List of Subjects

30 CFR Part 218

Coal, Continental shelf, Electronic funds transfer, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Research.

30 CFR Part 252

Continental shelf, Freedom of information, Intergovernmental relations, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Oil and gas exploration, Pipelines, Public lands-mineral resources, Public lands rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: November 17, 1989.

M. Edward Cassidy,

Deputy Director, Minerals Management Service.

For the reasons set forth in the preamble, 30 CFR parts 218, 250, 251, 252, and 256 are amended as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§ 218.154 [Amended]

2. Section 218.154, in paragraph (a), remove the phrase " § 250.12(a)(1) (ii), (iii) or (iv) of the title, the Director," and add in its place the phrase "30 CFR 250.10 (b)(2) through (b)(4), the Regional Supervisor,".

§ 218.154 [Amended]

3. Section 218.154, in the introductory text of paragraph (b), remove the word "Director" and add in its place the words "Regional Supervisor"; in paragraph (b)(1), remove the citation "30 CFR 250.12 (b)(1) or (c)" and in its place add the citation "30 CFR 250.10(a); and in paragraph (b)(2), remove the citation "30 CFR 250.12 (a)(1)(i) or (c)" and add in its place the citation "30 CFR 250.10 (b)(1), (b)(5) through (b)(7), or (c)".

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

4. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

§ 250.3 [Amended]

5. Section 250.3, in paragraph (b) add the word "or" following the words "natural resources,".

§ 250.12 [Amended]

6. Section 250.12, in paragraph (e)(5), remove the incorrectly spelled word "forfieted" and add in its place the correctly spelled word "forfeited".

§ 250.33 [Amended]

7. Section 250.33, in the introductory text of paragraph (b)(19), add the phrase "or § 250.46" after the citation "§ 250.45".

§ 250.34 [Amended]

8. Section 250.34, in the introductory text of paragraph (b)(12), add the phrase "or § 250.46" after the citation "§ 250.45".

§ 250.34 [Amended]

9. Section 250.34, in the third sentence of paragraph (q)(2), add a comma between the words "evaluated" and "requires".

§ 250.51 [Amended]

10. Section 250.51, in the first sentence of paragraph (g), remove the word "drilling".

§ 250.53 [Amended]

11. Section 250.53, in paragraph (c), remove the citation "9.3" and add in its place the citation "9.4".

§ 250.79 [Amended]

12. Section 250.79, in the second sentence, remove the word "safety" and add in its place the word "safely".

§ 250.85 [Amended]

13. Section 250.85, in the last sentence of paragraph (c)(1), remove the phrase "of rig air" and add in its place the phrase "if rig air".

§ 250.86 [Amended]

14. Section 250.86, in the second sentence of paragraph (a), remove the word "rate" and add in its place the word "rated".

§ 250.100 [Amended]

15. Section 250.100, in the second sentence, remove the phrase "remote operated or automatic-manual" and add in its place the phrase "remote operated manual or automatic".

§ 250.105 [Amended]

16. Section 250.105, in the last sentence of paragraph (c)(1), remove the phrase "operations of rig" and add in its place the phrase "operations if rig".

§ 250.106 [Amended]

17. Section 250.106, in the third sentence of paragraph (a), remove the word "sized" and add in its place the word "sizes".

§ 250.106 [Amended]

18. Section 250.106, in the fourth sentence of paragraph (b)(2), remove the word "blindor" and add in its place the words "blind or".

§ 250.107 [Amended]

19. Section 250.107, in the second sentence of paragraph (d), remove the word "reinstated" and add in its place the word "reinstalled".

§ 250.121 [Amended]

20. Section 250.121, in the introductory text of paragraph (d), add the words "one of" after the word "that" so that it reads "* * * satisfaction that one of the following criteria are met:", and in paragraph (d)(2), remove the last word "and" and add in its place the word "or".

§ 250.126 [Amended]

21. Section 250.126, in the last sentence of paragraph (a), remove the address "12203 Sunrise Valley Drive; Reston, Virginia 22091" and add in its place the address "381 Elden Street; Herndon, Virginia 22070–4817".

§ 250.154 [Amended]

22. Section 250.154, in the first sentence of paragraph (b)(2), remove the word "delivering" and add in its place the word "boarding".

§ 250.154 [Amended]

23. Section 250.154, in the second sentence of paragraph (b)(3), remove the word "at" and add in its place the phrase "not to exceed" so that the sentence reads: "The PSHL shall be set not to exceed 15 percent above and below the normal operating pressure range."

§ 250.159 [Amended]

24. Section 250.159, in the first sentence of paragraph (a)(1), remove the incorrectly spelled word "pipline" and add in its place the correctly spelled word "pipeline".

§ 250.161 [Amended]

25. Section 250.161, in paragraph (c)(2), remove the citation "(d)(1)" and add in its place the citation "(c)(1)".

§ 250.180 [Amended]

26. Section 250.180, in the first sentence of paragraph (f)(1), add the words "based, shall be" between the words "be equipped" so that it reads "* * * which royalty shall be based, shall be equipped with a * * *".

§ 250.204 [Amended]

27. Section 250.204, in the last sentence of paragraph (e), remove the citation "§ 250.23" and add in its place the citation "§ 250.24".

§ 250.206 [Amended]

28. Section 250.206, in paragraph (a)(4), remove the form number "(Form DI–10406)" and add in its place the form number "(Form DI–1040)".

§ 250.210 [Amended]

29. Section 250.210, in the last sentence of the introductory paragraph, remove the word "test" and add in its place the word "text".

§ 250.210 [Amended]

30. Section 250.210, in the first sentence of paragraph (b), remove the address "Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, Virginia 22091" and add in its place "Minerals Management Service; Mail Stop 646; 381 Elden Street; Herndon, Virginia 22070–4817".

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

31. The authority citation for part 251 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.* (1970).

§ 251.5–3 [Amended]

32. Section 251.5–3, in paragraph (a), remove the address "1951 Kidwell Drive, Vienna, Virginia 22180" and add in its place the address "381 Elden Street, Herndon, Virginia 22070–4817".

§ 251.6–3 [Amended]

33. Section 251.6–3, in the first sentence of paragraph (a), remove the incorrectly spelled word "stratigraghic" and add in its place the correctly spelled word "stratigraphic".

PART 252—OUTER CONTINENTAL SHELF (OCS) OIL AND GAS INFORMATION PROGRAM

34. The authority citation for part 252 continues to read as follows:

Authority: OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; Freedom of Information Act, 5 U.S.C. 552; § 252.3 also issued under Pub. L. 99–190 making continuing appropriations for Fiscal Year 1986, and for other purposes.

§ 252.5 [Amended]

35. Section 252.5, in the first sentence of paragraph (a), remove the phrase "in conjunction with the Director of the Bureau of Land Management" and the citation "43 CFR 3300.2"; and add in the place of the citation "30 CFR 256.10" so that the sentence reads: "The Director shall prepare an index of OCS information (see 30 CFR 256.10)."

PART 256—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

36. The authority citation for part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

§ 256.0 [Amended]

37. Section 256.0 in the first sentence add the phrase "of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance" after the word "Office" so that the sentence reads: "The information collection requirements contained in 30 CFR part 256 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0006."

§ 256.7 [Amended]

38. Section 256.7, in paragraph (a), remove the words "Geological Survey" and "part 250 *et seq*" and add in their places the words "Minerals Management Service" and parts 250 and 270", respectively, so that the sentence reads: "For Minerals Management Service regulations governing exploration, development and production on leases, see 30 CFR parts 250 and 270."

§ 256.72 [Amended]

39. In § 256.72, remove the phrase "as provided in 30 CFR 250.33".

§ 256.73 [Amended]

40. Section 256.73, in paragraph (a), remove the word "Director" and the citation "30 CFR 250.12(c), (d)(1) or (d)(4)", and add in their places the words "Regional Supervisor" and the citation "30 CFR 250.10(a), (b)(2) through (b)(7), or (c)", respectively.

§ 256.73 [Amended]

41. Section 256.73, in paragraph (b), remove the word "Director" and the citation "30 CFR 250.12(c), (d)(1), or (d)(4)", and add in their places the words "Regional Supervisor" and the

citation "30 CFR 250.10(a), (b)(2) through (b)(7), or (c)", respectively.

[FR Doc. 89-28584 Filed 12-7-89; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

Federal Payments Made Through Financial Institutions by the Automated Clearing House Method

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Final rule: correction.

SUMMARY: The Financial Management Service is correcting clerical errors in referencing paragraphs as a result of the amendments which appeared in the Federal Register on May 12, 1989.

FOR FURTHER INFORMATION CONTACT: Sheryl Morrow, Manager, Policy Research Branch, Financial Management Service, U.S. Department of the Treasury, room 328, Liberty Center, 401 14th Street SW., Washington, DC 20227, (202) 287-0308.

SUPPLEMENTARY INFORMATION: The Financial Management Service has promulgated regulations for Federal payments made through financial institutions by the Automated Clearing House Method. Amendments to the regulations promulgated on May 12, 1989 (54 FR 20568) added certain provisions which caused some paragraph references to change. Errors in the reference to paragraphs are corrected by this notice.

The following corrections are made in 31 CFR part 210 published on May 12, 1989 (54 FR 20568).

§§ 210.10-210.14 [Correctly Redesignated as §§ 210.11-210.15]

1. Section 210.10 is redesignated as § 210.11.

2. Section 210.11 is redesignated as § 210.12.

3. Section 210.12 is redesignated as § 210.13.

4. Section 210.13 is redesignated as § 210.14.

5. Section 210.14 is redesignated as § 210.15.

W.E. Douglas,

Commissioner.

[FR Doc. 89-28631 Filed 12-7-89; 8:45 am]

BILLING CODE 4810-35-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 33 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the regulations for mailing etiologic agent preparations, clinical specimens and biological products, and regulations concerning the eligibility of "Plus" issues for second-class mail privileges, have previously been published in the Federal Register.

EFFECTIVE DATE: December 17, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 33, dated December 17, 1989. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office. The following excerpt from the Summary of Changes section of the transmittal letter for issue 33 covers the minor changes not previously described in interim or final rules published in the Federal Register.

Summary of Changes

Chapter 1

Section 113.84, *Recruiting Posters,* is amended to delete the last sentence pertaining to the display of recruitment posters because it conflicts with the flag display policy in *Administrative Support Manual* 440. (PB 21750, 11-16-89)

Section 122.4, *Simplified Address,* is retitled *Alternative Addressing Formats.* Concurrently, section **122.41** is retitled *Simplified Address Format,* and other sections are renumbered to provide clearer organizational structure within the section. (PB 21750, 11-16-89)

Exhibits 122.63*a-r* are revised to reflect mail processing changes effective September 23, 1989. (PB 21744, 9-28-89)

* * * * *

Section 124.63, *Live Animals,* is amended to provide for the mailing of live day-old partridges and quail. (PB 21745, 10-5-89)

Section 124.63*b(1)* is revised to allow adult chickens, guinea fowl, turkeys, doves, pheasants, partridges, quail, ducks, geese and swan, as well as pigeons, to enter the mailstream via Express Mail if they are packaged in biologically secure containers approved by the Office of Classification and Rates Administration. (PB 21747, 10-19-89)

Section 137.252 is updated with several new agencies and deletes/changes several business reply mailer permits. Additionally, the titles of several agencies have been changed and others have changed from a sampling number (RPW) to direct accountability (M).

Section 145.927*a, Responsibility,* is revised to clarify that the final approval authority is the General Manager of the Rates and Classification Center that serves the post office where the AMS request was submitted. No other concurrence is required. (PB 21744, 9-28-89)

Section 146.123, is amended to clarify procedures for handling mailable matter found in the mailstream without postage affixed that is intended for delivery by a private delivery company. (PB 21748, 10-26-89)

Section 148.2, *Appeal of Ruling,* is revised to add that, in addition to a General Manager, Rates and Classification Center, any general manager of a division in the Office of Classification and Rates Administration may assess a revenue deficiency. (PB 21743, 9-21-89)

Chapter 3

Section 326, *Priority Mail,* is amended to authorize the use of merchandise return service to provide reshipment, via Priority Mail, for mail sent to post office box addresses at one or more other postal facilities. (PB 21749, 11-2-89)

Sections 362.4, 362.5, 362.6, and 365.25 are revised and **382.4** was added to modify the rate markings and postage payment requirements for pieces mailed at the ZIP+4 and ZIP+4 Barcoded rates. Material previously contained in 382.4 was renumbered 382.5. (PB 21749, 11-2-89)

Chapter 4

* * * * *

Section 429 is revised to: (1) clarify that "external dimensions" of the supplement referred to in 429.112*e* and 429.182*c* are the length and height; (2) amend 429.114 to clearly provide mailers of supplements to unbound publications with the option of complying with the requirements for supplements to bound

publications; (3) amend 429.31*g* to clarify the definition of "label carrier" to provide that it is a single, unfolded, and uncreased sheet of paper or card stock; and (4) amend 429.31*g(4)* to extend the alternatives for placement of addresses and address labels to include addresses on subscription, renewal, gift, and request forms and receipts. (PB 21744, 9–28–89)

Section 429.31*g(2)* **"Note" under** *General Addressing* is revised to include instructions for printing material on the front of a label carrier and to further clarify the placement of advertisement material on the reverse side of label carriers. (PB 21745, 10–5–89)

Section 445.223*e*, **445.233, and 445.242** are amended to (1) remind that second-class mail for foreign destinations must be prepared in sacks according to regulations in *International Mail Manual* 244.52 and (2) to emphasize that such mail cannot be prepared on pallets. (PB 21744, 9–28–89)

Chapter 6

Sections 662.4, 662.5, and 662.6 are revised to modify the rate markings and postage payment requirements for pieces mailed at ZIP+4 and ZIP+4 Barcoded rates. (PB 21749, 11–2–89)

Sections 667.13, 667.32, and 667.42 have been revised specifically to allow mailers of nonidentical-weight bulk third-class mailings the more stringent option of preparing sacks whenever 125 pieces or 15 pounds of pieces is developed for the same presort destination, provided adequate documentation can be presented in support of the mailing. These sections were also reorganized and recodified for added clarification. (PB 21750, 11–16–89)

Section 681.32, *Meter Stamps,* is revised to provide that regulations which allow the lowest rate to be affixed to each piece in a metered or precanceled stamp ZIP+4 mailing apply to mailings of nonidentical-weight pieces as well as identical-weight pieces. The application of this regulation to nonidentical-weight pieces is being permitted because the documentation required for the ZIP+4 rate levels involved is sufficiently detailed to allow verification of the mailings for accurate preparation and postage payment. (PB 21739, 8–24–89)

Chapter 7

Section 725.4*d*, adds the words "library rate" for clarification. (PB 21749, 11–2–89)

Chapter 9

Exhibit 911.21 is revised to add a note clarifying that $25,000 is the maximum amount of postal insurance available. Fees for articles valued over that amount are for handling only. (PB 21744, 9–28–89)

Section 911.22, *Payment of Fees and Postage,* is revised to include the requirement that whenever a permit is used on registered mail, the exact amount of postage and fees paid must be shown within the imprint. (PB 21749, 11–16–89)

Part 919, *Merchandise Return,* is amended to authorize the use of merchandise return service to provide reshipment, via Priority Mail, for mail sent to post office box addresses at one or more other postal facilities. (PB 21749, 11–2–89)

Section 919.41, is amended to provide for printing of the merchandise label directly on the mailpiece. (PB 21739, 8–24–89)

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	**Federal Register** publication
33	Dec. 17, 1989	54 FR [insert FR page number]

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89–28629 Filed 12–7–89; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3694–6]

Ocean Dumping: Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an existing dredged material disposal site located in the Gulf of Mexico near the Barataria Bay Waterway (BBWW) for the continued disposal of dredged material removed from the BBWW. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time, but the site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective on January 8, 1990.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this designation is available for public inspection at the following locations:

EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202.

Corps of Engineers, New Orleans District, Foot of Prytania Street, room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the BBWW site for the disposal of material dredged from the BBWW. In January 1980, the interim status of the BBWW site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions

significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) have jointly prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Barataria Bay Waterway, Louisiana Ocean Dredged Material Disposal Site Designation." On August 11, 1989, a notice of availability of the Final EIS for public review and comment was published in the Federal Register. The public comment period on this final EIS closed on September 11, 1989. No comments were received on the Final EIS.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE has coordinated a no adverse effect determination with the National Marine Fisheries Service (NMFS) and NMFS has concurred with this determination. The State of Louisiana has indicated that EPA's action is not consistent with the Louisiana Coastal Zone Management Program. However, EPA has determined that designation of the BBWW site is consistent, to the maximum extent practicable, with the Coastal Zone Management Act.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR part 227 by providing EPA a letter containing all the necessary information.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Final EIS based on information from the COE. The nearest land disposal area occurs about 3.5 miles north of the disposal site. However, this area is already used for disposal of material dredged from the bay portion of the BBWW. Using this or other sites would increase costs considerably and reduce their life expectancy, necessitating acquisition of new areas. Accordingly, this alternative was not considered feasible. Marsh creation and beach nourishment with BBWW material were also evaluated. Because of increased transportation costs, these alternatives were also determined not practicable.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located further east or immediately west of the existing site was also evaluated. However, no environmental benefits would be gained by its selection.

The EIS presented the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations and other applicable Federal environmental legislation. This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On August 18, 1989, EPA proposed designation of this site for the continuing disposal of dredged materials from the BBWW. The public comment period on this proposed action closed on October 2, 1989. No comments were received on the proposed rule.

The BBWW ocean disposal site is located off the Barataria Basin of southeast Louisiana. The northern end of the site is about 1.25 miles southeast of Grand Terre Island and about 2.0 miles east of Grand Isle in Jefferson Parish. The site extends approximately three miles offshore. Water depths at the site range from 8 to 20 feet. The coordinates of the rectangular shaped site are as follows: 29°16'10" N., 89°56'20" W.; 29°14'19" N., 89°53'16" W.; 29°14'00" N., 89°53'36" W.; 29°16'29" N., 89°55'59" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Final EIS, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the site are reviewed below in terms of the eleven specific factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).)

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography gently slopes to the southeast (2.0 feet per mile).

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).)

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The BBWW ocean disposal site represents a small area of the total range of the fisheries resource. Impacts to endangered or threatened turtles and whales that might utilize the area for the listed activities are negligible. Grand Terre Island harbors a bird nesting colony consisting of black skimmers. This colony is located about 2.5 miles from the disposal site.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).)

The existing ocean disposal site is about 1 mile from the nearest beach on Grand Terre Island. The Grand Terre beach is sparsely used because it is small and accessible only by boat. There is a beach on the eastern end of Grand Isle in Grand Isle State Park, about 1.5 miles to the east, that attracts visitors. The turbidity plume resulting from disposal would be diluted to ambient levels well before reaching either of these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).)

The material to be disposed of is from the adjacent area of the BBWW and consists of a mixture of sand, silt and clay obtained by hydraulic dredge. Sediment grain size generally decreases in the offshore direction, with sands being predominant in the disposal site. Approximately 500,000 cubic yards of material are disposed of in the site during each use. The material is removed with a hydraulic dredge and released in the disposal site. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5).)

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is nearshore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).)

Mixing processes, current characteristics, and sediment transport in the nearshore region off Barataria Pass are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a fairly homogenous water column in the area. Density stratification can occur seasonally to a minor extent with fresher water from the Mississippi River on the surface. In the summer, bottom waters on the Louisiana shelf are occasionally oxygen depleted, which can cause mortality of benthic organisms. During a site study in December 1980, waters were supersaturated with oxygen at all depths. During June 1981, waters were partially saturated or supersaturated with oxygen down to about sixteen feet. Velocities of 3 to 4 knots may occur during storm events. It appears that the predominant current is to the west, but easterly currents occur with storm events. Data on the specifics of currents in the area are sparse.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7).)

Dredged materials from the construction and maintenance of the BBWW have been disposed of at the site since 1960, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor release of trace metals, and a temporary change in sediment grain size. Since the effects of disposal are temporary, there are no cumulative effects.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).)

In the vicinity of the disposal site the majority of shipping traffic is confined to the BBWW. Dredging facilitates shipping; periodic use of the disposal site has some potential for interferring with ship movement in the BBWW during disposal operations.

Nearshore areas contain a productive "high-use" fishing ground for a number of commercial and recreational species. The BBWW site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries. If the material is spread evenly, it will raise bottom elevations within the site by 0.4 feet, which should not result in vessel groundings.

The nearest oyster leases are on the north side of Grand Terre Island about 2.0 miles to the northwest of the site. Designation of the disposal site would not impact these or any other lease areas. Desalination areas do not occur in the vicinity of the disposal site. The site is located near the Grand Isle State Park recreation area. There has been no apparent impact to the park from use of the disposal site and no impact is expected to occur in the future.

Petroleum and mineral-extracting activities occur offshore within 8.0 miles of the site and are not impacted by use of the site. Also there are pipelines that occur throughout the area that have not been impacted by the deposition of dredged material. There is a major oil and gas collection facility that occurs on the eastern end of Grand Isle; it has not been impacted by the use of the disposal site. Intermittent dumping does not interfere with the exploration of production phases of resource development, or with other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).)

Water column concentrations of trace metals were below EPA's water quality criteria during the 1980–1981 study. Chlorinated hydrocarbon concentrations (CHC) in and near the BBWW disposal site were below detection limits, except for dieldrin and DDE. These chemicals were found at slightly higher levels than EPA's 24-hour average criteria, but at levels well below the single measurement criteria.

Nutrient concentrations, turbidity, and suspended solids are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

During the 1980–1981 study, concentrations of chemicals in sediments were strongly related to grain size, with highest levels in silts and clays. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types. Total hydrocarbon concentrations were three to four times higher in June than in December, probably due to riverine sources. The presence of unresolved high molecular weight hydrocarbons showed evidence of chronic petroleum contamination. Concentrations of cyanide, phenol and oil and grease were low and were comparable inside and outside the disposal site.

The benthos at the site was found to exhibit a patchy distribution, spatially and temporally and was dominated by

polychaete worms and the little surf clam. The little surf clam only became dominant during summer on sand substrate. Polychaetes tended to reach highest densities in fine grained sediments. Statistical analyses demonstrated a high variance between dominant species inside and outside of the site. No effects of previous dredged material disposal on benthic organisms could be identified at the disposal site and the macrofauna were characteristic of shallow areas offshore from southern Louisiana.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).)

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11).)

Fort Livingston is a registered historic site on the west end of Grand Terre Island, due north of the disposal site. This landmark has undergone marked subsidence and cannot be restored. A survey to identify other archeological and historical resources is not required at this time. However, a Nautical Resources Plan for the Corps is being prepared in consultation with the Louisiana State Historic Preservation Officer. Under guidelines established by this plan, studies may be done in the future to evaluate impacts to historic shipwrecks that may result from use of the disposal site.

E. Action

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the general criteria and specific factors used for site evaluation. The designation of the BBWW site as an EPA approved Ocean Dumping Site is being published as final rulemaking.

It should be emphasized that, if an ocean dumping site is designated, such site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. And although the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: October 16, 1989.

Robert E. Layton, Jr.,

Regional Administrator of Region 6.

In consideration of the foregoing, subchapter H of chapter I of title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Barataria Bay Waterway, La.—Bar Channel and adding paragraph (b)(81) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(81) Barataria Bay Waterway, Louisiana—Region 6:

Location: 29°16'10" N., 89°56'20" W.; 29°14'19" N., 89°53'16" W.; 29°14'00" N., 89°53'36" W.; 29°16'29" N., 89°55'59" W.

Size: 1.4 square nautical miles.

Depth: Ranges from 8–20 feet.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of Barataria Bay Waterway, Louisiana.

[FR Doc. 89–28694 Filed 12–7–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[General Docket No. 87–505]

National Security Emergency Preparedness Telecommunications Service Priority System

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: This Memorandum Opinion and Order (*MO&O*) adopted by the Chief, Common Carrier Bureau (Bureau), approves procedures manuals and serves as the final regulatory step needed to permit implementation of a new service priority system, called the Telecommunications Service Priority (TSP) System, adopted by the Commission's Report and Order (*Order*) in Gen. Docket 87–505 (FCC 88–341) released November 17, 1988 and published in 3 FCC Rcd 6650 and 53 FR 47535 (1988), with corrections published in 54 FR 151 and 54 FR 1471 (1989). By its *Order*, the Commission amended subpart D and appendices A and B to part 64 of its Rules and Regulations governing (a) the system of priorities for restoration of vital private line services during emergency situations and (b) a precedence system to ensure that communications vital to the national interest will be afforded priority handling in all situations ranging from normal peacetime conditions to various stages of crises.

EFFECTIVE DATE: September 10, 1990.

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

FOR FURTHER INFORMATION CONTACT: James M. Talens, Chief, Domestic Services Branch, Common Carrier Bureau, telephone (202) 634–1800.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *MO&O* in Gen. Docket No. 87–505 adopted November 30, 1989, and released December 1, 1989. The complete document may be inspected and copied during the weekday hours (excluding

federal holidays) of 9 a.m. to 4:30 p.m. in the Commission's Public Reference Room, room 239, 1919 M St., NW., Washington, DC; or a transcript may be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of MO&O

1. The Order amending Part 64 of the rules was initiated by a petition from the Secretary of Defense (DoD) through the National Communications System (NCS), which contended that the Commission's current Restoration Priority (RP) System no longer addresses today's needs for priority treatment of National Security Emergency Preparedness telecommunications service. In its *Order*, the Commission adopted rules to create the TSP System, replacing the RP System, and delegated authority to the Bureau to review implementation manuals to be submitted by DoD. The manuals were filed by DoD on July 14, 1989, in conjunction with its Petition for Declaratory Ruling. By its submission, DoD sought approval of the manuals that will be used by government and industry to implement TSP. The Commission issued public notice on July 20, 1989, inviting comments. Thirteen parties filed comments. The *MO&O* summarizes the comments, resolves the issues raised, and approves the manuals, finding that they contain no provisions which exceed the limitations on delegated authority imposed on NCS by the Commission and do not, on their face, violate any other Commission policy or decision.

2. The *MO&O* also expresses the Bureau's anticipation that future administrative and procedural questions pertaining to the TSP process generally will be addressed in the first instance through the participative process engendered by the Oversight Committee currently being created by NCS.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 89–28615 Filed 12–7–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 69

Access Charges

[CC Docket Nos. 78–72, 80–286; FCC 89–241]

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted certain changes to the part 69 access charge rules that will more equitably distribute the burden of supporting high cost and lifeline assistance among interexchange carriers (IXCs). Under the Commission's rules, the costs associated with the high cost fund and lifeline assistance programs are recovered through a charge assessed on IXCs in proportion to their number of presubscribed lines. The current method of assessing charges could result in some very small IXCs being billed for high cost and lifeline assistance support while other medium sized IXCs would not be billed. Thus, the Commission issued a notice of proposed rulemaking (53 FR 47836 (11/28/88)) that proposed changing the criteria governing which IXCs would be assessed charges to recover the costs attributable to the high cost and lifeline programs. The rules, as amended, will require that only IXCs with more than .05 percent of all nationwide presubscribed lines pay the per-line charge to fund these programs, thereby ensuring a fair distribution of the responsibility of supporting these programs.

EFFECTIVE DATE: January 8, 1990.

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

FOR FURTHER INFORMATION CONTACT: Marian Gordon, Policy and Program Planning Division, Common Carrier Bureau (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (FCC 89–241), adopted July 21, 1989 and released August 7, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 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.

Summary of Report and Order

1. On May 19, 1987, the Commission released an order (NTS Recovery Order, 52 FR 21536 (6/8/87)) that adopted a Federal/State Joint Board Recommended Decision (52 FR 19896 (5/28/87)) that recommended improvements in the existing non-traffic sensitive (NTS) cost recovery mechanisms. The Joint Board recommendation involved the level of subscriber line charges, expansion of the Federal lifeline assistance program, a retargeting of high cost assistance measures, and a restructuring of the existing common line tariff and pooling system, as well as the mechanism for recovery of high cost and lifeline assistance.

2. Originally, the costs of high cost assistance and the lifeline programs were recovered through the nationwide common line pooling process and the carrier common line (CCL) charge. However, in the May 19, 1987 NTS Recovery Order, the Commission amended the rules so as to fund all of these programs through a charge assessed on IXCs in proportion to their number of presubscribed lines.

3. At the end of 1987, NECA conducted a voluntary data collection to gather presubscribed line information from the LECs in order to develop a workable new system for high cost and lifeline billing. The preliminary data collected by NECA indicated that the existing presubscribed lines criteria yielded unexpected and anomalous results in the selection of IXCs that are assessed charges for high cost and lifeline assistance support. NECA informed the Commission that, based on its analysis of the presubscribed line data, the present rules would cause some very small IXCs to be billed for high cost and lifeline assistance support while other medium size IXCs would not be billed. Thus, the Commission issued a notice of proposed rulemaking (53 FR 47836 (11/28/88)) that proposed changing the criteria governing which IXCs would be assessed charges for costs attributable to these programs.

4. The Notice proposed to reformulate the existing criteria and require that only IXCs with more than .05 percent of all nationwide presubscribed lines pay the per-line charge to fund these programs. This adjustment would reduce the discriminatory effect of the current rules on small IXCs and simplify the tasks of administering these programs. In its Memorandum Opinion and Order, the Commission adopted the proposals and amended its rules to reflect the new procedures for recovering the costs attributable to the high-cost and lifeline programs.

Ordering Clauses

1. Accordingly, *it is ordered*, That pursuant to sections 4(i), 4(j), 201–205, 218, 220, 403, and 404 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 218, 220, 403, and 404, the policies, rules, and requirements set forth herein *are adopted* effective 30 days from the release of this order.

List of Subjects in 47 CFR Part 69

Communications common carriers, Telephone.

Part 69 of title 47 of the Code of the Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.5 is amended by revising paragraph (d) to read as follows:

§ 69.5 Persons to be assessed.

* * * * *

(d) Universal Service Fund and Lifeline Assistance charges shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least .05 percent of the total common lines presubscribed to interexchange carriers in all study areas.

3. Section 69.116 is amended by revising paragraph (a) to read as follows:

§ 69.116 Universal service fund.

* * * * *

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least .05 percent of the total common lines presubscribed to interexchange carriers in all study areas.

* * * * *

4. Section 69.117 is amended by revising paragraph (a) to read as follows:

§ 69.117 Lifeline assistance.

* * * * *

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least .05 percent of the total common lines presubscribed to interexchange carriers in all study areas.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-28658 Filed 12-7-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 669

[Docket No. 91175-9275]

Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations for the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP) to temporarily close an area of approximately 14 square nautical miles in the exclusive economic zone (EEZ) southwest of St. Thomas, U.S. Virgin Islands to fishing during the spawning season for red hind. The intended effect of this rule is to prevent harvest of the overfished red hind during the height of their spawning season in an area where they are most susceptible to harvest.

EFFECTIVE DATE: This rule is effective from December 6, 1989, through February 28, 1990.

ADDRESSES: Copies of documents supporting this action may be obtained from William R. Turner, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION: The shallow-water reef fish fishery is managed under the FMP, prepared by the Caribbean Fishery Management Council (Council), and its implementing regulations at 50 CFR part 669, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Red hind once ranked among the five most important species and, since the decline of Nassau grouper, is the most economically important grouper in the shallow-water reef fish fishery. Red hind spawn seasonally in aggregations at specific locations. They are fished throughout the year but are particularly vulnerable to capture during their mid-December through February spawning season in an area in the EEZ southwest of St. Thomas near the edge of the continental shelf. During this period, fishing effort in this area is very effective so much so that the red hind population has been severely decimated. Continued high fishing mortality of red hind may cause a collapse of the fishery.

Fishery biologists, fishery managers, and local fishermen are in agreement that the red hind resource is in jeopardy. In its draft of amendment 1 to the FMP, the Council has included provisions to prohibit fishing in the area southwest of St. Thomas during the red hind spawning season. During public hearings on amendment 1, the prohibition was overwhelmingly accepted. However, amendment 1 cannot be implemented by the December 1989 commencement of the spawning season for red hind.

The Council has found that the probability of excessive harvest of red hind in the forthcoming spawning season constitutes an emergency. The Secretary concurs. Accordingly, the Secretary is promulgating this emergency interim rule to be effective for not more than 90 days, as authorized by section 305 (e)(2)(B) and (e)(3)(B) of the Magnuson Act.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

NOAA prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the address above.

The Secretary determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Puerto Rico and the U.S. Virgin Islands. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Secretary finds for good cause (i.e., to prevent fishing that would jeopardize the continued viability of red hind as a fishery resource) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule, or to delay for 30 days its effective date, under the provisions of section 553 (b)(B) and (d)(3) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 669

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 5, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 669 is amended as follows:

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

1. The authority citation for part 669 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 669.7, effective from December 6, 1989, through February 28, 1990, in paragraph (c), the reference to "669.21" is revised to read "669.21(a)"; and a new paragraph (m) is added to read as follows:

§ 669.7 Prohibitions.

* * * * *

(m) Fish in the area and during the time specified in 669.21(b).

3. In § 669.21, effective from December 6, 1989, through February 28, 1990, the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

669.21 Closed seasons.

* * * * *

(b) Effective from December 6, 1989, through February 28, 1990, fishing is prohibited in the area bounded by rhumb lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	18 13.2′ N	65 06.0′ W.
B	18 13.2′ N	64 59.0′ W.
C	18 11.8′ N	64 59.0′ W.
D	18 10.7′ N	65 06.0′ W.
A	18 13.2′ N	65 06.0′ W.

[FR Doc. 89-28684 Filed 12-5-89; 3:14 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 235
Friday, December 8, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-88-208]

Papayas: Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Agricultural Marketing Service (AMS) published in the **Federal Register** on Wednesday, October 11, 1989 (54 FR 41597) a proposed rule to establish voluntary U.S. Standards for Grades of Papayas. AMS is extending the comment period to provide interested persons with additional time in which to prepare comments on the proposed rule

DATE: Comments must be postmarked or courier dated on or before January 10, 1990.

ADDRESS: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent, in duplicate, to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page numbers of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Michael J. Dietrich, at the above address or call (202) 447-2093.

SUPPLEMENTARY INFORMATION: AMS published in the **Federal Register** on Wednesday, October 11, 1989, (54 FR 41597) a proposed rule to establish voluntary U.S. Standards for Grades of Papayas. The proposed standards would provide the papaya industry with voluntary U.S. grade standards containing three grade levels, tolerances for each, and definitions for terms used by the industry and in the grades. These grade standards would serve as a common trading language for papayas marketed nationally and internationally.

The proposed rule provided for a comment period to obtain public views and comments on the establishment and content of the proposed standards. Comments were to be submitted on or before December 11, 1989. J.R. Brooks & Son, Inc., Homestead, Florida, a grower/packer/importer of papayas submitted a written request to extend the comment period.

The request indicated that more time was needed to consult with interested industry members in order to evaluate the proposal and the effects it would have on the papaya industry.

Therefore, in order to provide additional industry review and to allow interested persons additional time for comment, the comment period is hereby extended until January 10, 1990.

Authority: (Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624).

Dated: December 5, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-28696 Filed 12-7-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment; Blasting

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the Indiana Surface Mining Statute provisions concerning blasting. The amendment is intended to provide the statutory authority to allow the director to, if invited, enter upon a blasting complainant's property to investigate a complaint.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on January 8, 1990; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on January 2, 1990; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on December 26, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226—6166.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204. Telephone: (317) 232—1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, (317) 226—6166; (FTS) 331—6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditons of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated November 8, 1989, (Administrative Record No. IND—0707), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Code (IC) 13–1.1–10. The proposed amendment is part of Indiana's 1989 House Enrolled Act No. 1069, and adds a Section 3 to IC 13–4.1–10 which allows the director, after receiving a complaint about blast related property damage, to, if invited, enter upon the blasting complainant's property to investigate the complaint.

The remaining provisions of House Enrolled Act No. 1069 instruct the IDNR to perform certain tasks related to Indiana's enforcement of surface coal mining related blasting and appropriate funds to purchase blast monitoring equipment.

Since these provisions do not alter the approved Indiana program, they are not State program amendments pursuant to the Federal rules at 30 CFR 732.17 and, therefore, will not be discussed here.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business on December 26, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 29, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89–28656 Filed 12–7–89; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3694–7]

Approval and Promulgation of State Air Quality Plans; Massachusetts; Withdrawal of Proposed Approval of RACT for the Non-CTG Processes at the O'Day Corp. in Fall River, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: EPA is withdrawing a proposed action to approve a revision of the Massachusetts State Implementation Plan (SIP). The Massachusetts Department of Environmental Protection (DEP) has formally withdrawn a SIP revision request which would have imposed reasonably available control technology (RACT) on certain processes at the O'Day Corporation (formerly Starcraft Sailboat Products) in Fall River, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Nam Nguyen, (617) 565–3249; FTS 835–3249.

SUPPLEMENTARY INFORMATION: On September 8, 1988 (53 FR 34788), EPA published a notice of proposed rulemaking proposing to approve a request from the Massachusetts DEP, formerly called the Department of Environmental Quality Engineering, to revise the Massachusetts SIP. The DEP's SIP revision consisted of a proposed plan approval (State Order SM–85–171–IF) imposing RACT on volatile organic compound (VOC) emitting operations at the O'Day Corporation in Fall River that are not otherwise subject to RACT under Massachusetts SIP regulations developed pursuant to EPA's Control Techniques Guidelines (CTG) documents.

The Massachusetts' SIP includes Regulation 310 CMR 7.18(17) which requires RACT on sources which emit 100 tons per year (TPY) or more of VOCs from non-CTG processes. At the time DEP originally submitted its proposed RACT plan for O'Day Corporation in Fall River, that facility had existing non-CTG processes which emitted more than 100 TPY of VOCs.

On August 10, 1989, the DEP submitted a copy of the correspondence it had received on August 8, 1989 confirming that the O'Day Corporation facility in Fall River had shut-down on April 14, 1989 as a result of being forced into bankruptcy proceedings by its creditors. In that August 10, 1989 letter, the DEP withdrew its SIP revision request for the company submitted on

June 29, 1987 and asked that EPA withdraw is September 8, 1988 notice of proposed rulemaking. Since the company is no longer in operation, it does not need to have RACT determined for it under Massachusetts SIP Regulation 310 CMR 7.18(17). Therefore, as a result of Massachusetts' withdrawal of its proposed plan approval for the O'Day Corporation, RACT is not defined for the previously existing VOC-emitting equipment at the O'Day Corporation facility in Fall River, Massachusetts. Therefore, the resulting reductions in VOC emissions due to the shutdown of the facility are not creditable for offsetting or emission trading purposes. This is because only reductions in emissions below RACT are considered surplus reductions pursuant to EPA's December 4, 1986 Emissions Trading Policy Statement and other applicable EPA regulations and policies. In the future, if any emission reduction credits are to be utilized from this facility, a RACT level of control will have to be defined and approved for the O'Day Corporation. EPA is hereby withdrawing its proposed action published on September 8, 1988 (53 FR 34788) to approve the SIP revision for the O'Day Corporation.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: November 28, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 89–28650 Filed 12–7–89; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–525, RM–7120]

Radio Broadcasting Services; Harker Heights, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Mid-Texas Communications, Inc., licensee of Station KIXS(FM), Channel 288A at Harker Heights, Texas, proposing the substitution of Channel 286C2 for Channel 288A at Harker Heights, and the modification of the station's license to specify operation on the higher powered frequency. The proposed site for Channel 286C2 at Harker Heights is located 30.6 kilometers (19.0 miles) southeast of the city at coordinates 30–54–50 and 97–30–00.

DATES: Comments must be filed on or before January 16, 1990, and reply comments on or before January 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John E. Fiorini, III, Esquire, Mark Van Bergh, Esquire, Joal R. Hall, Esquire, Heron, Burchette, Ruckert & Rothwell, Suite 700, 1025 Thomas Jefferson Street, NW., Washington, DC. 20007 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–525, adopted November 8, 1989, and released November 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The 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* contact.

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.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28659 Filed 12–7–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–491, RM–6650]

Radio Broadcasting Services; Middletown, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing a Further Notice to provide an opportunity to comment on a counterproposal filed on behalf of Joe L. and L. Ann Gross to allot FM Channel 254A to Middletown, CA, as a first local service. (See Commission's First Report and Order, adopted November 13, 1989, and released November 28, 1989 (54 FR 49996, December 4, 1989).) Additional information is requested to determine whether Middletown qualifies as a "community" for allotment purposes. Coordinates used for Chanel 254A at Middletown are 38–45–12 and 122–36–54.

DATES: Comments must be filed on or before January 25, 1990, and reply comments on or before February 9, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Vincent J. Curtis, Jr., Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Ave., NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 88–491, adopted November 15, 1989, and released December 4, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The 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* contact.

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.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28620 Filed 12-7-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 235
Friday, December 8, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

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 the Census.
Title: Survey of Property Transfer Records.
Form Number: GP–2, GP–2A.
Agency approval Number: None.
Type of Request: New collection.
Burden: 1,300 hours.
Number of Respondents: 1,400.
Avg Hours Per Response: 56 minutes.
Needs and Uses: This survey will collect data for the Census Bureau on the content and organization of local real property transfer records, estimated volume of realty transfers, and on automated data processing capability of reporting jurisdictions. The survey is an intergral part of the planning for the Taxable Property Values (TPV) Survey, a major component of the 1992 Census of Governments.
Affected Public: State or local governments.
Frequency: Once during the 5 years census cycle.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC clearance Officer, (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 Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 1989.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–28662 Filed 12–7–89; 8:45 am]
BILLING CODE 3510–07–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 the Census.
Title: Quarterly Survey of the Finances of Public-Employee Retirement Systems.
Form Number: F–10.
Agency Approval Number: 0607–0143.
Type of Request: Revision of a currently approved collection.
Burden: 272 hours.
Number of Respondents: 68.
Avg Hours Per Response: 1 hour.
Needs and Uses: This survey provides, on a quarterly basis, nationwide data on the receipts, expenditures, and cash and security holdings of the 104 largest public-employee retirement systems. Census conducts this survey at the request of the Council of Economic Advisors and the Federal Reserve Board. Economists from these and other agencies use these data to monitor and analyze investment trends and to formulate governmental economic policies and investment decisions.
Affected Public: State or local governments.
Frequency: Quarterly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (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 Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 1989.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–28663 Filed 12–7–89; 8:45 am]
BILLING CODE 3510–07–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 the Census.
Title: Survey of Assessed Values.
Form Number: GP–33.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 133 hours.
Number of Respondents: 53.
Avg Hours Per Response: 2 hours and 30 minutes
Needs and Uses: This survey provides data on the assessed values of real property in each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The Census Bureau will conduct this survey twice during the 5-year Census of Governments cycle. It uses the data collected in 1990 as a basis for sample selection for the 1992 Taxable Property Values Survey, and it uses the data collected in 1992 to compile the Census of Governments report, *Taxable Property Values and Assessment/Sales Price Ratios.* The Advisory Commission on Intergovernmental Relations uses the data in calculating its measure of fiscal capacity of state and local governments.
Affected Public: State or local governments.
Frequency: Twice during the 5 year census cycle.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, 395–7340
Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (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 Don Arbuckle, OMB Desk Officer, room

3208, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-28664 Filed 12-7-89; 8:45 am]

BILLING CODE 3510-07-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 the Census.

Title: Survey of Local Assessment Records.

Form Number: GP-1, GP-1A.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,750 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: GP-1—1 hour. GP-1A—30 minutes.

Needs and Uses: This survey will collect information on the content and organization of local assessment records, the estimated number of realty parcels on the assessment rolls, and automation capabilities of reporting jurisdictions. The Census Bureau will use the information collected to plan and carry out data enumeration for the Taxable Property Values Survey of the 1992 Census of Governments.

Affected Public: State or local governments.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (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 Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-28665 Filed 12-7-89; 8:45 am]

BILLING CODE 3510-07-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 the Census.

Title: Annual Survey of State tax Collections.

Form Number: F-5, F-5A, F-5-L1, F-5-L2.

Agency Approval Number: 0607-0046.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 109 hours.

Number of Respondents: 79.

Avg Hours Per Response: 1 hour and 23 minutes.

Needs and Uses: This form is used to collect information on the annual tax collections of each state and the District of Columbia. The data collected are a key component of the national income accounts maintained by the Department of Commerce. They are used in long established Census Bureau reports in the government finance series and provide important information to officials and researchers in the analysis of state government finances.

Affected Public: State or local governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (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 Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-28666 Filed 12-7-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

[Docket No. 91163-9268]

Foreign Availability Assessments: Initiation of an Assessment on 5.25-Inch Hard Disk Drives

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment and request for comments.

SUMMARY: Pursuant to section 5(f)(1) of the Export Administration Act, the Office of Foreign Availability is initiating an assessment to investigate the foreign availability of 5.25-inch hard disk drives of less than 45 megabytes formatted capacity that are compatible with the ST-412 type interface. OFA is seeking public comments on the foreign availability of such equipment.

DATES: The period of submission of information will close January 8, 1990.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Dr. Irwin M. Pikus, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, room SB-097, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Michael Andrews, Office of Foreign Availability, U.S. Department of Commerce, Washington, DC 20230, Telephone: (202) 377-4547.

SUPPLEMENTARY INFORMATION: Under sections 5(f) and (h) of the Export Administration Act of 1979 (EAA), as amended, the Office of Foreign Availability (OFA) assesses foreign availability of goods and technology whose export is controlled for national security reasons. Part 791 of the Export Administration Regulations (EAR) establishes the procedures and criteria for initiating and reviewing claims of foreign availability of these items.

Pursuant to sections 5(f)(3) and (9) of the EAA, OFA is publishing this notice.

On July 28, 1989, OFA accepted for filing a foreign availability allegation relating to decontrol of 5.25-inch hard disk drives, following Review. This item is controlled for national security reasons under paragraph (h) of Export

Control Commodity Number (ECCN) 1565A of the Commodity Control List (15 CFR 799.1, Supp. 1): Digital computers and related equipment. Upon acceptance of the allegation, OFA initiated an assessment of the foreign availability of 5.25-inch hard disk drives. The Department intends to submit the results of the assessment for publication in the **Federal Register** by December 28, 1989.

To assist the Department in assessing the claim, the Office of Foreign Availability will receive any information regarding the foreign availability of 5.25-inch hard disk drives of less than 45 megabytes formatted capacity that are compatible with the ST–412 type interface. A person wishing to submit relevant information relating to this claim may submit it to the Office of Foreign Availability of the Department of Commerce at the above address.

Such relevant information may include, but is not limited to: foreign manufacturers' catalogs, brochures, or operations of maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

Supplement No. 1 to part 791 proves additional examples of evidence that would be helpful to the investigation.

The Office of Foreign Availability will carefully and fully consider all information received. The Office will use information received to supplement other information to evaluate the claim of foreign availability.

The Department will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." The Bureau of Export Administration will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) or (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

Communications between agencies of the United States Government and foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record of information received on the allegation for foreign availability will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue N.W., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377–2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close 30 days from the date of publication. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: December 4, 1989.

Iain S. Baird,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–28670 Filed 12–7–89; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Additional Public Hearing on Swim-With-The-Dolphin Programs

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Notice of an additional public hearing on swim-with-the-dolphin programs.

SUMMARY: NOAA Fisheries has prepared a programmatic environmental impact statement (EIS) in accordance with the National Environmental Policy Act, and has conducted hearings on the use of marine mammals in swim-with-the-dolphin programs (54 FR 46755). These programs allow a member of the public, including any general visitor or customer, to enter the water with a captive marine mammal for recreational swimming, snorkeling or scuba diving activities. Provisional authority to conduct these programs on an experimental basis expires on December 31, 1989. NOAA Fisheries is considering the consequences of swim-with-the-dolphins programs and has requested comments on the draft EIS. In order to allow time for full consideration of public comment on the final EIS and decision, NOAA Fisheries intends to extend the provisional authority for the four existing programs until April 30, 1990, as stated in the draft EIS.

DATES: Hearings on the draft EIS were held in Honolulu, Hawaii on November 20, 1989; Islamorada, Florida on November 28, 1989; and Washington, DC on December 4, 1989. An additional hearing has been scheduled for Ft. Myers, Florida on December 19, 1989 at 4–7 p.m. Written comments on the draft EIS are due by December 28, 1989.

ADDRESSES: Written comments on the draft EIS may be mailed to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NOAA Fisheries, 1335 East-West Highway, Silver Spring, Maryland 20910. A copy of the draft EIS may be obtained by writing to this address or from the information contact listed below. The address for the Ft. Myers hearing is the Commissioner's Meeting Room, 2120 Main Street, Ft. Myers, Florida 33901.

FOR FURTHER INFORMATION CONTACT: Charles Oravetz or Jeff Brown in St. Petersburg, Florida at 813/893–3366; or Jaunice Yates in Washington, DC at 301/427–2289. Please notify one of these individuals at least seven days in

advance of the hearing if you wish to testify. A written copy of your testimony will also be required.

Dated: December 1, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-28625 Filed 12-7-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

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 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: January 8, 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: On October 6 and 20, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 41327 and 43103) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46550). After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities 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 commodities 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 commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1990:

Commodities

Strap, Webbing
- 5340-00-235-4432
- 5340-00-235-4434
- 5340-00-451-8157

Water-Displacing Compound
- 6850-00-142-9389
- 6580-00-142-9409

Deicing-Defroster Fluid
- 6850-00-835-0484

Penetrating Fluid
- 6850-00-508-0076
- 6850-00-973-9091
- 6850-00-985-7180

Services

Fast Pack/Carton Recycling and Pallet Repair
Sacramento Army Depot
Sacramento, California

Publications Distribution
Pacific Northwest Research Station (PNW)
Research Information Service
319 SW Pine Street
Portland, Oregon

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-28687 Filed 12-7-89; 8:45 am]

BILLING CODE 6820-33-M

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: January 8, 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

Strap, Webbing
- 5340-00-454-5963

Sweatshirt
- 8415-00-269-0403
- 8415-00-262-1534
- 8415-00-262-1535
- 8415-00-262-1536

Sweatpants
- 8415-00-268-1878
- 8415-00-268-8779
- 8415-00-268-8180

Services

Machining Parts
Mare Island Naval Shipyard
Vallejo, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-28688 Filed 12-7-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Deletion and Correction

On page 48759 of FR Doc. 89-27698 in the issue of Monday, November 27, 1989, the Clothing, Operating Room entry reading 6530- should read 6532-.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-28689 Filed 12-7-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Establishment; Correction

In FR Doc. 89-25872 appearing at page 46540 in the issue for Friday, November 3, 1989, make the following corrections:

1. On page 46560, second column, in the seventy-first line, 011 Street should read "O" Street.

2. On page 46562, first column, in the forty-second line, North Carolina Street should read North Capitol Street.

3. On page 46562, second column, under Laundry, the first entry under

Department of Health and Human Services, the heading should be Department of Defense, the second and third entries should remain under the Health and Human Services heading.

4. On page 46562, second column, in the fifty-fourth line, 300 C Street should read 330 C Street.

5. On page 46562, third column, in line sixty, 12201 should appear before Sunrise Valley Drive.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-28690 Filed 12-7-89; 8:45 am]

BILLING CODE 6820-33-M

Performance Review Board Membership; Senior Executive Service

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Notice

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Connie S. Corley, Administrative Officer, Committee for Purchase from the Blind and Other Severely Handicapped, 1755 Jefferson Davis Highway, Suite 1107, Arlington, Virginia 22202-3509, (703) 557-1145.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) (1) through (5) requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Kenneth L. Johnsen, Associate Director for Information Management, Selective Service System
2. Jeffrey S. Lubbers, Research Director, Administrative Conference of the United States
3. John P. Kratzke, Associate Director, Policy, Office of Information Resources Management, Department of Agriculture.

Frank Gearde, Jr.,

Chairman.

[FR Doc. 89-28691 Filed 12-7-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Los Angeles International Golf Club, Los Angeles, CA, Permit

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: The proposed action is to issue a permit pursuant to section 404 of the Clean Water Act to allow fill in Big Tujunga Wash necessary to construct flood protection facilities required by the City of Los Angeles in conjunction with the proposed Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Castonon, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 2711, Los Angeles, California 90053-2325, (213) 894-5606.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The proposed action would result in the construction of the Los Angeles International Golf Club, which will impact waters of the United States. The proposed Los Angeles International Golf Club is intended to provide a private golf facility suitable for the Los Angeles Open Golf Tournament in accordance with Professional Golf Association Tour guidelines and the Los Angeles Junior Chamber of Commerce. Construction activities include deepening a natural channel to enhance flood protection, building stabilization structures to reduce water velocities, and constructing golf course landforms on adjacent upland property. Approximately 1.5 million cubic yards of dredged material will be discharged over the entire site, a portion of which will be deposited in the waterways.

2. Alternatives

All underdeveloped parcels of 220 acres or greater in the City of Los Angeles were considered as potential alternative sites. Of the potential alternative sites considered, the applicant determined that there were three potential sites for the project within the Los Angeles area. The three alternative sites to be evaluated are: (1) A 650-acre site near Rancho Calabassas in western Los Angeles County: (2) a 220-acre parcel in the Chatsworth reservoir, owned by the Department of Water Power; and (3) a private owned 178-acre parcel in the Chatsworth area.

3. Scoping Process.

A Public Notice was published on January 27, 1989 and distributed to the U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch mailing list. The public was invited to comment, and numerous comments were received. Federal, state, and local agencies and other interested private organizations are encouraged to send their written comments to Mr. David Castanon at the address provided above. Significant issues to be analyzed in depth in the DEIS include:

a. Grading and Geology

The project may substantially alter existing site topography and drainage patterns. The project has the potential to result in unstable earth conditions or in geologic substructures.

b. Biological Resources

Discharge of dredged material may result in the loss of regionally significant alluvial scrub resources. The DEIS will evaluate potential impacts to the Federally listed endangered slender-horned spineflower (*Centrostegia Eptoceras*), the Federally listed endangered least Bell's vireo (*Vireo belli pusillus*), one Federal Candidate Category 1 plant species, and three Federal Candidate Category 2 animal species.

c. Cultural Resources

The DEIS will evaluate potential impacts to historic and pre-historic cultural resources.

d. Recreation Opportunities

The potential benefits of the opportunity for tournament level golf within the region will be evaluated. Potential impacts to existing equestrian use will be assessed.

e. Public Safety

The potential flood control benefits to existing adjacent residences will be assessed.

f. Transportation and Circulation

A traffic study will be required to determine the impact of project generated vehicular traffic on local intersections during special events. The proposed project will generate special events. The proposed project will generate a need for guest parking.

A consultation pursuant to section 7 of the Endangered Species Act was formally initiated in March 1989 which resulted in a draft jeopardy opinion on the project impacts to *Centrostegia Eptoceras* the project has been redesigned several times to produce a

reasonable and prudent alternative that will not jeopardize the continued existence of the species.

Formal coordination will be undertaken with U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, California Development of Fish and Game, State Historic Preservation Office, and City of Los Angeles.

4. Scoping Meeting

Currently, there are no plans to hold a scoping meeting.

5. DEIS Schedule

The current schedule estimates that the DEIS will be available for public review and comment in Winter 1990.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 89-28735 Filed 12-7-89; 8:45 am]

BILLING CODE 3710-KF-M

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Defense Subpanel Task Force will meet 10, January 1990 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss policy and budgetary matters of immediate Navy interest. The entire agenda of the meeting will consist of discussions of key issues regarding national security, maritime defense needs, defense policy, planning, and budgetary matters of immediate Navy interest. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 5, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-28671 Filed 12-7-89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet January 11-12, 1990 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in space. The entire agenda of the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 5, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-28672 Filed 12-7-89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet February 15-16, 1990 from 9 a.m. to 5 p.m. each day, in Los Alamos, New Mexico. All sessions will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda of the meeting will consist of discussions of key issues regarding the potential for unexpected technology breakthroughs that could have an acute impact on naval and other military forces. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, room 601, Alexandria, Viriginia 22302-0268, Phone (703) 756-1205.

Dated: December 5, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-28673 Filed 12-7-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 8, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503.

Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos, (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: December 4, 1989.

Carlos Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Foreign Language and Area Studies Program—Institutional List of Awardees and—Student Performance Report.
Frequency: Annually.
Affected Public: Individuals or households; Non-profit institutions.
Reporting Burden:
Responses: 1420
Burden Hours: 2156
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Individuals and Non-profit institutions that have participated in the Foreign Language and Areas Studies Program are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Application for Grants for Desegregation Assistance Centers, New and Continuation.
Frequency: Annually.
Affected Public: State or local Governments; Non-profit institutions.
Reporting Burden:
Responses: 40
Burden Hours: 1540
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This application is used by non-profit organizations to apply for desegregation assistance center awards under Title IV of the Civil Rights Act of 1964. The Department uses this information to evaluate the proposed projects and make awards in accordance with program regulations.

Office of Educational Research and Improvement

Type of Review: New.
Title: IEA Reading Literacy Study.
Frequency: On Occasion.
Affected Public: Individuals or households; State or local governments; Non-profit institutions; Small buisnesses or organizations.
Reporting Burden:
Responses: 2,096
Burden Hours: 4,728
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study will collect data on reading skills and activities of fourth and ninth graders. This study is intended to develop a unified definition of literacy and measure the comparative ability of educational systems to teach literacy skills.

[FR Doc. 89–28647 Filed 12–7–89; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Cooperative Agreement to Babcock and Wilcox Company

AGENCY: Department of Energy (DOE).

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award based on an unsolicited application under Cooperative Agreement No. DE–FC05–90CE40905 to Babcock and Wilcox Company.

Project Scope: The funding for this cooperative agreement will allow the grantee to perform research and development required to construct and test an instrument for real-time, in-situ measurement of lignin in pulp. This effort will include process characterization tests to resolve key technical issues identified during prior feasibility tests. Babcock and Wilcox has completed Phase I of the sensor development and demonstration of feasibility. They have furthered their technology by in-house R&D of their own. Phase I results indicate that the proposed technology has a significant potential for improving process control in the pulp and paper industry.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Babcock and Wilcox. This project represents a unique idea for which a competitive solicitation would be inappropriate.

This is a project with high technical merit, representing an innovative technology which has a strong possibility for potential savings in industry. The term of this cooperative agreement is for two years from date of award. The total estimated DOE cost is $463,873.

FOR FURTHER INFORMATION CONTACT: S.F. Sobczynski, Program Manager, CE–142, U.S. Department of Energy, Washington, DC 20585, (202) 586-1878.

Issued in Oak Ridge, Tennessee, on October 26, 1989.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89–28712 Filed 12–7–89; 8:45 am]
BILLING CODE 6450–01–M

Financial Assistance Award Intent To Award Grant to Kenneth H. Raihala

AGENCY: U.S. Department of Energy.

ACTION: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award of $27,713 based on an unsolicited application under Grant Number DE–FG01–90CE15365 to Kenneth H. Raihala.

Scope: The funding for this grant will provide for the testing of an engineering prototype of a safety damper for a wood or coal burning stove. Based on the analysis of the test data, the results will be further used to optimize assembly components and to determine assembly characteristics.

Eligibility: Based on receipt of an unsolicited application, eligibility for this award is being limited to Kenneth H. Raihala, who has high qualifications in this specialized field of energy research and development. The safety "stovepipe damper assembly" invention is an unique control device for a

conventional stovepipe damper to prevent flue overheating. The proposed pilot project has high technical merit representing an innovative technology, is technically sound, commercially feasible, and greatly reduces the possibility of chimney fires in wood burning stoves.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Calvin Lee, MA-405.42, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-28716 Filed 12-7-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Cooperative Agreement); Washington State University

AGENCY: Richland Operations Office, U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE Richland Operations Office, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award a noncompetitive financial assistance cooperative agreement to Washington State University, which now operates as a branch state university campus, the former Tri-Cities University Center in Richland, Washington.

Scope: The award will help support an educational program of course work leading to MS & PhD degrees in the physical and biological sciences, in engineering, and business.

The DOE has determined that the award on a noncompetitive basis is appropriate for the following reasons:

The activity to be supported is continuation of an existing advanced degree program which DOE has previously supported, initially through a cost sharing contractual arrangement and more recently with a cooperative agreement.

It is currently being conducted at the Washington State University, Tri-Cities branch campus, which, as a result of action by the State legislature, replaces the Tri-Cities University Center, a cooperative venture of the two state research universities which has been supported by DOE. Through Washington State University, the State of Washington provides the facilities for the program and about 70% of the cost, currently estimated at about $2,500,000 per year. DOE wishes to insure that the graduate degree program continue to be available in Richland in order to continue to attract and retain qualified employees at the Hanford site.

The present arrangement is the only one through which advanced degrees in the sciences and engineering are available in this area. No other awardee is presently available, and any other arrangement would seriously disrupt the educational programs of students pursuing advanced degrees. It has therefore been determined that it is appropriate to provide assistance to this activity on a noncompetitive basis.

FOR FURTHER INFORMATION CONTACT: Marji W. Parker, U.S. Department of Energy, Richland Operations Office, Procurement Division, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376-2039.

Dated: November 13, 1989.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 89-28713 Filed 12-7-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Utilization Research, Division of Energy Conversion and Utilization Technologies, Research Opportunity Announcement; 1990

I. Introduction

Pursuant to the authority of the Competition in Contracting Act of 1984 (CICA), as implemented by Federal Acquisition Regulation (FAR) 6.102(d)(2) and 35.016, the Energy Conversion and Utilization Technologies Division (ECUT), Office of Energy Utilization Research (OEUR), Department of Energy (DOE) issues this Research Opportunity Announcement (ROA) for Tribology research." Research Opportunity Announcement" is the designated name for DOE's form of a broad agency announcement. The ROA is a general solicitation which uses the scientific and peer review process for the evaluation of proposals. This type of solicitation procedure is considered a competitive selection procedure under CICA and the FAR. Universities or other institutions of higher education, not-for-profit, for-profit, non-Federal agencies, unaffiliated individuals, or other entities are invited to submit competitive proposal(s) to conduct applied research in the field of Tribology in the areas set forth in Section II, Appendix A, of this ROA.

Proposals for development ("development" as defined in FAR 35.001) are not being requested, will not be evaluated, and will not be selected under this ROA. Further, proposals submitted by specific entities which operate Government-owned or controlled research, development, special production, or testing establishments, such as DOE's management and operating (M&O) contractor facilities and Federally Funded Research and Development Centers chartered by other agencies, are not being requested, will not be evaluated, and will not be selected under this ROA.

The ECUT Program supports generic long-term, high-risk, basic and applied research which private enterprise cannot or will not pursue in energy conversion and utilization techniques that conserve energy. The program is mainly intended to support researchers in industry and academe to explore ideas or concepts aimed at specific applications, bringing them to a stage where private industry or other government programs can move them into more advanced technology and engineering development.

Its goals are to: Evaluate new concepts for improved energy efficiency or alternative fuel use in energy conversion and utilization, establish feasibility of revolutionary concepts that significantly reduce energy consumption, and expand the technology base necessary for development of improvements in energy conversion and utilization. The program attempts to be a bridge between basic research and large-scale technology and engineering technology.

The mission of the ECUT-Tribology Program is to provide U.S. industry with the base technology necessary to achieve savings in annual U.S. energy consumption through major tribological advances such as, reducing the significant limitations in the operation of existing and advanced tribological systems operating in severe environments, e.g., high temperatures, speeds, and loads, corrosive gases/liquids (and combinations thereof). This mission will be achieved through a combination of direct energy savings, savings of embodied energy, and enhanced productivity.

By means of this ROA, and through the award of contracts in the areas of research set out in appendix A of this ROA (and as elucidated in the above ECUT-Tribology Program Mission Statement), DOE hopes to further the objectives of its ECUT-Tribology research program. The total amount of annual funding available for research contracts awarded as a result, of this ROA is estimated to be $500,000. However, DOE makes no commitments, either express or implied that this total amount of funding will be made available for contract awards under this

ROA. Total funds made available for contract awards will be based on the quality of the proposals received in relation to the objectives of the Tribology research program. It is expected that the period of funding for the contracts awarded under this ROA will generally not exceed three years, however DOE may award contracts for longer periods.

II. Definitions

The terms "Basic Research," and "Applied Research" are defined in FAR–35.001. The primary aim of ECUT-supported applied research is to produce enabling technologies for specific applications as opposed to the discipline oriented, theoretical, scientific studies implicit in basic research.

"Objective Review" means a thorough, consistent, and independent examination and evaluation of a proposal by three or more persons knowledgeable in the field of endeavor for which support is requested. Such review is conducted to provide facts and advice to the selection official based upon the evaluation criteria in the ROA.

"Peer Reviewer" means a professional individual, selected to conduct an objective review of a research proposal. The person is not employed by the Government, has expertise in the same or related scientific or technical field as the research area set forth in the proposal, and is recognized in the scientific or technical community.

"Scientific Reviewer" means a professional Government employee, who has expertise in the same or related scientific field as the research area set forth in the proposal selected to conduct an objective of a research proposal.

III. Proposal Submission Instructions

A. The open period (that is, the time period during which proposals will be accepted from entities by DOE) for submission and receipt of proposals in response to this ROA is the twelve-month period beginning on the date of publication of this ROA in the Federal Register and ending at 4:30 p.m. (local time at the place designated for receipt of proposals) twelve months after the date of publication in the Federal Register.

B. Proposals may be submitted at any time the open period of the ROA. Proposals received subsequent to the expiration of the open period will be considered in accordance with FAR subpart 15.412. Therefore, the FAR provision, 52.215–10 entitled "Late Submissions, Modifications, and Withdrawals of Proposals" is incorporated herein by reference with full force and effect.

C. An original and four copies of a proposal (whether for a new research effort or for the continuation of an existing research contract) shall be submitted to: U.S. Department of Energy, Attn: ECUT-Tribology Program ROA, FY 1990, Building 201, Room No. 3C–12, 9800 South Cass Avenue, Argonne, Illinois 60439.

D. Entities may submit more than one proposal for any area of research within the scope of this ROA. However, each proposal for research shall be submitted as an individual proposal submission.

E. All proposals shall be clearly identified with the ROA identification number and title affixed to the shipping label.

F. A proposal which provides for the continuation of research previously funded by DOE as a contract awarded as a result of either a previously issued ROA or an unsolicited proposal may be evaluated and considered for selection and award under the instant ROA, provided that: (1) The proposed research is within the specific area of research contemplated by the ROA; (2) the proposal is received during the open period of the ROA; and (3) the proposal is full responsive to the requirements of the ROA.

IV. Proposal Preparation Instructions

Each proposal shall contain three distinct sections marked: Section I-Offerer Information, Section II-Technical Proposal, Section III-Cost Proposal. The following information shall be included:

A. Section I-Offerer Information

1. Name and address of offerer;
2. The ROA identification number;
3. The date of submission of the proposal, and the offer acceptance period;
4. The names and addresses of any other Federal, State, or local government agency, or any other public or private entity who has in the past, or is currently, or may in future, provide funds for the same or similar research activities of the offerer;
5. A proposal cover sheet signed by the offerer, and by an individual authorized to contractually obligate the offerer.

B. Section II-Technical Proposal

1. A detailed description of the proposed research, including the objectives of the research, the methodology and procedures for accomplishing those objectives, the anticipated results, and the relationship of the proposed research to the program objectives and evaluation criteria described in this ROA. This description should include a discussion and listing (with references) of any previous or ongoing research performed by the offerer in areas related to those contemplated by the ROA.
2. A detailed task breakdown and schedule depicting and defining key research milestones.
3. A description of the offerer's proposed methods and scope of management support and controls, including cost management techniques and subcontracting practices. Provide an example of these methods having been applied to a successfully completed contract, if one is available; otherwise a statement that the Principal Investigator is a new Investigator and has had no previous contracts with the Government.
4. A description of the facilities and other resources which will be used in performance of the research. Indicate specifically that these facilities will be available to the proposed principal investigators for this task period.
5. A description of any facilities and other non-monetary resources requested to be furnished by the Government for use by the offerer.
6. Resumés for the proposed principal investigator(s) and other key individuals.

C. Section III—Cost Propoal

1. A budget with supporting justification sufficient to evaluate the costs of the proposed project. (A fully executed Standard Form SF–1411, and supporting documents).
2. A description of all proposed cost-sharing arrangements.

V. Other Information for Proposers

DOE is under no obligation to pay for any costs associated with the preparation or submission of proposals.

DOE reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted.

DOE is not required to return to the proposer a proposal which is not selected or funded. This Announcement implies no commitment by the Government to make an award. A decision to award will be determined through evaluation of proposals received and the availability of funds.

VI. Point of Contact

The point of contact of all matters relating to this ROA is: Mr. David Mello, Attn: ECUT–Tribology Program ROA, FY 1990, Code CE–121, Room 5E–066, U.S. Department of Energy HQ, Washington, DC 20585, Telephone: (202) 586—5377.

Requests for information or for any forms required by this ROA should be submitted in writing to: Mr. Eric Simpson, U.S. Department of Energy, Chicago Operations Office, Attn: ECUT–Tribology Program ROA, FY 1990, Building 201, Room 3C–12, 9800 South Cass Avenue, Argonne, Illinois 60439, Telephone: (312) 972–2108.

Collect telephone calls will not be accepted by DOE personnel.

VII. Proposal Evaluation

The evaluation of each proposal will begin upon its receipt, or as soon as possible thereafter. Should the acceptance period for a proposal expire, the proposer may, in response to DOE's request, be required to revalidate the terms of the original proposal. All proposals will undergo an initial review to determine (1) the responsiveness and completeness of the proposal to the requirements of the ROA, including the appropriateness of the research to the intended uses by DOE, (2) the relevance of the proposed effort to the broad areas of research contemplated by the ROA and, (3) does not unduly duplicate work already funded. If, after completion of the initial review, a proposal is determined not to meet the requirements stated in this paragraph, the proposer shall be promptly notified that its proposal has been eliminated from any further competition under the ROA and the general basis for such a determination.

The following considerations will be used by the DOE Selection Official to determine the importance and relevance of the proposed research of ECUT's mission:

A. Factors Used in Determining Importance or Relevance to Program

1. A goal of the ECUT Division is to foster industry-academia-government collaboration in its sponsored research. It is important that proposals be explicit in describing all collaborative elements of the work, and the rationale for the collaboration.

2. A further goal of the ECUT Division is to foster the development of enabling technologies through applied research. Proposals from industry should indicate the shortcomings of present technology and indicate the importance of this work in adding to the knowledge base leading to the development of an enabling technology.

3. Proposals from academe should indicate the relevance of the work to a proven or perceived industrial need e.g., how this work might lead to the development of needed enabling technology.

4. Proposals from other Governmental units (State, Local) should describe the complementary nature of the work, its relevance to ECUT's interests, and the prospects for co-funding with that agency and/or its industrial clients.

5. Co-funding is a very relevant aspect of ECUT sponsorship. It is one measure of the importance of the work to the participants, and it can be indicative of early application of the technology.

The above factors will not be weighed or point scored.

B. Criteria Used in Objective Review of Proposals

Proposals which survive the initial review will be objectively reviewed against the following criteria, which are of equal importance, by at least three scientific and peer reviewers. The composition of the group may be any mix of these reviewers.

1. (The Project) The overall scientific and technical merit of the proposal including the merit and value of related research performed by the offerer under previous or existing contracts or other arrangements;
2. (The People) The qualifications, capabilities, experience, and demonstrated past performance of the offerer, principal investigator, and/or key personnel;
3. (Relevance) The appropriateness of the proposed method or approach in helping DOE to achieve its research objectives;
4. (The Workplace) The adequacy of the offerer's facilities and resources;
5. (Management) The adequacy of the offerer's management plan;
6. (The Cost) The realism of the proposed costs relative to known research conducted under similar circumstances, and the extent and nature of cost-sharing.

C. Relative Weighting of the Evaluation Criteria

All criteria will be weighted equally so that the broadest range of opportunity for new ideas may be accommodated. One proposal may be most meritorious because of an extraordinary opportunity for significant cost-sharing with industry, another proposal may be most valuable because of a combination of relevance to present DOE objectives and a unique research capability predicated upon specialized equipment on hand. Therefore the proposal overall rating will be derived by evaluating the relative merits of each Evaluation Criterion on a score of 0 to 4, representing a range of "Not Acceptable," to "Outstanding," respectively. It is the cumulative score of each proposal that will determine the relative standing of all competing proposals.

VIII. Proposal Selection

Proposals will be selected for award based upon the evaluation criteria described in this announcement and the availability of funds. After the selection of a technology for funding, DOE may, if necessary, enter into negotiations with a proposer prior to the award of a contract. Such negotiations are not a commitment that DOE will make an award. Resultant contracts will be negotiated, awarded, and administered by DOE in accordance with the Federal Acquisition Regulation (FAR), Department of Energy Acquisition Regulation (DEAR), and other controlling policies and procedures.

Issued in Chicago, Illinois, on November 27, 1989.

Timothy S. Crawford,

Assistant Manager for Administration.

Appendix A—Research Agenda

I. ECUT Program Overview

The Division of Energy Conversion and Utilization Technologies (ECUT).

This Program supports long-term, high-risk, interdisciplinary applied research to assure an adequate enabling technology base for efficient future energy conversion and utilization systems and feasible alternate fuels. It is a research program focused on knowledge of processes and materials needed to enable the improvement of the efficiency of energy-using components, devices and systems, and their capacity to use alternative energy sources.

ECUT draws from basic research to establish the feasibility of revolutionary concepts that significantly reduce energy consumption, evaluates new concepts for improved efficiency or alternative fuel use in energy conversion and end-use, and expands the technology base to enable development of improvements in the efficiency of energy conversion and utilization.

ECUT undertakes those activities that address specific technology-limiting problems and conducts research in five priority technology areas.

The ECUT-Combustion Technology-research program supports the development of new technologies related to engine combustion and continuous processes in boilers, furnaces, incinerators, turbines, and industrial process heat devices. ECUT Thermal Sciences research focuses on improved understanding of thermodynamics, fluid systems, direct energy conversion concepts, and heat/

mass transfer processes. The ECUT Materials research program seeks to design, discover, synthesize, and characterize the performance of new energy-conserving materials and processing technologies for a variety of end-uses. Research supported by the ECUT Biocatalysis program investigates new chemical and biochemical catalytic processes employing the power of the science of molecular biology. The ECUT Tribology research program provides support for investigating lubrication phenomena, friction and wear characterization, and analytical tribological computational simulation models.

II. The ECUT-Tribology Program

The mission of the ECUT-Tribology Program is to provide the base technology necessary to achieve savings in annual US energy consumption through major tribological advances. This may be achieved through direct energy savings, savings of embodied energy, or enhanced productivity. Also, the mission is to reduce the significant limitations in the operation of existing and advanced tribological systems which have to operate in severe environments such as high temperatures, speeds, loads, corrosive gases/liquids, and combinations thereof. The program has established close ties with US Industry and universities to determine current and future needs for advances of tribological systems and to facilitate the transfer of the new technologies which are developed in this program.

The ECUT-Tribology research program provides support for investigations of lubrication phenomena, friction and wear mechanisms, tribological surface modifications, and tribological design methodologies (tools). The following areas are of primary interest:

Tribology by Design: Performance of concurrent theoretical, computational, and experimental investigations having the objective of developing a predictive capability regarding the tribological properties of materials and components. The research contemplated includes development, from first principles, of theoretical models, empirical models, simulations, and experimental measurements with sufficient resolution to validate theoretical predictions. The goal is to develop computational procedures to support design of materials and components yielding any desired tribological characteristic. Such a capability has the potential of significantly reducing tribological losses in current and future energy systems.

Engineered Tribological Interfaces: Investigation of processes, mechanisms, materials, and techniques for the control of the tribological properties of surface (component) interfaces. Activities in this research area include surface modification, insitu emplacement of lubricious materials, advanced lubrication techniques, and microscopic level diagnostics. The goal is to provide replicable engineering approaches to reducing tribological losses beyond that possible with conventional lubrication and coatings.

Exteme Environmental Tribology: Investigations of tribological approaches and systems with the potential to expand the extremes of currently available tribological performance. This includes materials, processing and lubrication techniques. Examples are: Vapor phase lubrication, diamond films, ceramic composites, and intermetallics. The goal is to develop new methods of achieving required tribological performance in the more demanding operating environments which will exist in advanced energy systems.

[FR Doc. 89-28717 Filed 12-7-89; 8:45 am]
BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement Between the Governments of the United States of America, Sweden, and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement of Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/SW(JA)-5, for the transfer from Japan to Sweden of 8 irradiated fuel segments containing 2,076 grams of uranium, enriched to 1.25 percent in the isotope uranium-235, and 17 grams of plutonium, for power ramp testing in the R-2 reactor at Studsvik, Sweden.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 4, 1989.

Thad Grundy, Jr.

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-28715 Filed 12-7-89; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP90-46-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 1, 1989.

Take notice that ANR Pipeline Company ("ANR") on November 27, 1989 tendered for filing as a part of its Original Volume No. 1 of its FERC Gas Tariff, six copies each of the following tariff sheets:

Twenty-Fifth Revised Sheet No. 18
Fourth Revised Sheet No. 88
Fourth Revised Sheet No. 89
Fourth Revised Sheet No. 90
Third Revised Sheet No. 90A
Original Sheet No. 90A.1
First Revised Sheet No. 124
First Revised Sheet No. 125
Original Sheet No. 126
Original Sheet No. 127

ANR states that the above-referenced tariff sheets are being filed under Section 2.104 of the Commission's Regulations to implement partial recovery of $24.8 million of additional buyout buydown costs. Under the proposed filing, ANR is proposing to absorb twenty five percent of its buyout buydown costs, to recover twenty five percent of such costs through a fixed monthly charge applicable to its Rate Schedules CD-1, MC-1 and SGS-1 sales customers and to recover up to fifty percent of such costs through a volumetric buyout buydown surcharge of 0.55¢ per dth applicable to each sales and transportation Rate Schedule under Original Volume Nos. 1, 1-A and 2 of ANR's FERC Gas Tariff, but all subject to reservation of rights to make changes, including the achieve 100 percent cost recovery by increased direct charge recovery.

ANR has requested that the Commission accept this filing, to become effective December 27, 1989.

ANR states that copies of the filing were served upon all of its Volume Nos.

1, 1–A and 2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by December 8, 1989, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28638 Filed 12–7–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–284–000]

Commonwealth Gas Co. v. Distrigas of Massachusetts Corp. et al.; Complaint, Request for Hearing, and Request for Emergency Relief

December 1, 1989.

Take notice that on November 28, 1989, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, Commonwealth Gas Company (COM/Gas) filed an emergency complaint against Distrigas of Massachusetts Corporation (DOMAC), Boston Gas Company (Boston Gas), and Algonquin Gas Transmission Company (Algonquin) requesting that the Commission immediately issue a cease and desist order against DOMAC, Boston Gas, and Algonquin to prevent them from completing steps now underway to deliver vaporized Algerian liquefied natural gas (Algerian gas) into COM/Gas's system and to set the complaint for investigation and hearing.

COM/Gas alleges that Algonquin delivers 100 percent of the natural gas received by COM/Gas to serve the Cambridge and Somerville areas of Massachusetts through deliveries from the Alogonquin J System at COM/Gas' Brookford Street and Third Street take stations (Cambridge Stations). COM/Gas further claims that since 1975, DOMAC has been making sales of Algerian gas from its LNG import facilities in Everett, Massachusetts, to customers all over the Northeast, principally by displacement, by delivering the Algerian gas to Boston Gas Company. COM/Gas also claims that some of the Algerian gas is sold in liquid form and transported by truck to customers that have LNG tanks. COM/Gas asserts that approximately in January of 1989, DOMAC Boston Gas, and Algonquin agreed among themselves to change the existing pattern of distribution because Boston Gas could not absorb any more Algerian gas and because DOMAC wished to sell and transport more vaporized Algerian gas. COM/Gas contends that DOMAC, Boston Gas, and Algonquin decided that they would deliver the Algerian gas directly into Algonquin's interstate pipeline system for redelivery to COM/Gas which is a sales customer of Algonquin but not of DOMAC.

COM/Gas asserts that Algonquin has notified COM/Gas that, as early as December of 1989, Boston Gas will begin delivering Algerian gas from DOMAC into the Algonquin J System at a point between the two Cambridge Stations, and that once DOMAC, Boston Gas, and Algonquin flow the gas in this manner, COM/Gas alleges that it will be unable to avoid receiving it, and the Algerian gas will, at times, displace entirely the domestic gas that Algonquin normally delivers to COM/Gas.

COM/Gas contends that the Algerian gas has significantly different chemical compositions that affect the performance of consumer appliances and that when Algerian gas is supplied undiluted and without opportunity to survey and adjust consumer appliances, a significant number of furnaces, stoves, hot water heaters, and other appliances that operate acceptably on domestic gas in the homes and businesses of COM/Gas' customers could experience incomplete combustion and could produce excessive amounts of toxic carbon monoxide within occupied space. COM/Gas alleges that DOMAC and Algonquin have stated to COM/Gas that they do not believe that the safety precautions proposed by COM/Gas need to be taken and that they will not allow COM/Gas an opportunity to take those precautions before receiving the Algerian gas. Furthermore, COM/Gas alleges that each has stated to COM/Gas that they do not require authorization from the Commission before delivering the Algerian gas to COM/Gas.

COM/Gas asserts that since January 1989, COM/Gas has attempted to reach agreement with DOMAC and Algonquin concerning the timing and manner of delivering Algerian gas but that the companies have thus far failed to take the steps COM/Gas believes are required protect the safety of its customers by (i) failing to provide COM/Gas with data it requested concerning the chemical composition of the gas to be supplied to permit a determination of the number of appliances that will need to be adjusted; (ii) refusing to commit to allow COM/Gas time to identify and adjust or replace as necessary the burners of consumers' appliances that would emit carbon monoxide before delivering the Algerian gas; (iii) refusing to agree to operating procedures (a) to phase in the Algerian gas, (b) to commence initial deliveries outside of the peak heating season when service calls are at their maximum and forced safety-induced shutdowns of furnaces would severely affect the health and welfare of customers, and (c) to identify individuals responsible for and commit to halt deliveries if life-threatening emergencies develop.

COM/Gas alleges that despite nine months of effort by COM/Gas to cooperate and negotiate agreements to provide these necessary protections, COM/Gas faces an unprecedented crisis:

(i) Either it must close the valves to Algonquin, leaving 31,000 customers without heat indefinitely in subfreezing weather; or

(ii) Allow the Algerian gas to enter homes and businesses despite the fact that a significant number of appliances may, as a result, emit carbon monoxide, a deadly gas which is odorless, colorless and tasteless, and which therefore cannot be detected by human senses.

COM/Gas asserts that the Commission possesses ample authority under sections 3, 7, and 16 of the NGA to assure that imported gas is delivered in a safe manner. Further, COM/Gas alleges that none of the companies involved has sought or obtained the authorization under the NGA to deliver Algerian gas to COM/Gas in displacement of domestic supplies as contemplated by the proposed transaction. In addition, COM/Gas claims that DOMAC's, Boston Gas's, and Algonquin's imminent plans to deliver the gas supply without permitting the completion of necessary safety precautions constitutes a violation of the NGA. COM/Gas claims that because of the potential threat to life and the imminence of the delivery of Algerian gas in an unsafe manner, emergency action by the Commission is required.

COM/Gas alleges that it is not seeking to affect the existing delivery of Algerian gas to Boston Gas or deliveries of Algerian gas by truck since such deliveries do not implicate the public safety and lack of legal authorization

issues raised by deliveries of Algerian gas to COM/Gas' system, and that all existing sales arrangements therefore would be unaffected by the relief sought by COM/Gas. COM/Gas states that only the incremental sales by DOMAC that are dependent on the physical delivery of gas to the Algonquin J System would be temporarily delayed, pending resolution of the legal authorization and safety issues.

COM/Gas requests that the Commission:

(1) Without awaiting any response, by telephone order direct DOMAC, Boston Gas and Algonquin to cease and desist from preparing to deliver Algerian gas to COM/Gas' system until such time as the Commission concludes this proceeding and issues an order on the merits (such cease and desist order should, however, specifically exclude existing deliveries of Algerian gas to Boston Gas to be consumed on Boston Gas' system or deliveries of such gas by truck);
(2) Establish an expedited procedural schedule for this proceeding;
(3) Set the Complaint for investigation and hearing;
(4) Upon conclusion of the investigation and hearing, issue an order on the merits prohibiting Algonquin, DOMAC and Boston Gas from initiating deliveries of Algerian gas to Algonquin's J System until all required safety measures have been implemented; and
(5) Grant COM/Gas all other relief to which it is entitled.

Any person desiring to be heard or to protest with reference to said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such motions or protests should be filed on or before December 8, 1989. Protests filed with the Commision will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Respondents' answers to the complaint are due on or before December 8, 1989. No replies to respondents' answers will be accepted. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28641 Filed 12-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-45-000]

Southern Natural Gas Co.; Petition for Waiver

December 1, 1989.

Take notice that on November 22, 1989, Southern Natural Gas Company (Southern) filed a petition for a waiver of §§ 154.304 and 154.308 of the Commission's Regulations, which require Southern to make its next quarterly purchased gas adjustment (PGA) filing by the end of November to be effective January 1, 1990. Southern requests authorization to continue to include in its sales rates the cost of gas reflected in Southern's immediately preceding PGA filings.

Southern states that since its currently effective rates authorized in Docket No. TF90-1-7 already reflect the commodity cost of gas which Southern has agreed to guarantee its customers, Southern believes that it would be both unnecessary and administratively inefficient for it to make another PGA filing merely to continue the current rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before December 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28640 Filed 12-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-209-025]

United Gas Pipe Line Co.; Proposed Changes in FERC Tariff

December 1, 1989.

Take notice that United Gas Pipe Line Company (United) on November 27, 1989, tendered for filing certain revised tariff sheets as part of its FERC Gas Tariff, First Revised Volume No. 1.

United states that this filing is made in compliance with the Order Modifying and Approving Base Stipulation and Agreement and Denying Motion to Sever issued on March 17, 1989 (March 17, 1989 Order) by the Federal Energy Regulatory Commission (Commission) and the Order Granting and Denying Rehearing in Part issued on October 27, 1989 concerning the November 28, 1988 Base Stipulation and Agreement (Settlement) in Docket Nos. RP85-209, *et al.*

United states that contained in the above-referenced tariff sheets are numerous issues resolved in the Settlement, including FTS rates based on the same zones used in Rate Schedule ITS and revisions to sections of United's sales rate schedules and General Terms and Conditions to reflect directives and clarifications from the Commission regarding overrun services and United's system management plan. The submitted tariff sheets include cancellation of Rate Schedule G (Alternate) and the suspension of the Alaskan Natural Gas Tracking System. Also included in this filing are tariff sheets which document reductions in Contract Maximum Daily Quantity and D-1 and D-2 billing demand for Southern Natural Gas Company and Mississippi River Transmission pursuant to the Settlement as well as tariff sheets which reflect Customer Entitlement Quantities (CEQ) for the 12 months beginning November 1, 1989. United further states that tariff sheets are included herein which relate to take-or-pay issues resolved by the Commission's order approving the Settlement. United asserts that the cost shown on these tariff sheets are those which are set out in the Settlement updated to reflect interest and to reflect actual costs as filed in Docket No. RP89-138. United states that tariff sheets are also included to reflect refunds due in Docket No. IN86-5-001 which will be offset against take-or-pay costs allocable to United's jurisdictional customers in compliance with the March 17, 1989 Order.

United states that copies of this filing were served on all parties of United's Docket No. RP88-92 service list.

Any person desiring to protest said filing should file a protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before December 8, 1989, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedures (18 CFR 385.211 and 385.214). Such motion 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28639 Filed 12-7-89; 8:45 am]

BILING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-70-NG]

Westar Marketing Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 12, 1989, of an application filed by Westar Marketing Company (Westar) for blanket authorization to import up to 10 Bcf of Canadian natural gas for a two-year term beginning on the date of first delivery. Westar proposes to import gas at the existing international border delivery point on the interstate pipeline system of Northwest Pipeline Corporation (Northwest) located near Sumas, Washington, and anticipates transporting the imported gas through the existing pipeline facilities of Northwest, Colorado Interstate Gas Company (Colorado), and Questar Pipeline Company (Questar). Westar states that the requested authorization requires no new facilities. The company indicates it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than 4:30 p.m., e.s.t., January 8, 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:

John Boyd, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: Westar, a general partnership with its principal place of business in Salt Lake City, Utah, proposes to import natural gas it may purchase from various Canadian suppliers, including Wainoco Oil Corporation (Wainoco), for resale to various industrial customers and other marketers for delivery in the Pacific Northwest and Rocky Mountain region. According to Westar, the specific terms of each contract will be the product of arms-length negotiations between it and the Canadian suppliers. Additionally, Westar maintains that any shipments of Canadian gas will be based on its specific needs and those of its customers and will necessarily reflect market conditions at the time of the purchase agreements. Each supply contract will be structured to meet competition in the marketplace.

In support of its application, Westar asserts that the requested blanket authorization will facilitate short-term spot market transactions, thereby enhancing competition in the marketplace. Westar further maintains that there will be minimal potential for undue long-term dependence on foreign gas supplies because of the short-term nature of imports anticipate under the requested authorization.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose the application should comment in their responses on the matters as they relate to the requested import authority. The applicant asserts that the import arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of 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 on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional 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 question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR 590.316.

A copy of Westar's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 4, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–28714 Filed 12–7–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3695–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 20, 1989 through November 24, 1989 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 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D–AFS–J65153–MT

Rating EC2, Trail Creek Timber, Sale, Implementation, Beaverhead National Forest, Wisdom Range District, Beaverhead County, MT.

Summary

EPA believes that this project should include a feedback mechanism and monitoring plan that has adequate funding.

Final EISs

ERP No. F–BLM–K65116–CA

Arcata Planning Area, Land and Resource Management Plan, Implementation, Humboldt, Mendocino, Trinity and Sonoma Counties, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F1–BLM–L70009–AK

Utility Corridor Planning Area Resource Management Plan and Central Arctic Management, WSA Recommendations, Implementation, AK.

Summary

Review of this document has been completed and the project found to be satisfactory.

ERP No. F–BOP–K81019–CA

Taft Federal Correctional Institution, Construction and Operation, Kern County, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. FB–NRC–A06162–PA

Three Mile Island Nuclear Power Station, Unit 2, Decontamination and Disposal of Radioactive Waste Resulting from the March 28, 1979 Accident, Londonderry Township, Dauphin County, PA.

Summary

Review of the final was not deemed necessary.

Regulations

ERP No. R–FEM–A86234–00

44 CFR Part 206; Disaster Assistance; Hazard Mitigation Planning (Subpart M) (54 FR 37952).

Summary

EPA suggests that the protection of natural and beneficial values of floodplains be added to a hazard mitigation plan goal of protection of flood losses.

Dated: December 5, 1989.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 89–28721 Filed 12–7–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3694–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5073. Availability of Environmental Impact Statements Filed November 27, 1989 Through December 1, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890335, FSuppl. COE, MI, Sault Ste. Marie Federal Facilities, Operation, Maintenance and Minor Improvements, Implementation, Chippewa County, MI, Due: January 8, 1990, Contact: Donald Williams (313) 226–6753.

EIS No. 890336, Draft, FHW, WI, Wisconsin Trunk Highway 29 Improvement, Shawano Bypass Construction, Section 404 Permit and Funding Shawano County, WI, Due: January 22, 1990, Contact: R.W. Cooper (608) 264–5395.

EIS No. 890337, Draft, BLM, AZ, Arizona Strip District, Land and Resource Management Plan, Implementation, Mohave and Coconino Counties, AZ, Due: March 2, 1990, Contact: Dennis Curtis (801) 673–3545.

EIS No. 890338, Draft, NPS, VA, George Washington Memorial Parkway, Potomac Greens Interchange Development, Construction Permit, Special Use Permit, Daingerfield Island, VA, Due: January 29, 1990, Contact: Jack Benjamin (202) 416–6715.

EIS No. 890339, Draft, AFS, MT, Mill/Emigrant Timber Sale, Implementation, Gallatin National Forest, Livingston Ranger District, Park County, MT, due: January 23, 1990, Contact: Rita E. Beard (406) 222–1892.

EIS No. 890340, Final, COE, IL, Liverpool Village Flood Control Project, Implementation, Illinois River, Fulton County, IL, Due: January 8, 1990, Contact: John Bellinger (202) 272–0166.

EIS No. 890341, Final, AFS, WY, Mountain Meadow Guest Ranch Expansion, Site Development Plan Approval, Special Use Permit Renewal, Medicine Bow National Forest, Albany Country, WY, Due: January 8, 1990, Contact: Terry B. Dilts, (307) 745–8971.

Amended Notices

EIS No. 890353, Draft, FHW, VA, Southeastern Expressway Improvement, I–464/I–64 to VA–44 (Norfolk-Virginia Beach Expressway) Construction Section 10 & 404 Permits, CGD Bridge Permit, York and James City Counties, VA, Due: January 5, 1990, Contact: James M. Tumlin (804) 771–2371. Published FR 9–22–89—Review period extended.

Dated: December 5, 1989.

Willima D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–28720 Filed 12–7–89; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare Environmental Impact Statements (EIS's); Designation of Ocean Dredged Material Disposal Sites (ODMDS's) for Two Navigation Channels in Coastal Louisiana

AGENCIES: U.S. Environmental Protection Agency (EPA), Region 6 and U.S. Army Corps of Engineers (COE), New Orleans District.

ACTION: Notice of intent to prepare draft EIS's on the final designation of ODMDS's off coastal Louisiana.

PURPOSE: In accordance with Section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972 and 40 CFR part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping), the EPA and the COE will jointly prepare draft EIS's on EPA's designation of ODMDS's off coastal Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Norm Thomas, U.S. Environmental Protection Agency, 1445 Ross Ave., Dallas, Texas 75202–2733, Telephone (214) 655–2260 or Mr. Robert Martinson, U.S. Army Corps of Engineers, Environmental Analysis Branch (CELMN–PD–RE), P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–2526.

Summary: The proposed DEIS's will provide information regarding the environmental impacts from continued use of ocean dredged materials disposal sites (ODMD's) for two navigation channels in coastal Louisiana—the Mermentau River in Cameron Parish, and Freshwater Bayou in Vermilion Parish. Without dredging, operating depths would decrease and limit economically important ship traffic utilizing the channels. Each of the above navigation channels extends into the Gulf of Mexico until it reaches a depth equal to the authorized channel depth. During maintenance dredging of the channels in the Gulf, material is placed in a disposal site westward of and parallel to each channel. The sites proposed for designation have been used for over 17 years. These sites received a 3-year interim designation from EPA in 1977, based on historical use. In January 1980, the interim designation of each site was extended indefinitely. The EPA has now determined that it will voluntarily prepare a draft and final EIS for each designation action. The EPA and COE will function as joint lead agencies in preparing these draft EIS's.

Alternatives: Alternatives to be considered in the draft EIS's include no action, final designation of the interim designated ODMDS's, relocation of the ODMDS's to alternate ocean areas, and land disposal and beach nourishment. Other alternatives may be identified during the scoping process.

Scoping: No formal scoping meetings are planned. A Scoping Input Request will be distributed in early December 1989 to allow Federal, state, and local agencies; environmental groups; and other interested parties an opportunity to provide input and assist in identification of significant issues and alternatives to be addressed in the draft EIS's. Comments received as a result of the Scoping Input Request will be compiled and analyzed. A scoping document summarizing the results will be made available to all respondents.

Estimated Date of Release: The draft EIS's are currently scheduled to be available for public review as follows: Mermentau River ODMDS—Spring 1990, Freshwater Bayou ODMDS—Summer 1990.

Dated: December 4, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89–28722 Filed 12–7–89; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–00101; FRL–3684–4]

Biotechnology Science Advisory Committee; Subcommittee on Biotechnology Health; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1–day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Biotechnology Health. The meeting will be open to the public. The Subcommittee will review and discuss biotechnology health safety work and EPA's proposed biotechnology health research plan. Advice and recommendations will be sought from the Subcommittee about the content and future direction of the biotechnology health research program at EPA.

DATE: The meeting will be held on Tuesday, December 19, 1989, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Crystal Gateway Marriott Hotel, 1700 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 St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: December 2, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89–28726; Filed 12–7–89; 8:45 am]

BILLING CODE 6560–50–D

[OPTS–00102; FRL–3684–3]

Biotechnology Science Advisory Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1–day meeting of the Biotechnology Science Advisory Committee (BSAC). The meeting will be open to the public. The Committee will hear and discuss reports from various Subcommittees, including the Subcommittee on Antibiotic Resistance Markers, the BSAC Subcommittee on Mobile Genetic Elements, and the BSAC Subcommittee on Health. The BSAC will also receive updates on various activities, such as the microcosm workgroup, monitoring and greenhouse guidelines, the Good Developmental Practices workgroup, and the Offices of Pesticides and Toxic Substances rulemaking activities.

DATE: The meeting will be held on Wednesday, December 20, 1989, starting

at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Crystal Gateway Marriott Hotel, 1700 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 St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date. Time will be allocated for public comments on the Scope Definition developed by a Subcommittee of the Biotechnology Science Coordinating Committee. Requests for comments should be given to Charlene Dunn at 202-382-6900. Priority will be given to commenters who have provided written comments in advance of the meeting.

Dated: December 2, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-28727 Filed 12-7-89; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 1, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0106.

Title: Section 43.61—Reports of Overseas Telecommunications Traffic.

Action: Extension.

Respondents: Businesses or other for-profit.

Frequency of Response: Annually and other.

Estimated Annual Burden: 38 Responses; 986 Hours.

Needs and Uses: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities. Subjected carriers are required to submit their reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent of the reported figure by October 31 pursuant to § 43.61(d).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-28660 Filed 12-7-89; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 1, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0170.

Title: Section 73.1030, Notifications concerning interference to radio astronomy, research, and receiving installations.

Action: Extension.

Respondents: Businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 30 responses; 30 hours total annual burden; 1 hour average burden per respondent.

Needs and Uses: Broadcast licensees must provide written notification to the Interference Office of Green Bank, WV, setting forth the particulars of a proposed station when it is within the geographical coordinates of the National Radio Astronomy Observatory or the Naval Radio Research Observatory in West Virginia. The information is used by the Interference Office to enable it to file objections with the Commission to minimize potential interference to observatories.

OMB Number: 3060-0184.

Title: Section 73.1740, Minimum Operating Schedule.

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 311 responses; 156 hours total annual burden; 30 minutes average burden per response.

Needs and Uses: Licensees of commercial broadcast stations are required to notify the Commission when events beyond their control make it impossible to continue operating or to adhere to the operating schedule and to again notify the Commission upon return to normal operation. This information is used by the Commission staff to authorize temporarily a limited operation or a discontinuance of operation.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-28661 Filed 12-7-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Asia North America Eastbound Rate Agreement, et al.; Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–051.

Title: Asia North America Eastbound Rate Agreement ("ANERA").
Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner Systems, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.

Synopsis: The proposed modification provides that a party to the Agreement who knowingly discloses confidential information in violation of the provisions of Article 15 (Breach of Confidentiality) shall be liable to reimburse the Agreement and any other parties for all damages and costs which may result from such violation.

Agreement No.: 217–010855–003

Title: V.A.G. Transport/Hoegh-Ugland Auto Liners Space Charter Agreement.
Parties:

V.A.G. Transport GmbH ("V.A.G Transport")
Hoegh-Ugland Auto Liners A/S.

Synopsis: The proposed amendment would delete V.A.G. Transport as a party to the Agreement and would add V.A.G Transport GmbH & Co. O.H.G. as a party. The parties have requested a shortened review period.

Agreement No.: 232–011199–001

Title: V.A.G Transport/Kommar Reciprocal Space Charter and Sailing Agreement.
Parties:

V.A.G Transport GmbH ("V.A.G Transport")
Kommar Companhia Maritima S.A.

Synopsis: The proposed amendment would delete V.A.G Transport as a party to the Agreement and would add V.A.G Transport GmbH & Co. O.H.G. as a party. The parties have requested a shortened review period.

Agreement No.: 232–011230–002

Title: V.A.G Transport/Tecomar Reciprocal Space Charter and Sailing Agreement.
Parties:

V.A.G Transport GmbH
Tecomar S.A.

Synopsis: The modification amends the Agreement by substituting for V.A.G Transport GmbH, the newly-formed legal entity of V.A.G Transport GmbH & Co. O.H.G. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 4, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–28630 Filed 12–7–89; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final FY 1990 program guidelines/application solicitation for labor-management committees.

SUMMARY The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 1990 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. No comments were received on the draft version.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653–5320.

A. Introduction

The following is the final solicitation for the Fiscal Year 1990 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in Fiscal Year 1981. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects to mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section I. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the

establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY90, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. Problem Statement

The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses WHY the effort is needed.

2. Results or Benefits Expected

By using specific goals and objectives, the application must discuss in detail WHAT the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. Approach

This section of the application specifies HOW the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represents 70% of the area or plant workforce);

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position description for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. Major Milestones

This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for WHEN they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1990 as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. Evaluation

Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which will briefly discuss what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. Letters of Commitment

Applications must include current letters of commitment from all proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable.

7. Other Requirements

Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all courses and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility versus its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal Government agencies and their employees are not eligible.

Third party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee and FY88 grantees seeking continuation funding.

D. Allocations

FMCS has been given an allocation of $1.4 million for this program. However, this amount may be reduced by about $25,000 due to federally mandated budget reductions. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be awarded according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY90 appropriation to contract for program support purposes other than administration. In FY90, approximately $400,000 will be reserved to continue successful grants funded in FY88.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio.

The total project period can thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the intitial cash match ratio. The total project period can thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants;

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-mangement committee be compensated out of grant funds for time spent at committee meetings or time spent in training sessions. Applicants generally will not be allowed to claim all or a portion of existing staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY90 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applicants should be signed by both a labor and management representative and be postmarked no later than May 5, 1990. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application, containing numbered pages, plus three copies should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427. FMCS will not accept videotaped submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY90 grant applicants will be notified of results and all grant awards will be made before September 28, 1990. Applications submitted after the deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Application Development Training

In FY90, FMCS will offer a half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC, on December 11, 1989. Individuals interested in attending the session should contact FMCS to reserve a space. See Section I for contact information.

I. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427; or by calling 202/653-5320.

Robert P. Baker,

Acting Director, Federal Mediation and Conciliation Service.

[FR Doc. 89-28734 Filed 12-7-89; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

The Bank of Tokyo, Limited; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *The Bank of Tokyo, Limited*, Tokyo, Japan; to acquire indirect ownership through Service Corp. II, New York, New York, of certain assets of certain leasing subsidiaries within BancNew England Leasing Group, a group of affiliated companies controlled by the Bank of New England Corporation and Bank of New England, N.A., including the hardware, software, office space, furniture and fixtures, personnel and contracts (including servicing contracts) for the purpose of engaging in (1) leasing personal or real property or acting as agent, broker or advisor in leasing such property, pursuant to the Board's Regulation Y § 225.25(b)(5); (2) making, acquiring or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts), for Service Corp. II's account or for the account of others, such as would be made, for example, by companies engaged in consumer finance, credit card, mortgage, commercial finance and factoring, pursuant to the Board's Regulation Y, § 225.25(b)(1); (3) acting as investment or financial advisor pursuant to the Board's Regulation Y, § 225.25(b)(4); and (4) providing to other data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel, data bases or access to such services, facilities or data bases by any technological means, pursuant to the Board's Regulation Y, § 225.25(b)(7). The acquisition of these assets and the establishment and operation of Service Corp. II is part of a larger transaction in which The Bank of Tokyo, Limited, will acquire indirectly through its subsidiary banks in New York and California certain of the leasing assets and/or of the stock of certain leasing subsidiaries within BancNew England Leasing Group.

Board of Governors of the Federal Reserve System, December 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28652 Filed 12-7-89; 8:45 am]

BILLING CODE 6210-01-M

Barclays PLC 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.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC*, London, England, and *Barclays Bank PLC*, London, England; to engage *de novo* through Barclays de Zoete Wedd, Inc., New York, New York, in (i) providing for affiliated and unaffiliated financial and nonfinancial institutional clients, advice in connection with merger, acquisition, divestiture, leveraged buyouts, capital-raising vehicles and other corporate transactions (including advice regarding the terms and features of different publicly-traded bonds available to finance a client's activities, such as market considerations, feasibility studies, and negotiations with bond rating agencies, and including acting as a "dealer-manager" in a tender or exchange offer (which function shall not encompass the purchase of securities either as agent or principal, and valuations and fairness opinions in connection with merger, acquisition, divestiture and similar transactions and to provide ancillary services or functions incidental to the foregoing activities; (ii) making and servicing loans, or other extensions of credit for the company's account or the account of others, as authorized by the Board's Regulation Y, 12 CFR 225.25(b)(1); and (iii) providing investment and financial advice, as authorized by the Board's Regulation Y, 12 CFR 225.25(b)(4).

Board of Governors of the Federal Reserve System, December 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28653 Filed 12-7-89; 8:45 am]

BILLING CODE 6210-01-M

Greenwood National Bancorporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activties

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve. Bank indicated or the offices of the Board of Governors not later than December 29, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Greenwood National Bancorporation*, Greenwood, South Carolina; to engage *de novo* through GNB Mortgage Company, Greenwood, South Carolina, in acting as a mortgage broker engaged in the origination of single family residential first mortgage loans, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *CB Bancshares, Inc.*, Honolulu, Hawaii; to engage *de novo* through Credit Finance and Mortgage, Inc. (to be known as City Finance and Mortgage, Inc.), Honolulu, Hawaii, in industrial banking pursuant to § 225.25(b)(2) of the Board's Regulation Y and making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *U.S. Bancorp*, Portland, Oregon; to engage through U.S. Bancorp Mortgage Company, Portland, Oregon, in arranging commercial real estate equity financing which involves the transfer of title, risk and control of income producing real estate to investors including: pension funds and their advisors, life insurance companies and their investment affiliates, REITS, corporations, investment companies, trusts, partnerships, and individuals. The various forms of equity financing will include: Outright sale, convertible mortgages, participating mortgages, joint ventures, and sale/leasebacks. The above activities involve the transfer of title, in whole or in part from one entity to another and, except for an outright sale, involve both debt and equity financing.

U.S. Bancorp, in summary, will limit its participation to those transactions where the financing exceeds $1 million; where Bancorp and its affiliates do not provide financing to the investors, and where U.S. Bancorp and its affiliates do not have an interest in or participate in managing, developing or syndicating a project for which U.S. Bancorp and its affiliates arrange financing. Neither will U.S. Bancorp receive fees based on profits to be derived from any project or fees that are larger than those charged by an unaffiliated company. This activity is permissible for bank holding companies pursuant to § 225.25(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28654 Filed 12-7-89; 8:45 am]

BILLING CODE 6210-01-M

Synovus Financial Corp. et al.; Formations of Acquisitions by and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 29, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Synovus Financial Corp.*, Columbus, Georgia; to acquire 100 percent of the voting shares and merge with NBWC Corporation, Monroe, Georgia, and thereby indirectly acquire The National Bank of Walton County, Monroe, Georgia.

2. *TB&C Bancshares, Inc.*, Columbus, Georgia; to acquire 100 percent of the voting shares and merge with NBWC Corporation, Monroe, Georgia, and thereby indirectly acquire The National Bank of Walton County, Monroe, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Blackhawk Bancorp, Inc.*, Beloit, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Beloit Savings Bank (to be named Blackhawk State Bank), Beloit, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Walden Holding Company*, Jonesboro, Arkansas; to become a bank holding company by acquiring at least 97 percent of the voting shares of Planters and Stockmen Bank, Pocahontas, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Glenwood Bancshares, Inc.*, Glenwood City, Wisconsin; to acquire 100 percent of the voting shares of Elmwood Financial Services, Inc., Elmwood, Wisconsin, and thereby indirectly acquire First State Bank, Elmwood, Wisconsin.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Chrisman-Sawyer Bancshares, Inc.*, Kansas City, Missouri; to become a bank holding company by acquiring 87.18 percent of the voting shares of First City Bank, Independence, Missouri.

Board of Governors of the Federal Reserve System, December 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28655 Filed 12-7-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3261]

An-Mar International, Ltd., Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Wood Dale, Ill. maker of suntanning devices, from misrepresenting that its devices provide health benefits and that they do not pose a risk of any harmful side effect. In addition, the order requires respondents' promotional materials to contain a warning statement regarding potential eye injury, skin cancer, skin aging and photosensitive reactions.

DATE: Complaint and Order issued July 17, 1989.[1]

FOR FURTHER INFORMATION CONTACT: William Brinley, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue, Suite 520-A, Cleveland, OH, 44114. (216) 522-4210.

SUPPLEMENTARY INFORMATION: On Tuesday, May 9, 1989, there was published in the **Federal Register**, 54 FR 19912, a proposed consent agreement with analysis in the Matter of An-Mar International, Ltd., Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 89-28710 Filed 12-7-89; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3263]

SILO, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Philadelphia, PA based corporation, that operates stores that sell major appliances, to pay $45,000 in civil penalties.

DATE: Complaint and Order issued July 20, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Kathryn Nielsen, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA 98174. (206) 442-4656.

[1] Copies of the Compliant and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Under the Energy Policy and Conservation Act (EPCA), the Commission may enforce the Appliance Labeling Rule by accepting administrative consent orders. Section 1.92 of the Federal Trade Commission's Rules of Practice provides for the assessment of civil penalties for violations of section 332 of the EPCA, 42 U.S.C. 6302, and of the Appliance Labeling Rule. Therefore, the Commission has ordered the issuance of the complaint and consent agreement, in disposition of this proceeding.

Donald S. Clark,

Secretary.

[FR Doc. 89-28711 Filed 12-7-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Additions to Senior Executive Service Performance Review Board Membership

Title 5, U.S.C. 4314(c)(4), of the Civil Service Reform Act of 1978, Public Law 95-484, requires that the appointment of Performance Review Board members be published in the **Federal Register.**

On November 24, 1989, the Department of Health and Human Services' PRB membership was published in the **Federal Register.** The following members are hereby added to that membership:

John McLachlan, Ph.D.
Steven Paul, M.D.

Dated: December 1, 1989.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

[FR Doc. 89-28627 Filed 12-7-89; 8:45 am]

BILLING CODE 4150-04-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the **Federal Register** submission for FSA.

(For a copy of the proposed rules below, call the FSA Reports Clearance Officer on 202-252-5604.)

Request for approval of a new submittal, Child Support Enforcement Program-Extension of Services to Medicaid Applicants and Recipients and Former AFDC Recipients—NEW—The information is needed to ensure that IV-D agencies collect and provide various parties the information necessary to efficiently provide child support enforcement services to Medicaid-only applicants and recipients and to former AFDC recipients. The information collection requirements contained in proposed regulations implementing sections 9141 and 9142 of the Omnibus Budget Reconciliation Act (OBRA) are:

A. *Title 45 CFR 302.33(a) State Plan Revision*—Respondents: State or local governments, Number of respondents 54; Frequency of response: 1; Average Burden per response: 43 minutes; Estimated Burden: 39 hours.

B. *Title 45 CFR 302.33(a)(4) Notifying Family of Available IV-D Services*—Respondents: State or local governments; Number of respondents 54; Frequency of responses: 7000; Average Burden per response: 0.5 minutes; Estimated Burden: 3,150 hours.

C. *Title 45 CFR 302.33(D)(1)(ii) Notifying Court or Administrative Authority of Cost Recovery Policy*—Respondents: State or local governments; Number of respondents 24; Frequency of response: 80; Average Burden per response: 1.0 minutes; Estimated Burden: 32 hours.

D. *Title 45 CFR 302.33(d)(5) Notifying Family of Cost Recovery Policy*—Respondents: State or local governments; Number of respondents 24; Frequency of response: 8000; Average Burden per response: 0.5 minute; Estimated Burden: 1600 hours.

E. *Title 45 CFR 302.33(e)(2) Notifying Family of Assignment Policy*—Respondents: State or local governments; Number of respondents 10; Frequency of response: 9,000; Average Burden per response: 0.5 minute; Estimated Burden: 750 hours.

F. *Title 45 CFR 302.51(e) Forwarding Medical Support to Medicaid Agency*—Respondents: State or local governments; Number of respondents 54; Frequency of response: 900; Average Burden per response: 0.5 minute; Estimated Burden: 405 hours.

G. *Title 45 CFR 306.50(a) Providing IV-D Case Information to Medicaid Agency*—Respondents: State or local governments; Number of respondents 54; Frequency of response: 1800; Average Burden per response: 5.0 minutes; Estimated Burden: 8,100 hours.

H. *Combined Title 45 CFR 306.50(b) and 306.51(c) Notifying Family of Available Medical Support Services*—Respondents: State or local governments; Number of respondents 54; Frequency of response: 9000; Average Burden per response: 0.1 minutes; Estimated Burden: 810 hours.

Total Estimated Burden for all Collections: 14,886.

OMB Desk Clearance Officer: Justin Kopca.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information 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 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: November 28, 1989.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and Information Systems, FSA.

[FR Doc. 89-28312 Filed 12-7-89; 8:45 am]

BILLING CODE 4150-04-M

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays 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). Following is the **Federal Register** Submission for FSA.

(For a copy of the package below, call the FSA, Reports Clearance Officer on 202 252-5602.)

April 1990 CPS Supplement on Child Support and Alimony—The information is required by Title IV-D of the Social Security Act as amended by PL-98-378. The survey will obtain information on women eligible to receive child support. It will obtain social and economic characteristics as well as needed information on receipt and awarding of child support. Respondents: Individuals or Households; Number of Respondents: 27,000; Frequency of Response: 1; Average Burden per resonse: 2.5 minutes; Estimated Annual Burden: 1,125 hours.

OMB Desk Clearance Officer: Justin Kopca.

Written comments and recommendations for the proposed information collection 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 3201 725 17th Street, NW. Washington, DC 20503.

Dated: December 1, 1989.

Silvia E. Vela,

Deputy Associate Administrator, Office of Information and Management Systems, FSA.

[FR Doc. 89-28632 Filed 12-7-89; 8:45 am]

BILLING CODE 4150-04-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress: National Advisory Committee on Rural Health.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026. Thomas Jefferson Building, Second Street and Independence Avenue. SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library. HHS North Building. room G-400, 330 Independence Avenue, SW., Washington. DC, telephone (202) 245-6791. Copies may be obtained from: Mr. Jeffery Human, Executive Secretary, National Advisory Committee on Rural Health, room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443-0836.

Dated: December 4, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-28668 Filed 12-7-89; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration

Final Funding Preferences for Grants for Residency Training and Advanced Education in the General Practice of Dentistry

The Health Resources and Services Administration (HRSA) announces the final funding preference for Fiscal Year 1990 for Grants for Residency Training in the General Practice of Dentistry.

Section 785 of the PHS Act (formerly section 786(b)) authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or an approved advanced educational program in the general practice of dentistry and to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

To receive support, programs must meet the requirements of final regulations at 42 CFR part 57, subpart L.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The potential effectiveness of the proposed project in carrying out the training purposes of section 785 of the Act;

(b) The degree to which the proposed project adequately provides for meeting the project requirements;

(c) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner;

(d) The qualifications of proposed staff and faculty;

(e) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

Proposed funding preferences were published in the **Federal Register** of August 9, 1989 (54 FR 32696) for public comment. Nine comments were received during the 30-day comment period. Seven were from individuals and two were from professional organizations representing U.S. dental schools, hospital dental programs and hospital dentists.

The proposed funding preferences addressed the following categories of programs: Initiation, expansion, and improvement. All respondents urged the Department to consolidate funding preferences 1 (new programs) and 2 (expanding programs) on the basis that both preferences address the overall grant program objective of increasing the number of training opportunities in advanced general dentistry education. The respondents asserted that both new and expanding programs should compete equally for grant support. In response, the Department is consolidating these two preferences as suggested.

One of the professional organizations suggested that the maximum number of years to define a program as new be increased from three to five, in recognition of the time required to establish a new program. By consolidating the proposed funding preferences 1 and 2, the proposed expansion of Category 1 is no longer relevant. However, to continue to encourage eligible institutions to proceed with initiating and expanding programs in years when no competitive grant funds are available, and to assist recently established programs during their more costly start up years, a sixth funding priority is proposed for projects which have been operating an advanced general dentistry program for five years or less, that are proposing to increase the number of trainees in the program, and that have not previously received grant funds under this authority.

The notice of August 9, 1989, included five funding priorities to be used in the determination of funding. The consolidation of the funding *preferences* 1 and 2 affects funding *priority* 1, since a new program cannot meet the documentation requirements of the priority, where an existing program can. This would give an unfair advantage to applicants from existing programs. The Department is therefore expanding funding priority 1 to include programs which do not have a trainee track record but provide a plan for the recruitment, selection and increased enrollment of underrepresented minorities.

The funding preferences for making FY 1990 grant awards are established as follows. Funding Preference 1, new training positions (created by new or expanding programs) will be funded first, followed by program improvements. Within Funding Preference 1, first funding will be for approved applications designed to establish programs in States in which no nonfederally supported residency or advanced educational programs in general dentistry are currently in operation.

In response to the comments, the following are final FY 1990 funding priorities:

(1) Projects which satisfactorily document enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native or Pacific Islanders) over average enrollment of the past three years in the project's postgraduate year (PGY) trainees, or demonstrate a

plan for the recruitment, selection and increased enrollment of underrepresented minorities;

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population;

(3) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of HIV/AIDS infection-related diseases;

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of dental services and utilization of peer-developed guidelines and standards;

(5) Applications proposing to provide substantial *multidisciplinary* geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities; and

(6) Applicants which have been operating an advanced general dentistry program for five years or less, who are proposing to increase the number of trainees in the program, and which have not received funds under this authority.

Dated: December 4, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-28669 Filed 12-7-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meetings

Notice of meetings of the 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 January 18-19, 1990 at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

The meeting will be open to the public on January 18 from approximately 8:30 a.m. to 8:45 a.m. for opening remarks of the Institute Director and from 10:15 a.m. to recess for meetings of the Council subcommittee. On January 19 the meeting will be open to the public from approximatley 8:30 a.m. until 12:15 p.m. 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 an update on Biomedical Research Training Programs; and, a report on the NIAID Task Force on Immunology and Allergy.

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, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:45 a.m. until approximately 10:15 a.m. on January 18, in conference rooms 4, 7 and 8 respectively. The meeting of the full Council will be closed from approximately 12:15 p.m. until adjournment on January 19 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: December 1, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-28705 Filed 12-7-89; 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 Service (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 November 17, 1989.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Possible Misconduct in Science—42 CFR part 50—New—As required by section 493 of the Public Health Service Act, the Secretary by regulation shall require that applicant and awardee institutions receiving PHS funding to investigate and report any allegations of misconduct in science. Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

	Number of respondents	Number of hours per response	Number of responses per respondent
Reporting	2,500	5.6	2.06
Recordkeeping	40	24.6	1

Estimated annual burden..... 29,801 hours

2. NHIS Medical Records Evaluation—0920-0239—The National Health Interview Survey, an ongoing survey of the civilian, non-institutionalized population, monitors the nation's health. This study will evaluate procedures for collecting diagnostic data from household respondents. Survey data from household interviews will be compared to data from medical records. *Respondents:* Individuals or households; non-profit institutions; *Number of Respondents:* 1,100; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.78 hours; *Estimated Annual Burden:* 862 hours.

3. Family of HIV Seroprevalence Surveys—0920-0232—This study is designed to measure the level of HIV prevalence in the U.S. It consists of a family of both blinded and non-blinded serologic surveys among patients in TB

clinics, STD clinics, family planning and other women's health clinics and drug abuse treatment clinics, as well as studies among HIV positive blood donors, transfusion recipients and their heterosexual partners and homeless persons. *Respondents:* Individuals or households; *Number of Respondents:* 60,149; *Number of Responses Per Respondent:* 1; *Average Burden per Response:* .265 hours; *Estimated Annual Burden:* 15,913 hours.

4. 1990 National Household Survey on Drug Abuse—0930–0110—The 1990 National Survey consists of personal interviews with respondents age 12 years and older randomly selected from the household population of the U.S. Findings will provide prevalence and trend data for use by Federal and State agencies to evaluate present drug abuse control policies and to determine policy and strategy for education, treatment and prevention activities. *Respondents:* Individuals or households; *Number of Respondents:* 10,287; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1.15 hours; *Estimated Annual Burden:* 11,844 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 1, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–28636 Filed 12–7–89; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2088]

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.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, 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 SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the 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: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 4, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Secretary's Discretionary Fund, Technical Assistance Program: Evaluation Questionnaire.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The Form will be used to solicit comments on contractor performance from participants receiving technical assistance from contract awards in the Secretary's Discretionary Fund, section 107, Technical Assistance Program. The participants' comments will be used to alert the contract GTR to emerging contract problems that need correction during the contract period and for future contractor selections. The respondents will be recipients of technical assistance provided by HUD contractors to Community Development Block Grant and Urban Development Action Grant grantees.

Form Number: HUD–40011, and 40011.1.

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
Questionnaire	2,400		1		.25		600
Follow-Up	2,400		1		.0833		200

Total Estimated Burden Hours: 800.
Status: Revision.
Contact: Edward P. Winkler, HUD, (202) 755–6032, John Allison, OMB, (202) 395–6880.

Dated: December 4, 1989.

[FR Doc. 89–28681 Filed 12–7–89; 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–49]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for 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: December 8, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC (20410; telephone (202) 755-7300; TDD number for the hearing- and speech-impaired (202) 755-5965. (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 or 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 ultimately 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 as 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. Army Corps of Engineers: Bob Swieconek, HQ–US Army Corps of Engineers, Attn: CERE–MN, 20 Massachusetts Avenue NW., Washington, DC 20415–1000, (202) 272–1750; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535–7067; Air Force: H. L. Lovejoy, Bolling AFB, HQ–USAF/LEER, Washington, DC 20332–5000 (202) 767–4191; Department of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319D, Washington, DC 20590, (202) 366–4246.

Dated: December 4, 1989.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)
(Number of Properties [ ])

Alaska

Wrangell Narrows Reservation [1]
see below, AK
Landholding Agency: DOT
Location: 6 miles south of City of Petersburgh along the Mitkof highway (surplus)
Comment: 42.15 acres; restrictions—easement right-of-way to US Forest Service

Kansas

Portion of Cheney Dam and Reservoir [1]
Sedgwick County, KS
Landholding Agency: GSA
Location: about 40 miles West of Wichita, KS
Comment: Located immediately below a dam; 150.8 acres; wheat crops

Massachusetts

Monmouth Beach [1]
Cape Cod, MA
Landholding Agency: DOT
Location: ———
Comment: 0.1 acre; possible periodic flooding

New Jersey

Portion of former Nike Battery #60 [1]
Middlesex County

Old Bridge, NJ
Landholding Agency: GSA
Location: GSA #2–GR–NJ–520A (excess)
Comment: 35.444 acres; no improvements

Oregon

Port Orford Radio Site [1]
Port Orford
Curry, OR
Landholding Agency: DOT
Location:———
Comment: 5.17 acres; current use radio site
Suitable Building (by State)
(Number of Properties [ ])

Kansas

Pomona Lake [1]
Vassar, KS
Landholding Agency: COE
Location: Osage County
Comment: one story frame bldg; 1,275sf; possible off-site removal; possible asbestos

Air Route Surveillance Radar [2]
Johnson Co. Industrial Airport
Gardner, KS
Landholding Agency: DOT
Location: (surplus)
Comment: 1.2 acres; 4 story metal and one story concrete; structural problems

Massachusetts

Nahant Tower [1]
Suffolk County
Nahant, MA
Landholding Agency: DOT
Location: (excess)
Comment: concrete tower on 0.1 acres; no utilities

Minnesota

Orwell Dam Reservoir [1]
RFD #4, Box 100
Fergus Falls, MN
Landholding Agency: COE
Location: ———
Comment: one story frame bldg; 1040sf; possible asbestos

Oklahoma

Vance Air Force Base [1]
Bldg. 111
Enid, OK
Landholding Agency: AIR FORCE
Location: Property #111; (excess); Garfield County
Comment: off-site removal only; 3769sf; possible asbestos

Puerto Rico

Mona Island [4]
Mona Island, PR
Landholding Agency: DOT
Location: (excess)
Comment: 209 acres; bldg—lighthouse; no utilities
Unsuitable Land (by State)
(Number of Properties [ ])

Alaska

Sanak Harbor [1]
Sanak Island, AK
Landholding Agency: DOT
Location: latitude 54 degrees 30' North, longitude 162 degrees 50' Wide, as shown on USCG and Geodetic Survey Chart #8841
Reason: Not accessible by road
Comment: 98 acres; probable historical and/or archaeological site

Mississippi

Vernon-Anderson Road [1]
Vernon-Anderson Road
Flora, MS
Landholding Agency: GSA
Location: GSA #4–D–MS–475; (excess)
Reason: Other
Comment: Road right-of-way; storm drainage ditches

Washington

Puttin Island [1]
San Juan County, WA
Landholding Agency: DOT
Location: ———
Reason: Not accessible by road
Comment: 5 acres
Unsuitable Building (by State)
(Number of Properties [ ]

Alaska

6th Infantry Division (Light) [1]
Fort Wainwright, AK
Landholding Agency: ARMY
Location: Property #4006; (excess)
Reason: Secured area, Within 2000 ft. from flammable or explosive material

6th Infantry Division (Light) [1]
Bldg. 3705
Fort Wainwright, AK
Landholding Agency: ARMY
Location: Property #3705; (excess)
Reason: Secured area

California

Sierra Army Depot [1]
SDSSI–EPS
Herlong, CA
Landholding Agency: ARMY
Location: Property #S–554; Lassen County
Reason: Secured areas, Within 2000 ft. from flammable or explosive material

Georgia

94 CSG/DE [1]
Dobbins, AFB
Dobbins, GA
Landholding Agency: AIR FORCE
Location: Property #556; (excess)
Reason: Secured area, Within 2000 ft. from flammable or explosive material

Louisiana

Bldgs. T–8222, 8224 [2]
Fort Polk, LA
Landholding Agency: ARMY
Location: Property #T–8222, 8224; (excess)
Reason: Secured area

Massachusetts

Westover AFB [1]
Bldg. 1900
Chicopee, MA
Landholding Agency: AIR FORCE
Location: Property #1900; Hampden County
Reason: Secured area

Michigan

U.S. Army Garrison-Selfridge [2]
AMSTA–XEM
Mt. Clemens, MI
Landholding Agency: ARMY
Location: Property #602, 604; (excess); Macomb County
Reason: Secured area, Within 2000 ft. from flammable or explosive material

Minnesota

934th Tactical Airlift Group [1]
Bldg. 622
Hennepin County, MN
Landholding Agency: AIR FORCE
Location: Property #622; Minneapolis-St. Paul IAP
Reason: Within 2000 ft. from flammable or explosive material

934th Tactical Airlift Group (AFRES) [1]
Bldg. 810
Hennepin, MN
Landholding Agency: AIR FORCE
Location: Property #810; Minneapolis-St. Paul IAP
Reason: Secured area, Within 2000 ft. from flammable or explosive material

934th Tactical Airlift Group (AFRES) [1]
Bldg. 864
Hennepin, MN
Landholding Agency: AIR FORCE
Location: Property #864; Minneapolis-St. Paul IAP
Reason: Secured area, Within 2000 ft. from flammable or explosive material

934th Tactical Airlift Group (AFRES) [1]
Bldg. 46
Hennepin County, MN
Landholding Agency: AIR FORCE
Location: Property #46; Minneapolis-St. Paul IAP
Reason: Secured area, Within 2000 ft. from flammable or explosive material

934th Tactical Airlift Group (AFRES) [1]
Bldg. 616
Hennepin County, MN
Landholding Agency: AIR FORCE
Location: Property #616; Minneapolis-St. Paul IAP
Reason: Within 2000 ft. from flammable or explosive material

New York

914th Tactical Airlift Group [1]
Niagara Falls International Airport
Niagara Falls, NY
Landholding Agency: AIR FORCE
Location: Property #518; (excess)
Reason: Secured area, Within 2000 ft. from flammable or explosive material
914th Tactical Airlift Group [1]
Niagara Falls International Airport
Niagara Falls, NY
Landholding Agency: AIR FORCE
Location: Property #524; (excess)
Reason: Secured area, Within 2000 ft. from flammable or explosive material

Tennessee

Holston Army Ammunition Plant [1]
Kingsport, TN
Landholding Agency: ARMY
Location: Property No. 1, Area B; Hawkins County; (excess)
Reason: Within 2000 ft. from flammable or explosive material

Texas

Building 2211 [1]
Fort Hood, TX
Landholding Agency: ARMY
Location: Property #2211; (excess)
Reason: Secured area
MSD Brownsville [2]
Cameron County
Brownsville, TX
Landholding Agency: DOT
Location: ———
Reason: Floodway

Virginia

Bucks Elbow RML Facility [1]
Private Government Road
Waynesboro, VA
Landholding Agency: DOT
Location: Albemarle County
Reason: Secured area

Wisconsin

Dwelling [1]
400 E College Avenue
Milwaukee, WI
Landholding Agency: AIR FORCE
Location:———
Reason: Secured area, Within 2000 ft. from flammable or explosive material

[FR Doc. 89-28651 Filed 12-7-89; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-00-4211-14; S 3324]

Realty Action; Intent To Terminate Right-of-Way Grant

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action: notice of intent to terminate right-of-way grant (S 3324).

SUMMARY: This Notice is to advise all interested parties that the Bureau of Land Management intends to take action to terminate abandoned right-of-way grant S 3324.

SUPPLEMENTARY INFORMATION: Right-of-way grant S 3324 was issued on August 26, 1905, to the Diamond & Caldor Railway Company over Federal land in El Dorado County, California. The right-of-way was issued under authority of the Act of March 3, 1875. A record search found that in 1953 the right-of-way was dismantled and abandoned and the Diamond & Caldor Railway Company was dissolved. In view of the abandonment, action is being referred to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge, pursuant to 43 CFR part 4, to determine if grounds for termination exist and that such action is justified.

DATE: On or before January 8, 1990, parties claiming an interest in the right-of-way may request a hearing.

ADDRESS: Parties claiming an interest in the right-of-way should contact the Bakersfield District Office in writing at 800 Truxtun Avenue, Bakersfield, CA 93301. The Bureau of Land Management will notify any interested parties as to the date, time and place for the hearing.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, District Realty Specialist, at the above address or telephone at (805) 861-4191.

Dated: December 1, 1989.

Nancy J. Cotner,

Associate District Manager.

[FR Doc. 89-28674 Filed 12-7-89; 8:45 am]
BILLING CODE 4310-40-M

[NV-930-00-4214-10; N-52289]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

November 29, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency has filed an application to withdraw 3,892.02 acres of public lands to protect the integrity of the site which is proposed for land application of digested sludge from the Reno-Sparks Wastewater Treatment Facility. This notice closes the lands for up to 2 years from settlement, sale, location and entry under the general land laws, including the United States mining laws. The lands will remain open to leasing under the mineral leasing laws.

DATE: Comments and requests for a public meeting should be received on or before March 8, 1989.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702-328-6326.

SUPPLEMENTARY INFORMATION: On November 21, 1989, the U.S. Environmental Protection Agency filed an application to withdraw the following described public lands from settlement, sale, location, and entry under the public land laws, including the mining laws, subject to valid existing reights:

Mount Diablo Meridian

T. 23 N., R. 20 E.,
Sec. 2, Lots 3 and 4, S½NW¼, NW¼SW¼, S½SW¼;
Sec. 3, Lots 1-4, S½N½, S½;
Sec. 4, Lot 1, S½NE¼, SE¼;
Sec. 9, E½;
Sec. 10, All;
Sec. 11, E½E½, NW¼NE¼, NW¼, N½SW¼, SW¼SW¼;
Sec. 12, NW¼NE¼, S½NE¼, NW¼, S½;
Sec. 14, S½NW¼;
Sec. 15, S½NE¼, NW¼NW¼, S½NW¼, SW¼, SW¼SE¼;
Sec. 16, NE¼.

The area described contains 3,892.02 acres in Washoe County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer

that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period by the BLM authorized officer after consultation with the Environmental Protection Agency are any temporary uses which will not interfere with the purpose of the withdrawal.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 89-28634 Filed 12-7-89; 8:45 am]

BILLING CODE 4310-HC-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31546]

Clyde S. and Saundra Forbes and CSF Acquisition, Inc.; Continuance in Control Exemption

Clyde S. and Saundra Forbes (Forbes) and CSF Acquisition, Inc., (CSF) filed a notice of exemption to continue to control New Hampshire and Vermont Railroad Company (NH&V). The Forbes control CSF, a non-carrier formed to acquire and operate shortline railroads. CSF already controls Florida West Coast Railroad Company (FWC), a class III shortline railroad headquartered in Trenton, FL. Once incorporated, NH&V will also be a wholly owned subsidiary of CSF.

NH&V concurrently filed a notice of exemption in Finance Docket No. 31547, *New Hampshire and Vermont R. Co.—Lease, Oper. and Acq, Exemp.—& B.&M. Corp.* to lease, operate and ultimately to purchase approximately 80 miles of Boston and Maine Corporation lines located in Coos and Grafton Counties, NH.

Forbes and CSF state that: (1) FWC and NH&V will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier.

This transaction involves the continuance in control of a nonconnecting carrier, and comes within the class exemption in 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.* 390 I.C.C. 60 (1989).

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: November 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-28503 Filed 12-7-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31547]

New Hampshire and Vermont Railroad Co.; Lease, Operation and Acquisition Exemption

New Hampshire and Vermont Railroad Company [1] (NH&V), a non-carrier, has filed a notice of exemption to lease, operate, and ultimately purchase approximately 80 miles of Boston and Maine Corporation's (B&M) North Country Branch in Coos and Grafton Counties, NH.[2] The track involved consists of the Berlin Branch, extending from milepost MPC 94.01 at or near Woodsville, NH, to milepost MPC 154.34 at or near Berlin, NH; and the Groveton Branch, extending from MPC 126.93 at or near Waumbek Junction, NH, to MPC 146.22 at or near Groveton, NH.

This transaction is related to a notice of exemption filed concurrently in Finance Docket No. 31546, *Clyde S. and Saundra Forbes and CSF Acquisition Inc.—Cont. in Control Exemp.—New Hampshire and Vermont R. Co.* There the continued control of NH&V and a nonconnecting carrier is being exempted from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

Any comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street, NW., Suite 1107, Washington, DC 20006.

Applicant must preserve intact all sites and structures more than 50 years old until compliance with requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C.2d 305(1988).[3]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab inito.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[4] The filing of a petition to revoke willnot automatically stay the transaction.

Decided: November 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[1] A new company that will be incorporated prior to consummation.

[2] For purposes of calculating the effective date of the exemption, the notice will be considered having been filed on November 16, 1989, the date NH&V supplemented the record with the required certification that its projected revenues would not exceed those that would qualify it as a Class III carrier.

[3] Applicant has certified to the New Hampshire State Historic Preservation Officer that this transaction will not lead to the transfer of properties qualifying for inclusion in the National Register of Historic Places.

[4] A petition to revoke the exemption or, alternatively, a motion to strike the verified notice was filed by 15 Rail Labor parties on November 1, 1989. They contend that the exemption request was improperly filed and cannot be acted on because applicant is not incorporated and, therefore, not a legal entity. On November 20, 1989, applicant responded, contending that our rules are not limited to legal entities and that in any event NH&V became a Florida corporation on November 9, 1989. Since NH&V is now incorporated, Rail Labor's petition/motion is moot.

DEPARTMENT OF JUSTICE

Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *Mine Safety Appliances Company, Inc.*, Civil Action No. 87-1531, was lodged with the United States District Court for the Western District of Pennsylvania on November 29, 1989. The Consent Decree requires the compliance by the Defendant with certain requirements under the Resource Conservation and Recovery Act, as well as the payment by the Defendant of a civil penalty of $130,000.00.

The Department of Justice will receive for thirty (30) days from the date of

publication of this notice, written comments related to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Mine Safety Appliances Company, Inc.*, D.J. Ref. No. 90–7–1–359.

The Consent Decree may be examined at: (1) The Office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219; (2) the Environmenal Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530; and (3) the Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Please enclose a certified check payable to "Treasurer, United States of America" for $1.60 (10 cents per page) to cover the costs of copying.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–28732 Filed 12–7–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that on November 30, 1989 a proposed consent decree in *United States* v. *City of Springfield, Mo. and Litton Industries, Inc.*, Civil Action No. 89–3440–CV–S–2 was lodged with the United States District Court for the Western District of Missouri. The proposed consent decree involves claims by the United States pursuant to CERCLA for recovery of clean-up costs incurred and to be incurred at the Fulbright and Sac River Landfills near Springfield, Missouri as well as claims for injunctive relief.

The proposed consent decree requires the defendants to perform the remedial action selected in the Record of Decision issued by the United States Environmental Protection Agency ("EPA") on September 30, 1988, which specifies removal and off-site disposal of drums, drum remnants and contaminated soil found in the Fulbright Sinkhole; post-closure monitoring of surface and ground water; and deed restrictions on the use of the property. The defendants are also required to prepare a contingency plan for leachate management is necessary. In addition, defendants are required to pay $272,157.91 to the EPA for post costs expended at the Site and to reimburse EPA for any additional response costs incurred after the issuance of the Record of Decision. In return, the defendants are given a release from claims for certain past indirect costs totalling $104,803.57.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Springfield et al.*, D.J. Ref. No. 90–11–2–448.

The proposed consent decree may be examined at the Office of the United States' Attorney for the Western District of Missouri, 227 United States Courthouse, 870 Boonville, Springfield, Missouri 68501 and at the Region VII Office of the United States Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1517, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–28733 Filed 12–7–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Recording Industry Association of America

Notice is hereby given that, on October 30, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Recording Industry Association of America, Inc. ("RIAA"), for itself and on behalf of its member companies, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of new parties to the venture. The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following parties have joined the venture, effective August 1, 1989: April Records, Brimstone Records, LeFrak-Moelis Records, Motown Records, Narada Productions, Inc., SBK Records Group, Heart & Soul Productions, Ltd., Nise Productions, Inc., and Tip Records.

The following are no longer participants in the venture, effective August 1, 1989: Attack/Ambush Records, Bee Gee Records, M Records, Inc., MTM Music Group, Birthright Records, Inc., and Track Record Company.

No other changes have been made in either the membership or planned activity of the RIAA.

On March 27, 1989, RIAA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 1, 1989, 54 FR 18607.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–28729 Filed 12–7–89; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Petroleum Environmental Research Forum

Notice is hereby given that, on October 31, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") filed a written notification simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the membership of PERF. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional party has become a member of PERF: Coastal Biotechnology, Inc., 310 First Street, Post

Office Box 1871, Roanoke, Virginia 24008.

No other changes have been made in either the membership or the planned activities of PERF.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903). On May 6, 1986, May 27, 1986, June 23, 1986, February 3, 1989 and March 21, 1989, PERF filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on June 9, 1986 (51 FR 20897), June 19, 1986 (51 FR 22365), July 17, 1986 (51 FR 25957), March 1, 1989 (54 FR 8607), and April 20, 1989 (54 FR 16014), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-28730 Filed 12-7-89; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; MRI Ventures, Inc. et al., Pyrolysis Materials Research Consortium

Notice is hereby given that, on October 27, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), written notice was filed by MRI Ventures, Inc. ("MRIV") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the members of the Pyrolysis Materials Research Consortium ("Consortium") and (2) the nature and objectives of the Consortium. The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the members of the Consortium and its general areas of planned activities are given below.

The members of the Consortium are:

Allied-Signal Corporation, Margaret & Bermuda Streets, Philadelphia, PA 19137;

Aristech Chemical Corporation, 600 Grant Street, Pittsburgh, PA 15230-0250;

Georgia-Pacific Resins, Inc. 133 Peachtree Street, N.E., P.O. Box 105605, Atlanta, GA 30348-5606;

MRI Ventures, Inc., 425 Volker Boulevard, Kansas City, MO 64110-2299;

Plastics Engineering Company, 3518 Lakeshore Road, P.O. Box 758, Sheboygan, WI 53082-0758;

Pyrotech Corporation, 8016 State Line, Suite 101, Leawood, KS 66208-2710.

The nature and planned activities of the Consortium are to assist in the develpment of, and subsequently to commercialize, technologies for (1) breaking down waste or other low-cost biomass materials such as sawdust or bark, via fast pyrolysis, into constituent chemicals; (2) processing or separating the chemicals into commercially usable products or feedstocks; and (3) converting the feedstocks into commercially usable products such as phenolic resins and aromatic hydrocarbons.

The technologies are the result of research and development work of the Solar Energy Research Institute ("SERI"), which is a United States Department of Energy ("DOE") laboratory managed by Midwest Research Institute ("MRI"). Initial membership in the Consortium was determined by MRIV, a subsidiary of MRI, following review of responses to an open invitation for indications of interest, based on the capabilities and willingness of prospective members to help achieve the development and commercialization of the technologies.

Joseph M. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-28731 Filed 12-7-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for all Urban Consumers United States City Average

Pursuant to the requirements of Public Law 95-602, I hereby certify that the Consumer Price Index for All Urban Consumers rose by 4.5 percent between October 1988 and October 1989 from a level of 120.8 (1982-84=100) in October 1988 to level of 125.6 (1982-84=100) in October 1989. Signed at Washington, DC, on the 30th day of November 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-28737 Filed 12-7-89; 8:45 am]

BILLING CODE 4510-24-M

Employment Standards Administration

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 tudy 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 the 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, organizations, 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-3504, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page numbers(s).

Volume II

Iowa:
IA89-2 ..... p.27, pp.28-30.

Volume III

California:
CA89-5 ..... p.104c, pp.104d-104t.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Relaed 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

Florida:
FL89-13 (Jan. 6, 1989) ..... p. 129, p. 130.
FL89-17 (Jan. 6, 1989) ..... p. 141, p. 142.
FL89-36 (Jan. 6, 1989) ..... p. 183, p. 184.
FL89-38 (Jan. 6, 1989) ..... p. 191, pp. 192-193.
FL89-42 (Jan. 6, 1989) ..... p. 201, p. 202.
FL89-44 (Jan. 6, 1989) ..... p. 205, p. 206.
FL89-45 (Jan. 6, 1989) ..... p. 206a, p. 206-b, p. 206c.

Georgia:
GA89-31 (Jan. 6, 1989) ..... p. 271, p. 271-272b.

Pennsylvania:
PA89-26 (Jan. 6, 1989) ..... p. 1016c, p. 1016e.

West Virginia:
WV89-2 (Jan. 6, 1989) ..... p. 1209, p. 1211, p. 1213, p. 1217.

Volume II

Texas:
TX89-7 (Jan. 6, 1989) ..... p. 999, p. 1000.

Volume III

Alaska:
AK89-1 (Jan. 6, 1989) ..... p. 1, pp. 2-3.

California:
CA89-1 (Jan. 6, 1989) ..... p. 33, pp. 33-42.

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 18th day of December 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-28455 Filed 12-7-89; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

[Docket No. NRTL-1-88]

MET Electrical Testing Company, Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of request for expansion of recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the application of MET Electrical Testing Company, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is February 6, 1990.

ADDRESS: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

Application

SUPPLEMENTARY INFORMATION: Notice is hereby given that the MET Electrical Testing Company, Inc., which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9-83 (48 FR 35763), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 49258, 12/6/88), and which was so recognized (see 54 FR 21136, 5/16/89), has made application for an expansion of its current recognition, for the equipment or materials listed below.

The address of the concerned laboratory is: MET Electrical Testing Company, Inc., Laboratory Division, 916 West Patapsco Avenue, Baltimore, Maryland 21230.

Expansion of Recognition: MET Electrical Testing Company, Inc. (MET) submitted an application for expansion of its current recognition to include the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL #913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous Locations, and ANSI/UL #1262—Laboratory Equipment.

The NRTL Recognition Program staff made an in-depth study of the details of MET's original recognition and determined that MET had the staff capability and the necessary equipment to conduct testing of products using the proposed test standards. The NRTL staff determined that an additional on-site review was not necessary since the proposed additional test standards were closley related to MET's current areas of recognition.

Preliminary Finding

Based upon a review of the details of MET's recognition and an evaluation of its present application including details of necessary test equipment, procedures, and special apparatus or facilities needed, the Assistant Secretary has made a preliminary finding that the equipment and expertise required to list products to the two aforementioned standards are within the capabilities of the laboratory, and that the proposed additional test standards (product categories) can be added to MET's recognition without the necessity for an additional on-site review.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the expansion of the current recognition of the MET Electrical Testing Company, Inc., as required by 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than February 6, 1990, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

Copies of all pertinent documents (Docket No. NRTL–1–88), are available for inspection and duplication at the Docket Office, room N2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC this 4th day of December 1989.

Gerald F. Scannell,

Assistant Secretary.

[FR Doc. 89–28738 Filed 12–7–89; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[License No. SNM42; Docket No. 70–27]

Finding of No Significant Impact and Notice of Opportunity for a Hearing Amendment of Special Nuclear Material; Babcock & Wilcox; Naval Nuclear Fuel Division; Lynchburg, VA

The U.S. Nuclear Regulatory Commission (the Commission) is considering the amendment of Special Nuclear Material License No. SNM–42 for Babcock & Wilcox Naval Nuclear Fuel Division (NNFD) located in Lynchburg, Virginia.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is amendment of License No. SNM–42 to allow the processing of slightly irradiated fuel for uranium recovery. The uranium fuel which NNFD proposes to recover was used, or intended to be used, in zero-power critical assembly experiments performed at Bettis Atomic Power Laboratory and Knolls Atomic Power Laboratory between 1959 and 1977. The recovery steps will be the same as those used for non-irradiated fuel, viz., dissolution of fuel rods in acid, solvent extraction to separate the uranium from the fission products and other components in the scrap, and uranium concentration and recovery. The liquid waste containing the fission products will be treated for fission product removal in the new Recovery System before being transferred to the existing Waste Treatment Facility (WTF).

In the new Recovery System, the liquid waste will be neutralized and flocculated by the addition of a polymer to settle, by gravity, most of the fission products. The supernatant liquid from the flocculation process will be processed in a volume reduction evaporator to concentrate the remaining fission products. The evaporator concentrate and the flocculation solids will be solidified in concrete and sent to an authorized burial ground. The condensate from the first reduction evaporator will then be processed in a scrub evaporator to further reduce the quantity of fission products in the bulk of the liquid waste. The concentrate with fission products from the second evaporator will be sent back to the first evaporator for processing. The condensate from the scrub evaporator will be monitored and if results are satisfactory, sent to the existing WTF where additional quantities of radioactive materials will be removed by routine treatment. The air effluent from the new treatment facility will be passed through two high efficiency particulate air filters and routed through the existing recovery process ventilation system to be released via a building stack.

NNFD plans to divide the total quantity of fuel into six campaigns for processing; two campaigns a year for 3 years. The maximum amount to be processed in any 1 year is 332.5 kg of U–235.

The Need For The Proposed Action

NNFD plans to recover uranium from some slightly irradiated fuel and therefore, requests an amendment to their license to authorize this action.

Environmental Impacts of the Proposed Action

Processing of the irradiated fuel will be conducted in place of routine recovery processing. NNFD representatives state that the existing operation has no history of elevated environmental releases. As the process will be the same, uranium releases should not change. Similarly, non-radiological chemical emissions should not change.

NNFD calculated the quantity of byproduct material that will be released in the gaseous effluents by comparing the current uranium released to the amount of uranium materials processed. This ratio was then applied to the byproduct material. Since Kr–85 is a noble gas, 100 percent was assumed to be released; noble gas would not be removed by filtration or scrubbing. The estimated byproduct material released in the gaseous effluent during the processing period (3 months/year) are 6.8E–2 μCi of Cs–137, 3.3E–2 μCi of Sr–90, 3.32E–2 μCi of Y–90, and 2,917 μCi of Kr–85. The maximum estimated concentrations during the processing period, calculated using the 1988 average flow rate for the recovery ventilation system, are all less than 0.1 percent of the maximum permissible concentration (MPC) in 10 CFR part 20, appendix B, table II.

NNFD will sample the gaseous emissions from the recovery operations and analyze the samples for gross beta activity. An action level of 1.5E–12 μCi/ml based on the Sr–90 MPC has been proposed. If the action level is exceeded, further analysis will be performed to determine the isotopic content of the sample. If after further analysis, the concentration of any single isotope exceeds 50 percent of the value in 10 CFR part 20, appendix B, table II, further corrective action will be taken, which

may include repair, replacement, cleaning, modification, and/or addition of equipment.

NNFD calculated the quantity of byproduct material that will be released in the liquied effluents by making some conservative assumptions as to the removal efficiency of the treatment systems. A removal efficiency of 80 percent (greater than 90 percent is expected) was used for the new treatment system. This leaves 20 percent of the fission products contained in the liquid waste that will be discharged to the current WTF. Based on current operating histories and NNFD–RL byproduct inputs, a 20 percent removal efficiency was used for the WTF. The collection removal efficiency used for release calculations is therefore 84 percent; 16 percent of the fission products are available for ultimate release to the James River. NNFD estimates that in the 3-month processing period each year that 4,294 μCi of Cs–137, 2,118 μCi of Sr–90, and 2,118 μCi of Y–90 would be discharged with the liquid effluent. The concentration in the effluent prior to discharge to the James River, based on the 1988 average flow of all liquid effluents, expressed as a percentage of MPC, was less than 1 percent for Cs–137 and Y–90 and 10.4 percent for Sr–90.

These concentrations would be further reduced upon entry and mixing in the James River. The Sr-90 concentration in the James River (based on an average flow of 3.39E+15 cm^3/yr) would be less than 1 percent of the MPC and EPA's drinking water standards.

NNFD has proposed an action level of 3E–8 μCi/ml, based on the Sr-90 MPC. If this action level is exceeded, NNFD proposes to perform an investigation and take corrective action if the investigation indicates that the annual average concentration would exceed the action level. While the action level triggering the investigation is acceptable, the corrective action should not be based on an annual average concentration but on whether any single isotope exceeds a set percentage of the value identified in 10 CFR part 20, appendix B, table II. Because NNFD has not set an acceptable percentage, the staff will set the percentage at 25 percent. The staff recommends that any investigation include an isotopic analysis. Further, it is recommended that if any single isotope exceeds 25 percent of the value identified in 10 CFR part 20, appendix B, table II, further corrective action should be taken. NNFD's proposed corrective action may include additional dilution of the liquid effluent stream. This corrective action is not acceptable to the staff. The staff recommends that the corrective action include steps to reduce the quantity of fission products discharged and not dilution of the stream.

NNFD performed a dose assessment using Regulatory Guide 1.109. Atmospheric release estimates were made assuming worst case conditions. A hypothetical person was assumed to live at the nearest site boundary (400 m from the recovery stack). The whole body dose was calculated to be 5.46E–3 mrem/yr, and the dose to the bone was 1.14E–2 mrem. These doses are incremental doses. The actual nearest resident is located approximately 1,370 m from the recovery stack. The incremental annual dose to the nearest resident due to the recovery of two campaigns of irradiated fuel is estimated to be 1.4E–5 mrem to the bone and 6.4E–6 mrem to the body. The cumulative dose to the nearest resident (based on the dose calculations of operations at the NNFD, the Research Lab, and the Commercial plant from the 1986 Environmental Assessment for renewal of the Research Lab license) would be 1.6E–1 mrem to the bone and 5.1E–2 mrem to the body. The doses due to NNFD operations are well below the 25 mrem limit established by EPA in 40 CFR part 61. Additionally, the cumulative doses from the three facilities are well below the 25 mrem permitted by 10 CFR part 20, § 20.105(c), which incorporates the provisions of EPA's standards in 40 CFR part 190 (the Commercial plant is subject to 40 CFR part 190). Staff, therefore, concludes there is no adverse impact to the maximally exposed individual from the release of radioactivity due to operations of the plant.

NNFD has not proposed any changes to the environmental monitoring program. NNFD has stated that the boundary air monitors will be closely monitored when operations are in progress. It is recommended the NNFD collect quarterly sediment samples from the pond and river and analyze them for Sr-90 and Cs-137. Water samples from the river and the wells around the pond should also be analyzed for gross beta (based on Sr-9).

The potential for an accident and the consequences of an accident involving the zero-power scrap material are no different than those for an accident during routine scrap recovery.

Conclusion

The release of some byproduct material in the effluents is unavoidable. However, potential exposures are well within acceptable limits, and the staff concludes that there will be no significant impact associated with recovery of the irradiated fuel. The staff is recommending, however, that: (1) Sediment samples from the pond and river be collected quarterly and analyzed for Sr-90 and Cs-137, (2) water samples from the river and the wells around the pond be analyzed for gross beta (Sr-90), (3) the investigation conducted when the liquid effluent exceeds the action level include an isotopic analyses, (4) the corrective action level for gross beta in liquids be changed to any single isotope that exceeds 25 percent of the MPC, and (5) the corrective action be changed to remove dilution as an option and include actions that would reduce the quantity of fission products released.

Alternatives to the Proposed Action

Alternatives to the proposed action include complete denial of NNFD's amendment application. This action would result in NNFD not processing the irradiated fuel. Since impacts from the recovery operations are expected to be minor, this alternative does not offer any real benefit.

Agencies and Persons Consulted

In performing this assessment, the staff utilized the amendment application dated October 11, 1989, and the December 1986 Environmental Assessment for the Research Center.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM–42. On the basis of this assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the Federal Register; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Babcock & Wilcox, Naval Nuclear Fuel Division, P.O. Box 785, Lynchburg, Virginia 24505-0785); and must comply with the requirements set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings." Subpart L of 10 CFR part 2, which became effective March 30, 1989, was published in the Federal Register on February 28, 1989.

Dated at Rockville, Maryland, this 30th day of November, 1989.

For the Nuclear Regulatory Commission.

Glen L. Sjoblom,

Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89-28677 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

Maine Yankee Atomic Power Co. Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-309]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix E, to the Maine Yankee Atomic Power Company (MYAPC/licensee) for the Maine Yankee Atomic Power Station located at the licensee's site in Lincoln County, Maine.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from certain schedule requirements of appendix E of 10 CFR part 50.

On October 27, 1989, MYAPC requested an exemption from section IV.F.3, which requires that each licensee at each site shall exercise with offsite authorities such that State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway Emergency Planning Zone (EPZ).

The Need for the Proposed Action

The proposed exemption is needed because the Federal Emergency Management Agency (FEMA) will be unable to observe the exercise as scheduled due to demands on the agency associated with recent emergencies in California and South Carolina. The off-site aspects of the biennial exercise were to be evaluated by FEMA. The licensee requested that the emergency plan exercise be rescheduled to a time convenient for all affected parties.

Environmental Impact of the Proposed Action

The proposed exemption constitutes an exemption from the requirement that each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

Since the last full participation exercise at Maine Yankee in 1987, State and local governments have paticipated on a limited basis with the licensee in September 1988 and four times this calendar year. The most recent exercise, conducted in November 1989, included onsite personnel and limited offsite participation. In addition, emergency preparedness training sessions were conducted for each of the sixteen communities and two counties in the primary plume exposure pathway between September 12 and October 25, 1989. The training sessions, conducted by representatives from Maine Yankee, the Maine Emergency Management Agency, the Maine Division of Health Engineering, and Maine Yankee's consultant, reviewed the key aspects of the communities' responsibilities during a radiological emergency.

The requested exemption is a temporary one and a full participation biennial exercise will be conducted at the earliest future date that is convenient for all affected parties and prior to the end of 1990. The State of Maine supports the rescheduling of the exercise. The exemption concludes that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the Maine Yankee Atomic Power Station. Accordingly, the exemption does not adversely affect either the probability or the consequences of any accident at this facility or radiation levels at the facility. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station.

Agencies and Persons Contacted

On November 2, 1989, FEMA confirmed their non-availability for the scheduled full-participation emergency preparedness exercise at Maine Yankee and indicated their availability for participation in late 1990. In addition, the State of Maine supported rescheduling the exercise. The Commission has received substantial information concerning emergency planning at the Maine Yankee facility in connection with the licensee's requested exemption.

This information was considered by the NRC in the evaluation of the requested exemption.

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, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated October 27 and November 6, 1989. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Wiscasset Public Library, High Street, P.O. Box 367, Wicasset, Maine 04578.

Dated at Rockville, Maryland, this 1st day of December 1989

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directoratee I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28676 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.; San Onofre Nuclear Generating Station, Units 2 and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF-10 and 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 licensees) for operation of San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the following Technical Specifications (TS) to increase the interval for the 18-month surveillance tests to at least once per refueling interval, which is defined as 24 months, in support of the nominal 24-month fuel cycle:

a. TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation."
b. TS 3/4.3.3.1, "Radiation Monitoring Instrumentation."
c. TS 3/4.4.10, "Reactor Gas Vent System."

The Need for the Proposed Action

The proposed amendments are required to prevent unnecessary plant shutdowns to perform a surveillance test which cannot be performed during plant operation.

Environmental Impacts of the Proposed Action

For each of the proposed amendments, the licensees provided analyses to demonstrate the reliability of the systems. The staff reviewed the licensees' analyses and agrees that reliability of the systems would not be significantly degraded by extension of the surveillance intervals. Therefore, the staff has approved the proposed 24-month surveillance interval for these proposed changes.

As a result, 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 amendments do not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. 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 amendments do 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 amendments.

The Notices of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action were published in the **Federal Register** on February 24, 1989 (54 FR 8038), February 24, 1989 (54 FR 8034), and May 16, 1989 (54 FR 21142). No request for hearing or petition for leave to intervene was filed following these notices.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

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 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 has reviewed the licensees' request that supports the proposed amendments. The NRC staff 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 amendments.

Based upon the foregoing environmental assessment, the Commission concludes 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 applications for amendments dated December 19, 1989, December 30, 1988 and April 7, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 18th day of October, 1989.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28678 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

Public Workshop on Research Activities Related to Resolution of Technical Issues in Regard to Direct Containment Heating and High Pressure Melt Ejection Phenomena

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The NRC has supported a research program on high pressure melt ejection (HPME) and direct containment heating (DCH) over the past several years. This research has greatly increased the basic knowledge of HPME and DCH phenomena. In conjunction with implementing the revised Severe Accident Research Program (SARP) plan, the NRC is reviewing research in this area with respect to our ability to resolve this issue. As part of this reevaluation of the focus of future research efforts, the NRC is conducting a workshop to solicit technical assessments and views from experts in the research community and industry. A preliminary workshop agenda is provided as supplementary information.

DATES: The workshop will be held on December 18 and 19, 1989. Notification of intent to attend the meeting should be received by the staff no later then December 11, 1989. Written comments on matters covered by the meeting should be provided to the NRC no later than January 31, 1990.

ADDRESSES: The workshop will be held at the Annapolis Waterfront Hotel, 80 Compromise Street, Annapolis, Maryland 21401. Notification of intent to attend and written comments on the workshop should be sent to Dr. Farouk Eltawila, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Farouk Eltawila, Office of Nuclear Regulatory Research, U.S. Nuclear

Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3569.

SUPPLEMENTARY INFORMATION:

Preliminary Workshop Agenda

December 18, 1989:		
08:45 a.m.	Introduction and description of Workshop Purpose	Sheron.
09:15 a.m.	Current Status of DCH Research	Constanzi.
09:45 a.m.	The Current Prespective of Risk from DCH	
09:45 a.m.	—What does NUREG–1150 tell us about DCH risk?	Murphy.
10:30 a.m.	—Break	
10:45 a.m.	—Current Research at SNL vs. NUREG–1150 insights	Gauster, Dalgren.
(SNL) 11:30 a.m.	—General Discussion	All.
12:00 Noon	Lunch	
01:15 p.m.	The Experimental Program	
01:15 p.m.	—SASM—What have we learned?	Zuber.
02:00 p.m (INEL).	—Perspectives on in-vessel behavior as it affects DCH and DCH experiments	Allison.
02:45 p.m.	—The scaling relationship between BNL and SNL experimental programs	BNL.
03:30 p.m.	—Break	
03:45 p.m.	—The future of SURTSEY—Addressing the scaling questions	SNK.
04:30 p.m.	—Discussion	All.
05:00 p.m.	Adjourn	
December 19, 1989:		
08:30 a.m.	The Analysis Program	
08:30 a.m (SNL).	—Does the current experimental program answer the question?	Bergeron.
09:15 a.m.	—How do we know when the codes are "good enough"?	Zuber.
10:00 a.m.	—Break	
10:15 a.m.	—Are the consequences of HPME containment and lower cavity geomentry dependent?	BNL, SNL.
11:00 a.m.	—General Discussion	
12:00 Noon	Lunch	
01:15 p.m.	Closure	
01:15 p.m.	—The need to close the issue	Sheron.
02:00 p.m.	—Will the current research program achieve closure?	Eltawila.
02:45 p.m.	—The cost/benefit of depressurization	INEL.
03:30 p.m.	—Break	
03:45 p.m.	—Discussion	
04:30 p.m.	Conclusions	
05:15 p.m.	Adjourn	

Dated in Rockville, Maryland, this 4th day of December, 1989.

For the Nuclear Regulatory Commission.

Brian Sheron,

Director, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 89-28680 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Human Factors; Meeting Rescheduled

The ACRS Subcommittee on Human Factors scheduled for December 11, 1989 has been rescheduled for Tuesday, December 12, 1989, 1:00 p.m., Room P-110, 7920 Norfolk Avenue, Bethesda, MD. All other items remain the same as previously published.

Dated: December 4, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-28740 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

[General Licensee 10 CFR 150.20; EA 88-290]

American Testing and Inspection, Inc., Joliet, Illinois; Order Modifying License

I

American Testing and Inspection, Inc. (ATI or licensee) is the holder of a Byproduct Materials License issued by the State of Illinois on January 8, 1988, which authorizes ATI to possess and use licensed byproduct materials to perform industrial radiography within the State of Illinois. In accordance with 10 CFR 150.20 and its Illinois license, ATI is authorized to possess and use licensed byproduct materials to perform industrial radiography in non-Agreement States. ATI's Illinois License No. IL-01085-01 is due to expire on August 31, 1992, at which time ATI's authorization under the Nuclear Regulatory Commission's (Commission or NRC) regulations would also terminate.

II

On February 27, 1989, the Commission issued to ATI an Order to Show Cause Why the General License Should Not Be Revoked and Order Suspending License (Effective Immediately). The basis for that Order, as described therein, was a group of violations committed by ATI while a licensee of the Commission prior to the transfer to the State of Illinois of the Commission's jurisdiction over Illinois holders of specific materials licenses. The Order suspended ATI's general license to perform radiography pursuant to 10 CFR 150.20 in non-Agreement States and required the licensee to show cause why the general license should not be revoked because the NRC lacked reasonable assurance that ATI would conduct radiography in accordance with regulatory requirements. The suspension was immediately effective, pursuant to 10 CFR 2.202(f), because of the willful nature of the violations and because the public health, safety, and interest so required.

III

By letter dated April 5, 1989, the licensee responded to the Order. ATI admitted that several of the violations occurred as stated in the Order. However, the licensee denied that those violations were made knowingly or willfully on the part of its President. ATI also denied several of the violations. While not availing itself of an opportunity to request a hearing, ATI did request that the NRC vacate the Order.

After consideration of the licensee's response and statements of fact, explanations, and arguments for vacation of the Order contained therein, the staff has concluded, as set forth in the Appendix to this Order, that: (1) The violations occurred as stated, (2) the licensee willfully violated the Commission's requirements because it exhibited at least careless disregard, if not deliberateness, in violating its license requirements, and (3) the President, as the chief executive officer and radiation safety officer (RSO) of ATI, is responsible either directly or indirectly for the actions of ATI's employees in the performance of licensed activities and therefore has responsibility for the violations that occurred. Consequently, the staff lacks reasonable assurance that this licensee will comply with the Commission's requirements without significant additional actions.

The licensee has taken corrective action in response to the violations, including replacing those persons it employed during the time when the violations occurred with more experienced and mature individuals and restructuring its management to assure that its employees complete their utilization logs on time. Therefore, revocation of the general license is not now warranted. The President's continued control over licensed activities and continued responsibilities as RSO, however, render the licensee's corrective action, while necessary to assure the safety of the license's future operations, insufficient to warrant unconditionally lifting the suspension of the general license. Accordingly, modification of the license is necessary to give the staff reasonable assurance that ATI and its President will conduct future licensed activities in non-Agreement States in accordance with NRC requirements under the general license of 10 CFR 150.20. If the licensee complies with the conditions set forth in sections IV and V of this Order, then the suspension of the general license will be lifted.

On the basis of the above information and the staff's evaluation as stated in the appendix, I am prepared to lift the suspension of ATI's license if the President of ATI and other persons responsible for the supervision of licensed activities will comply with NRC requirements, including this Order, in the future. Accordingly, I have determined to modify the February 27, 1989, Order to permit continuation of licensed activities in non-Agreement States where the NRC has jurisdiction upon the licensee's satisfaction of the conditions given in section IV, below.

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended (Act) and the Commission's regulations in 10 CFR parts 2, 30, 34 and 150. It is hereby ordered that the general license provided by 10 CFR 150.20 is modified as follows:

A. With respect to activities under NRC jurisdiction: (1) The licensee shall replace Mr. Ronald Preston as RSO with an individual whose qualifications have been evaluated and approved by the NRC; (2) Mr. Ronald Preston shall certify in writing, under oath or affirmation, to the Regional Administrator that (a) he has reviewed the Commission's requirements for radiography including his license and procedures, (b) he fully understands these requirements, (c) he is committed also to comply with these requirements and (d) he, to the best of his ability, will assure that his employees also comply with these requirements.

B. At least 7 days prior to engaging in licensed activities at locations that are under NRC jurisdiction, the licensee shall give notice to the NRC by filing 4 copies of NRC Form 241, "Report of Proposed Activities in non-Agreement States," with the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137;

C. The licensee shall engage the services of a qualified independent consultant or organization (organization) that is capable of auditing and evaluating the licensee's radiography program and, if needed, making recommendations for corrective actions. The licensee shall submit the name and qualifications of the independent organization, together with the organization's plan for accomplishing the tasks listed below, to the Regional Administrator, Region III, for review and approval. The organization shall be approved by the NRC prior to ATI resuming licensed activities in non-Agreement States. After being approved by the Regional Administrator, USNRC, Region III, the organization shall:

At intervals not to exceed 3 months, beginning with the date of resumption of activities in non-Agreement States, observe all ATI radiographers and conduct an audit of the ATI radiation safety program for work performed in non-Agreement States to ensure compliance with NRC regulatory statements;

D. Within 30 days after completing its observations and audits of ATI's radiographic activities in non-Agreement States, as described in section IV.C. above, the organization shall submit written reports of its findings and recommendations or corrective action directly to the Regional Administrator, Region III, as well as to the licensee;

E. Within 30 days after receiving the organization's report, the licensee shall notify the Regional Administrator, Region III, of its corrective actions in response to the observations and recommendations in the report. For those recommendations not implemented, the licensee shall describe in writing why such actions were not taken;

V

Upon completion of the action required by section IV.A and the receipt of approvals required by section IV.C, the suspension ordered by the February 27, 1989 Order is lifted and the licensee may resume operations in accordance with the general license provided under 10 CFR 150.20 as modified by the conditions of Section IV of this Order.

The Regional Administrator, Region III, may for good cause shown, relax, modify, or rescind any of the above requirements upon written request of the licensee.

VI

The licensee or any other person adversely affected by this Order may request a hearing within twenty days of the date of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, attn: Document Control Desk, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, IL 60137. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and

should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland this 30th day of November 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On February 27, 1989, an Order to Show Cause Why License Should Not Be Revoked and Order Suspending License (Effective Immediately) was issued to American Testing and Inspection, Inc. (ATI) based upon violations identified during NRC inspections and an investigation from March 1987–January 1989. The Order described the violations and stated that portions of the violations involved willfulness on the part of the licensee's staff and the licensee's President, who is also the Radiation Safety Officer (RSO). The licensee responded to the Order in a letter dated April 5, 1989. In its response, the licensee admits some of the violations occurred as referenced but denies that these violations were made knowingly or willfully on the part of its President and RSO. The licensee requests that NRC vacate the Order based upon cause submitted. Provided below are (1) the violations as presented in the Order; (2) the licensee's response to the violations; (3) The NRC's evaluation of the licensee's response; (4) the licensee's basis for withdrawal of the Order; and (5) the NRC's conclusions. The NRC evaluation has been organized to correspond to the licensee's April 5, 1989 response.

1. Violation No. 1

"It was concluded that ATI willfully used unqualified radiographers in violation of 10 CFR 34.31 on at least three occasions * * *.

a. An ATI employee who had not completed the required radiographer's training performed radiography on July 1, 1986, at the direction of the President (who is also the Radiation Safety Officer (RSO)) of ATI * * *".

Summary of Licensee's Response

The licensee admits that the employee, Mr. Jump, had not completed the training program to become a radiographer. However, the licensee contends that Mr. Jump was working with an experienced radiographer, Mr. Anderson, during field training on July 1, 1986. The licensee contends Mr. Jump inappropriately signed documentation indicating he was the radiographer for the job performed on July 1, 1986.

In regard to the President's involvement, the licensee contends that he did not direct Mr. Jump to perform unauthorized radiography since he (the President) was on vacation and assignment of employees to perform radiography was made by the lead radiographer, Mr. Jobbe. The licensee also contends that the President first gained knowledge of this event after returning from vacation.

NRC's Evaluation of ATI's Response

The NRC recognizes that two individuals, Messrs. Jump and Anderson, were both at the jobsite on July 1, 1986. Mr. Anderson, in sworn statements, told NRC investigators that Mr. Jump performed the entire job, including setting up the radiography camera, making exposures with the radioactive source and securing the source in the shielded camera upon completing the job. Mr. Jump also stated, in sworn statements, that he set up all the shots to be taken with the radiography sources; however, he states that Mr. Anderson actually did the moving of the source in and out of the camera. The activities performed by Mr. Jump are required by ATI's license to be performed by a radiographer or assistant who has completed the training specified in 10 CFR part 34. Mr. Jump had not completed the training to function as a radiographer or assistant radiographer in training; therefore, the NRC maintains Mr. Jump was unqualified to perform the radiographic activities that occurred on July 1, 1986. Therefore, the NRC concludes that Mr. Jump, an unqualified individual, performed radiography activities.

The NRC agrees the President was out of town on July 1, 1986. The NRC does not agree that the President had no prior knowledge of Mr. Jump being involved in radiography work. Although the President stated to investigators that Mr. Jobbe made all work assignments on July 1, 1986, Mr. Jobbe stated, in a sworn statement, that he did not assign Mr. Jump to that job, but rather the President made assignments at that time. In addition, the NRC has a sworn statement from Mr. Anderson that prior to July 1, 1986, the President directed him (Mr. Anderson) to accompany and observe Mr. Jump performing radiography. The statements of the President and Mr. Jobbe contradict each other. Based upon the statement by Mr. Anderson, however, the NRC concludes that the President knew or should have been aware that Mr. Jump would be performing radiography and that he was not fully trained or authorized to do so.

b. "* * * another ATI employee who was not trained as a radiographer performed radiography on February 3, 1987 * * *.

Summary of ATI's Response

The licensee admits that a violation occurred when an unqualified individual performed radiography on February 3, 1987. The licensee contends that the President was not aware of the violation until he was told by the lead radiographer, Mr. Jobbe. The licensee also states that the President was not aware of the violation prior to its occurrence, nor was he in the State of Illinois when the violation occurred. The licensee submits documentation to support that during February 2 through 6, 1987, the President was out of town working with Mr. S. A. Turner, President of Corrosion Monitoring Services, in Indianapolis, Indiana.

NRC's Evaluation of ATI's Response

The licensee does not contest the violation but denies that the President knowingly and willfully violated NRC requirements, since he was out of town at the time. Based upon statements made to NRC staff by the lead radiographer (Mr. Jobbe), the unqualified individual (Mr. Elliott), and a Clark Oil inspector during the 1987 and 1988 NRC inspection and investigation, the NRC agrees with the licensee's assessment that the President was out of town and did not knowingly or willfully permit this violation to occur. The NRC Order, however, does not single out the President as knowingly and willfully permitting this violation to occur. The Order refers to the licensee as an entity in regard to willfulness. Other licensee employees (i.e., Messrs. Jobbe and Elliot) were aware that Mr. Elliot was left at the Clark Oil site to perform radiography. The licensee's response also indicates that Mr. Elliot was left to perform radiography (i.e., crank the source back into its shielded container). Based upon these facts, the NRC concludes that the licensee's employees and, thus, the licensee willfully allowed an unqualified radiographer to perform radiography on February 3, 1987.

c. "* * * another ATI employee who was not trained as a radiographer performed radiography on March 13, 1987 * * *.

Summary of ATI's Response

The licensee admits that a violation occurred in that radiography was performed by an unqualified individual Mr. Elliot, on March 13, 1987. The licensee denies that this violation occurred at the direction or with the prior knowledge of the licensee's President. The licensee supports this statement by submitting a locator sheet showing that the President was scheduled out of town on March 13, 1987, and he left early that day. The licensee admits Mr. Elliot was assigned to perform work on March 13, 1987 without the presence of an authorized radiographer. However, the licensee contends that its staff did not know radiography would be performed at the site.

NRC's Evaluation of ATI's Response

The licensee admits that a violation occurred in that an unqualified individual performed radiography. With respect to the President's knowledge of this, the licensee provides a locator sheet to show that the President was out of town and could not be aware of the assignment of this unqualified individual. The NRC, however, has a sworn statement from the unqualified radiographer that the President did, in fact, ask Mr. Elliot to go to the jobsite prior to March 13, 1987. The NRC also has a sworn statement from Mr. Jobbe that the President assigned Mr. Elliot to do the radiography job on March 13, 1987; however, Mr. Jobbe's statement contradicts those he told NRC inspectors during the inspection. During the inspection, Mr. Jobbe told NRC inspectors that he (Mr.

Jobbe) assigned Mr. Elliot to perform radiography on March 13, 1987.

The licensee also contends its staff did not know Mr. Elliot would perform radiography. However, the licensee permitted Mr. Elliot to go to the jobsite with radioactive materials that could be used to perform radiography.

The NRC Order stated that the licensee willfully permitted an unqualified individual to perform radiography. The Order did not single out the President. The NRC maintains that the licensee, whether by Mr. Jobbe or the President, permitted this to occur since the licensee sent Mr. Illiot to the jobsite with radioactive materials he was not qualified to use. The licensee did not restrict him from using the mateirals to perform radiography and he performed licensed activities.

2. Violation No. 2

a. "* * * employees willfully failed to complete and maintain current utilization logs in violation of 10 CFR 34.27 * * * (This failure) * * * violated the record keeping requirements of 10 CFR 34.28, 34.33 and 34.43 * * *."

Summary of ATI's Response

The licensee admits that prior to the 1987 NRC inspection utilization logs were not maintained as required, but denies having knowledge of willful intent on the part of its employees.

The licensee insists that its employees were trained in the requirements of maintaining current utilization logs. Further, the licensee points out that past NRC inspections (1983–1986) never resulted in a violation related to utilization logs.

NRC's Evaluation of ATI's Response

The NRC agrees that employees (i.e., radiographers) were trained in the requirements of maintaining logs as stated in the licensee's response. In addition, NRC's inspection and investigation showed that employees knew the logs were required to be completed and were not completed on time (i.e., utilization logs were anywhere from a month to a year delinquent). Some radiographers said that the logs were only requested just prior to the NRC inspection, which the licensee knew was conducted normally every 12 months. The President admitted to NRC inspectors and investigators that he had been "lax" about keeping up with his staff's logs. NRC concludes that with the President's knowledge, specific radiographers (Anderson and Small) failed to complete utilization logs when they knew the logs were required to be completed (i.e., willful failure).

b. "Further evidence revealed that the RSO personally failed to complete utilization logs between January 1986 and March 1987, even though he had regularly performed radiography during that time."

Summary of ATI's Response

The licensee admits that the President did not personally maintain utilization logs during the period in question. However, the licensee notes that the President did not regularly perform radiography. In addition, when he was involved in radiographic operations, the utilization logs were generated by one of the other radiographers on the job with him. The licensee furnished three examples of this practice in its response.

NRC Evaluation of ATI's response.

The President knew there was a requirement for utilization logs as shown by (1) training of licensee employees, including the President, in the requirement for maintaining utilization logs (see licensee's response to Violation 2.a, page 5); (2) the President providing logs for NRC inspections; and (3) the President admitting to the NRC inspectors and investigators that he was "lax" in keeping up with his staff's logs.

The President admitted to NRC inspectors and investigators that he failed to complete utilization logs of work he performed from January 1986 to March 1987. The licensee contends, however, that in most cases, logs were generated by other radiographers. The information submitted by the licensee does not demonstrate that logs were generated in most cases. The licensee only produced three examples where logs were maintained, yet, the President participated in at least 29 radiography procedures during the period in question. Such records were not available during the inspection. In addition, record reviews indicate that the President performed radiography in the absence of other radiographers on at least 5 occasions during the period in question, and no utilization logs were maintained.

c. "* * * utilization logs were not completed until months after the jobs were completed * * *. It was determined that when utilization logs were completed late, employees fabricated lost information in the backfitted logs."

Summary of ATI's Response

The licensee admits knowing that some utilization logs were generated some time after the specific jobs were performed. The licensee denies having directed any of its employees to fabricate utilization logs, however, and further denies knowledge of such fabrication on the part of any individual employed by the licensee. As corrective action, the licensee states that in April 1987 it instituted a "No Logs-No Pay" policy to ensure that logs would be completed on a timely basis.

NRC's Evaluation of ATI's Response

The licensee responds to this violation by stating that it did not direct any employee to fabricate logs and it had no knowledge of such fabrication. The NRC did not state the licensee directed employees to fabricate logs, but that the employees in fact fabricated the records.

The licensee employees admitted to NRC inspectors and investigators that utilization logs were commonly generated long after the specific jobs were performed. ATI contends that it understood these logs contained legitimate information recalled by its employees or readily available from other documents. The NRC agrees that some of the information required was available; however, other information such as camera serial numbers, dosimeter results and survey measurements were not available on any other record. Sworn statements by the licensee's radiographers (Anderson, Baker and Bednarowicz) made to the NRC investigators substantiate that this type of information could not be accurately recalled by employees after the periods of time involved here had elapsed. The NRC confirmed that Anderson fabricated information in his utilization logs. The licensee has not presented any information to change NRC's conclusion that records were fabricated.

3. Violation No. 3

a. "It was determined that one ATI employee had not been field audited for the fourth quarter of 1986 * * *".

Summary of ATI's Response

The licensee assumed that this particular violation was in reference to a former employee, Mr. Small. The licensee states that an audit was not performed due to Mr. Small having terminated employment in November 1986 and thus not being available during the time the fourth quarter audits were performed.

NRC's Evaluation of ATI's Response

The NRC does not refute the licensee's statements about Mr. Small. However, Mr. Small was not the individual referred to in the NRC's Order. The individual in question was Mr. Jobbe, an ATI radiographer, employed at least until June 1987. The President indicated to the investigators that his failure to audit Mr. Jobbe would have been an oversight. During the NRC inspection, the President also acknowledged that he failed to audit Mr. Jobbe during the fourth quarter of 1986. Accordingly, this violation is valid.

b. "It was determined that * * * another employee had not been field audited for the third and fourth quarters of 1986."

Summary of ATI's Response

The licensee contends that field audits for this radiographer were performed in July 1986 during his first independent radiographic operation. The licensee states that it was unable to audit this radiographer further because he terminated his employment prior to the end of the third quarter of 1986 (i.e., August 1986). It stated this individual was allowed to perform "free-lance" radiography on four occasions during the fourth quarter primarily to earn spending money while in college; however, he was not audited by ATI during this quarter, since he was not considered a regular employee of ATI.

NRC's Evaluation of ATI's Response

The NRC investigation did not produce evidence to refute the licensee's statement that the radiographer was audited in July 1986, other than statements from the radiographer that he did not recall being audited. Therefore, the NRC accepts the licensee's assertion that the July 1986 audit

was performed as stated in the licensee's response.

The licensee's response indicates that no other audit was performed during the period July–November 1986 and contends this was due to the radiographer not being regularly employed. The licensee contends the radiographer was not subject to audits, since he was not a regular employee during this time. This individual, however, performed radiography in November 1986 and was not audited from July 1986 to November 1986, an interval exceeding three months. Thus, the licensee is in violation of the requirement in the license and 10 CFR 34.11(d)(1). The NRC disagrees with the licensee's contention that the radiographer was not subject to the requirement for audits due to irregular employment. The requirements for audits in the license and 10 CFR 34.11(d)(1) do not excuse licensees from auditing irregularly employed individuals. It may be particularly important to audit irregularly employees due to their lack of regular experience.

c. "The RSO stated that the latter employee (Mr. Jump) has not been audited because he was not working as a radiographer in the third and fourth quarters of 1986. This was subsequently determined to be a false statement as evidence revealed the individual had performed radiography in those two quarters."

Summary of ATI's Response

The licensee admits the President made the statement about Mr. Jump not working as a radiographer. The licensee contends this was made because the President considered Mr. Jump not employed during the months of August 18–December 1986 in the third quarter of 1986 and October–December 1986 in the fourth quarter of 1986.

NRC's Evaluation of ATI's Response

During the inspection, the President told NRC inspectors that Mr. Jump was not audited because he did not perform radiography during the scheduled audit months of August 1986 and November 1986. This statement was later proven false because NRC review of the licensee's records showed that Mr. Jump did perform radiography in August 1986 and November 1986. The licensee's response also admits that Mr. Jump performed radiography in August and November 1986.

Subsequently, during sworn statements to the investigators, the President admitted Mr. Jump worked in August 1986, but "was not employed here in the winter after that because he was back in school." The licensee's response also admits that Mr. Jump worked in October and November 1986. However, the licensee claims this was not "employment" since Mr. Jump was hired as a "free lance" radiographer. The regulation, however, is not limited to individuals who are employed full-time to perform radiography, but applies to any person who acts as a radiographer under the authority of the license. Because Mr. Jump performed work for ATI under its NRC license, the regulation required the licensee to audit his performance.

d. "It was also determined that on August 27, 1986 the RSO willfully falsified documentation of a field audit for an ATI radiographer. Evidence revealed that the radiographer was not at the job site on the date that the RSO had documented the field audit."

Summary of ATI's Response

The licensee denies that its President willfully falsified documentation of the August 27, 1986 field audit. The licensee admits the audit form was completed by the President. The licensee contends the documentation was for a field audit of Mr. Anderson performed by the President on August 27, 1986 at a job site in Troy Grove, Illinois. The licensee contends that the President had time to perform the audit on August 27, 1986 after performing radiography in Bloomington, Illinois. The licensee contends that the audit report is true and accurate, with the exception of the billing company.

NRC's Evaluation of ATI's Response

During the investigation, the President provided sworn testimony that the audit was of Mr. Anderson, but at Phillips in Kankakee, Illinois, the only error being that the form was misdated. The licensee now maintains in its response that the audit was done at Ni-Gas, Troy Grove, Illino.

4. Violation No. 4

"On January 5, 1989, * * * the NRC inspector identified that on 55 occasions from January 13 to December 20, 1988, ATI violated the provisions of reciprocity as stated in 10 CFR 150.20(b)(1). Specifically, ATI failed to notify the Regional Administrator of USNRC Region III, either by telephone or by filing copies of Form–241 at least three days before engaging in licensed activities * * * in Indiana, a non-Agreement State."

Summary of ATI's Response

The licensee admits that it failed to submit copies of Form–241 prior to working in Indiana between January 13 and December 20, 1988, in violation of the regulations. The licensee claims it was unaware that an Illinois license does not authorize radiographic operations outside the State of Illinois. The licensee also claims it was not aware of the general license requirements for NRC notification when performing licensed activities outside Illinois.

NRC's Evaluation of ATI's Response

The NRC received a letter, dated November 3, 1986, from the licensee's President which indicates he was aware of the NRC notification requirements in 10 CFR 150.20. In that letter, the President states "I request that my above referenced NRC license be 'split' when Illinois becomes an Agreement State, whereby I may retain an NRC license for our services to temporary job sites outside of Illinois jurisdiction. I realize that reciprocity requests can be made of the NRC, federal facilities and other Agreement States to recognize the Illinois license, but retaining an NRC license seems to be a method to reduce paperwork that would otherwise be required for performing services to federal facilities in Illinois and in NRC jurisdictions outside of Illinois." This demonstrates that the President was aware at one time of the requirements for filing the notifications with the NRC. Licensees are charged with the knowledge of Commission requirements. Moreover, the failure to be aware of the limitations of the Illinois license raises substantial questions of the capability of the President to be a RSO.

5. ATI's Arguments to Show Why Order Should be Vacated

The licensee sets forth the following reasons as a basis why its general license under the provisions of 10 CFR 150.20 should not remain suspended and should not be revoked:

a. ATI has documented that the violations identified during the inspection conducted were not made knowingly or willfully on the part of its President.

b. ATI identified several problems within its organization attributable to specific individuals and no longer employs these individuals.

c. ATI presently employs an entirely new crew of radiographers who are mature and experienced.

d. ATI established the position of Office Manager and a new policy to ensure utilization logs are completed and compliance is aggressively assured.

e. ATI's inspection history has been very good, except for the period 1986 through March 1987.

f. ATI has been in full compliance with reciprocity requirements since January 1989, when its staff was made aware of, and fully understood, the requirements.

NRC's Evaluation of ATI's Arguments for Vacation of Order and Conclusion

The NRC concludes that the licensee's President was responsible either directly or indirectly for violations of NRC requirements, and he remains in control of ATI's licensed activities. In addition, licensee employees knowingly violated NRC requirements and these employees were under the supervision of the President. While the termination of all radiographers, radiographer assistants and helpers employed by ATI prior to the 1987 special inspection and the hiring of new experienced radiographers provide some assurance of future compliance, the licensee's response did not propose adequate methods or steps to assure that the President or other persons responsible for supervision of licensed activities will, in view of past supervisory failures, comply with NRC requirements in the future. Therefore, after carefully reviewing all of the relevant circumstances, the NRC staff has concluded that, while revocation of the licensee's response does not provide an adequate basis for lifting the suspension Order at this time without additional requirements to provide adequate assurance that the President of ATI or other persons responsible for the

supervison of licensed activities will comply with NRC requirements in the future.

[FR Doc. 89-28679 Filed 12-7-89; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-62]

Further Modification to the Determination To Impose Increased Duties on Certain Products of the European Community

AGENCY: Office of the United States Trade Representative.

ACTION: Modification to the Harmonized Tariff Schedule of the United States.

SUMMARY: The United States Trade Representative suspends the application of the increased duty on imports of certain tomato sauces from the European Community.

EFFECTIVE DATE: 12:01 a.m., December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Laura Anderson, Office of the United States Trade Representative, Washington, DC 20506, (202) 395-3074.

SUPPLEMENTARY INFORMATION: In Proclamation No. 5759 of December 24, 1987, the President increased United States customs duties on certain articles the product of the European Community (EC) in response to action by the EC prohibiting imports into the European Community of U.S. beef and beef products. The increased duties apply to products exported from the EC on or after January 1, 1989, or entered, or withdrawn from warehouse for consumption, on or after February 1, 1989. Following imposition of the increased duties, the United States and the European Community announced the formation of a Task Force to develop ways in which U.S. meat exporters might resume shipping to the Community. As a result of the Task Force discussions, the United States and the European Community agreed on an interim measure administered by the EC to enable U.S. producers of meat not treated with hormones to ship such meat to Europe. The United States agreed to reduce its retaliation to the extent that U.S. beef and beef products are shipped under the interim measure. Effective July 28, 1989, the USTR reduced the retaliation by suspending the application of the increased duty on imports of certain pork hams and shoulders from the EC (54 FR 31398). This notice further reduces the retaliation by suspending the application of the increased duty on imports of certain tomato sauces.

Partial Suspension of Increased Duties

Pursuant to the authority granted to me in Proclamation No. 5759, I am hereby suspending the increased duty imposed by that Proclamation under subheading 9903.23.15 of the Harmonized Tariff Schedule of the United States (HTS) on tomato sauces provided for in HTS subheading 2103.20.40. I have determined that it is in the interest of the United States to suspend the increased duty on such tomato sauces in response to the permitted shipments of U.S. meat to the EC.

Modifications

Pursuant to the authority delegated by the President to the USTR in Proclamation 5759, the increased duty imposed under subheading 9903.23.15 on tomato sauces provided for in HTS subheading 2103.20.40, as set forth in Annex B to Proclamation 5759, is suspended.

Accordingly, the Harmonized Tariff Schedule of the United States is hereby modified by striking out subheading 9903.23.15 and by inserting in lieu thereof the following new subheadings, with article descriptions at the same level of indentation as that of subheading 9903.23.20:

Heading/ subheading	Article description	Rates of duty 1-gen. (per-cent)	Rates of duty 2
"9903.23.14 ...	Other tomato sauces (provided for in subheading 2103.20.40.	100	No change.
9903.23.16	Tomatoes, prepared or preserved (except paste) otherwise than by the processes specified in chapter 7 or 11 or in heading 2001 (provided for in subheading 2002.10 or 2002.90).	100	No change."

The increased rate of duty provided for in HTS subheading 9903.23.14 is hereby suspended, and that subheading shall be shaded in the HTS. The modifications to the HTS made by this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. on December 8, 1989.

Carla A. Hills,
United States Trade Representative.

[FR Doc. 89-28657 Filed 12-7-89; 8:45 am]
BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27509; File No. SR-NASD-89-36, Amendment No. 1]

Self-Regulatory Organizations; Notice of Filing of Amendment To Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Registration Category, Study Outline and Specifications for Series 28 Examination, Introducing Broker/ Dealer Financial and Operations Principal

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 7, 1989 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") Amendment No. 1 to the above numbered proposed rule change,[1] as described in Items I, II, and III below. Notice of the original proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 27144, August 15, 1989) and by publication in the Federal Register (54 FR 34843, August 22, 1989). 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 amendment changes Schedule C of the NASD By-Laws to add an additional category of registration, Introducing Broker/Dealer Financial and Operations Principal. Upon effectiveness of the proposed amendment, the new text would be designated as part II, section (2)(c) of Schedule C.

The NASD is also submitting the examination specifications and study outline for this registration category.

[1] The NASD submitted Amendment No. 2 to the proposed rule change. It is available for inspection in the Public Reference Room. The Amendment, dated November 20, 1989, requests accelerated approval for the proposed rule change, which the Commission has denied.

The examination will be designated Series 28. These items do not involve any textual changes to the NASD's By-Laws, Schedules to the By-Laws, rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In implementing the recommendations of the Regulatory Review Task Force, the NASD Board of Governors determined that it was appropriate to approve a new registration category, introducing Broker/Dealer Financial and Operations Principle, for principles of introducing general securities firms. All introducing and clearing firms are required to qualify financial and operations principles on the Series 27 examination. It was recognized, however, that the Series 27 examination tested knowledge of subject areas such as margin accounts, the Uniform Practice Code and the Customer Protection Rule (Rule 15c3–3 under the Act), which would not be relevant to the financial and operations principle at an introducing firm. The Board determined that the proposed registration category would address this situation, while still assuring an appropriate level of qualification in introducing firms in the financial and operations area. The proposed registration category is also intended to provide greater flexibility to members in qualifying their personnel.

With respect to the Series 28 examination, specifications, and study outline, it is the NASD's responsibility under section 15A(g)(3) of the Act to prescribe standards of training, experience, and competence for persons associated with NASD members. Pursuant to this statutory obligation, the NASD has developed examinations that are administered to establish that persons associated with NASD members have attained specified levels of competence and knowledge.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Act pursuant to which the NASD prescribes standards of training, experience, and competence for persons associated with NASD members.

Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the new registration category or the study outline and specifications impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments regarding the new registration category, study outline and specifications were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 30 days of the date of publication of this notice in the **Federal Register** within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Streets NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: December 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28918 Filed 12–7–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27494; File No. SR–NASD–89–44]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Quotation Linkage Between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd.

The National Association of Securities Dealers, Inc. ("NASD") submitted on September 29, 1989, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder to extend for one year the informational linkage between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("ISE").

Notice of the proposed rule change together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 27335, October 3, 1989) and by publication in the **Federal Register** (54 FR 41890, October 12, 1989). No comments were received with respect to the proposed rule change.

On October 2, 1987, the Commission issued an order approving operation of the NASD–ISE linkage for a pilot term of two years, through October 2, 1989.[3] In its original order granting interim approval of the pilot, the Commission noted certain competitive concerns raised by Instinet Corporation.[4] In response to those concerns, the NASD and ISE agreed to narrow the universe of firms and terminals permitted access to linkage information at no cost. These changes were reflected in the October 2, 1987, order, in which, however, the Commission stated that it was not reaching a final determination of the

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] Securities Exchange Act Release No. 24979 (Oct. 2, 1987), 52 FR 37684 (Oct. 8, 1987).

[4] *See* Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 15989 (Apr. 29, 1986), and letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, SEC, dated April 16, 1986.

issues raised by Instinet.[5] The order requested that the NASD compile certain information relative to the linkage's operation and examine the feasibility of separately allocating costs associated with the linkage. On May 31, 1989, the NASD submitted to the Commission linkage data on the number of common issues, the levels of market maker participation, aggregate monthly trading volumes in common issues, and query traffic emanating from participating NASDAQ market makers. On September 11, 1989, the NASD submitted information on its costs respecting operation of the linkage. The ISE has declined to submit cost allocation information.[6]

On September 29, 1989, the Commission granted accelerated approval to a two-month extension of the pilot, through December 2, 1989, in order to allow the NASD to formulate and submit a more comprehensive proposed rule change, which is the subject of this order.[7]

The present proposed rule change requests a one-year extension of the pilot to allow additional time to assess the results of the linkage relative to the business objectives of the two markets and to allow the NASD and ISE to evaluate the feasibility of enhancing the linkage to include automated order routing and execution capabilities and more efficient automated procedures for clearance and settlement of international securities transactions. The NASD has indicated in its proposed rule change that the October 1987 market break and the subsequent dedication of substantial resources by the NASD and ISE to addressing the regulatory and operational concerns that were raised has meant that neither market has had sufficient opportunity to operate or consider enhancements to the pilot under more normal market conditions.

The Commission believes that the NASD and ISE should be provided the additional year requested in order to develop the operational and cost information sought by the Commission in its October 1987 order, especially in light of the extraordinary events of the market break. We do not anticipate that continuation of the pilot under the same circumstances provided for in our two-year approval order will raise any additional concerns. The Commission, however, expects that during the additional year extension both parties to the linkage will make a good faith effort to address those concerns that have been raised throughout this process.

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 section 15A and the rules and regulations thereunder.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the above-mentioned proposed rule change be, and hereby is, approved for a period of one year from the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: December 1, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-28636 Filed 12-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27486; File No. SR-PHLX-89-27]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating to Index Hedge Exemption One-Year Pilot

On August 10, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change that establishes a one-year pilot program during which public customers may apply for a hedge exemption from Utility Index Option ("UTY") position limits.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27280 (September 20, 1989), 54 FR 39605 (September 27, 1989). No comments were received on the proposed rule change.

The Exchange's proposed rule change provides for a one-year pilot program during which public customers may request Exchange approval for a "hedge exemption" from position limits on the UTY.[3] Specifically, the Exchange proposes to exempt from its position limits any position taken by a public customer in UTY options that is hedged by at least ten UTY-component stocks, of which no one component stock may account for more than 15 percent of the stock portfolio hedging the UTY position. [4] The proposed exemption applies to positions in UTY options that are hedged against either long or short stock portfolios. The PHLX believes that the increased position limits are necessary to assist in the development of a more active and liquid UTY options market. Specifically, the Exchange believes that increased position limits are needed to better meet the needs of investors who would use the UTY for investment and hedging purposes.

The Exchange believes that the proposed rule provides several safeguards against manipulation. In particular, no one UTY-component stock can account for more than 15 percent of the hedged stock portfolio and a minimum of ten stocks must be included in the hedging portfolio. In addition, no UTY position, inclusive of a hedged position permissible under the proposal, can exceed twice the specified UTY position limit (*i.e.*, 16,000 contracts) [5] and the maximum size of any UTY position above 8,000 contracts cannot exceed the unhedged value of the underlying hedging stock portfolio. The proposal also requires that both the option and stock positions be initiated and liquidated in an orderly manner. This requires that a reduction in the options position must occur at or before a corresponding reduction in the stock portfolio position. In addition, to further ameliorate the potential for adverse impacts on the market, the Exchange proposes to leave UTY exercise limits unchanged, except that no exercise

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[5] Instinet appealed to the full Commission the approval of the two-year pilot, which had been granted for the Commission by the Division of Market Regulation pursuant to delegated authority. The Commission affirmed the Division's delegated determination (Securities Exchange Act Release No. 26710, Apr. 11, 1989; 54 FR 15293, Apr. 17, 1989).

[6] *See* letter from Peter Cox, Director-International Equity Market, ISE, to Robert E. Aber, Vice President and Deputy General Counsel, NASD, dated June 1, 1989.

[7] Securities Exchange Act Release No. 27320 (September 29, 1989), 54 FR 41548 (October 10, 1989).

[8] The Commission hereby incorporates by reference the findings and conclusions contained in its order affirming the delegated determination of the Division of Market Regulation. See fn. 5, *supra.*

[1] 15 U.S.C. 768s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] Currently, the customer position limits for UTY options is 8,000 contracts and the rule does not exempt positions hedged with stock portfolios.

[4] The UTY was approved by the Commission on September 9, 1987. The UTY index is a capitalization-weighted index consisting of twenty geographically diverse, highly capitalized New York Stock Exchange ("NYSE")—listed electric utility common stocks. The UTY option is a cash-settled, European style contract. See Securities Exchange Act Release No. 24889 (September 9, 1987), 52 FR 35021.

[5] See letter from William W. Uchimoto, General Counsel, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated November 2, 1989, amending the maximum hedged position limit to twice that of the specified UTY position limit.

restrictions will apply in expiring series from the last business day prior to expiration until expiration.[6]

The Exchange's Surveillance staff has designed surveillance procedures to monitor use of the hedge exemption. If an entity is identified as exceeding the existing UTY position limit, and an offsetting stock position does not exist, the entity will lose its exemption, be precluded from affecting additional opening transactions, and be required to close out those positions in excess of the current position limit. As a more routine compliance monitoring procedure, the PHLX will require member firms representing customers who seek the exemption to apply for the exemption on a form prescribed by the Exchange. The application form will require the firm carrying the customer's position to telefax, on the Wednesday prior to expiration, data to the PHLX surveillance department regarding the status of the account's portfolio (*i.e.*, the current UTY position and any changes made to the stock portfolio since the filing of the application for examption). Additionally, the PHLX surveillance department will closely monitor UTY trading activity in connection with contemporaneous trading in the securities underlying the UTY to detect and deter potential frontrunning and mini-manipulation abuses.

The Commission concludes, as it has with other hedged position limit exemption programs in place on other options exchanges,[7] that the proposal will allow more effective hedging of underlying stock portfolios and may increase the depth and liquidity of the UTY options markets. At the same time, for several reasons the Commission does not believe that allowing public customer's a hedge exemption from UTY option position limits to the level proposed by the PHLX will increase the potential for disruption or manipulation in the markets for the stocks underlying the UTY.

First, the PHLX proposal has incorporated safeguards from the exisiting index hedge programs that will make it difficult to use the exempted positions to disrupt or manipulate the market. In this regard, the PHLX proposal provides that: (1) UTY position limits must be hedged by at least ten UTY-component stocks, of which no one component stock position may account for more than 15 percent of the stock portforlio being hedged by the UTY position; (2) the maximum size of the exempt position cannot exceed the unhedged value of the underlying hedging stock portfolio; (3) the maximum UTY hedged position cannot exceed two times the established UTY hedged position cannot exceed two times the established UTY position limit; and (4) reductions in options positions must occur at or before corresponding reductions in the stock portfolio position.

Second, because the UTY is a narrow-based index, the PHLX has proposed to exempt hedged UTY positions for an additional 8,000 contracts. In other words, the maximum overall position permitted can only be double the maximum unhedged limit. This is the exact hedge exemption limit for individual equity options, and is less than the hedge exemption limit for broad based index options.[8]

Third, to the extent any potential for manipulation or disruption might increase because of larger UTY positions, the Commission believes the PHLX's surveillance procedures, as described above, will be adequate to detect and deter such activity. The Commission also notes that the Exchange has proposed a one-year pilot program for the hedge exemption to the UTY position limit. Therefore, over the course of the pilot, the Exchange and the Commission will be able to monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.[9]

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act because it will allow public customers to utilize more effectively the UTY options market for investment and hedging purposes and may increase the depth and liquidity of the UTY market, thereby removing inpediments to and perfecting the mechanism of a free and open market and protecting investors and the public interest.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PHLX–89–27) is approved for a one year period ending November 30, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: November 30, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–28637 Filed 12–7–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27495; File No. SR–NYSE–89–40]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Pricing Procedures for Standard Odd-Lot Market Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 28, 1989 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") 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.

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[6] By eliminating exercise restrictions on expiration, UTY hedge exemption customers who hold expiring positions will be able to roll their hedge positions into forward months without affecting their stock positions.

[7] The Commission has approved pilot programs proposed by the American Stock Exchange and the Chicago Board Options Exchange to permit the exchanges to grant position limit exemptions for positions in broad-based index option hedged with a qualified stock portfolio. These programs require that the hedging stock portfolio include twenty stocks and that no single stock may represent more than 15% of the value of the hedged stock position. See Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204 (order approving File No. SR–CBOE–87–25) and Securities Exchange Act Release No. 25938 (July 22, 1988), 53 FR 28738 (order approving File No. SR–AMEX–18). These proposals were recently extended and modified. See Securities Exchange Act Release No. 27322 (Sept. 29, 1989), 54 FR 41889 (order approving File No. SR–CBOE–89–8) and Securities Exchange Act Release No. 27326, (Oct. 2, 1989), 54 FR 42121 (order approving File No. SR–AMEX–89–20).

[8] See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988), order approving PHLX rule change to permit hedged position limits for equity options.

[9] The Commission expects the PHLX to determine from the monitoring program information including, but not limited to, the following: (1) The persons who use the exemption; (2) how often the exemption is used; (3) the size (dollar value) of any portfolio hedged; (4) the number of stocks represented in these portfolios and the quantity of each stock hedged; and (5) the size (number of contracts) of UTY options positions held pursuant to the exemption. The PHLX also should inform the Commission of the results of any surveillance investigations undertaken for apparent violations of any of the provisions of the UTY hedge exemption rule.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1989).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend for one year its pilot program regarding pricing procedures used for standard odd-lot market orders contained in Exchange Rule 124.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. 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 aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose. In December 1987, the Commission approved proposed amendments to the Exchange's pricing procedures for standard odd-lot market orders as a two year pilot program.[2] These pricing procedures provide that standard odd-lot market orders are to be executed at a price based on the prevailing NYSE quotation in the stock at the time the order reaches the system, *i.e.*, buy orders will be executed on the NYSE bid, and sell orders at the NYSE offer. No odd-lot differential will be charged on these orders.

In the Approval Order, the Commission requested that the Exchange continue to study odd-lot pricing. In particular, the Commission requested the Exchange to analyze the difference between using the best bid or offer disseminated by markets participating in the Intermarket Trading System ("ITS") and the NYSE bid and offer (without an odd-lot differential) to price off-lot orders.

Pursuant to the Commission's request, the Exchange staff began a review of the pricing of standard odd-lot market orders following the Commission's approval of the two-year pilot. That review is continuing. In the coming months, the Exchange staff commits to work to develop an amended pricing procedure for odd-lot market orders that takes into consideration the bids and offers disseminated by other ITS market participants and to file the proposed pricing procedures with the Commission for approval. The Exchange further commits to implement the new pricing procedure as soon as possible after receiving Commission approval. The Exchange is proposing a one year extension of the pilot program to allow sufficient time to complete its review and to implement the new odd-lot pricing procedure.

Basis. The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited or received written comments on this rule change.

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 a national securities exchange, and, in particular, with the requirements of section 6[3] and the rules and regulations thereunder. In particular, the Exchange's existing pricing procedures for standard odd-lot market orders are consistent with section 6(b)(5) of the Act,[4] in that they should facilitate the execution and accurate reporting of odd-lot transactions, and also should assist in the prompt and accurate clearance and settlement of such transactions. In addition, the current pricing procedures have been in place for two years and the Exchange states that they have operated well during this time.[5] The Commission believes it is reasonable to extend the pilot program for one more year to enable the Exchange to complete its review of the pricing of standard odd-lot market orders.

The Commission reiterates the request stated in its 1987 Approval Order, however, that the NYSE analyze the difference in executions between using the ITS best bid or offer and the NYSE quote without the odd-lot differential. Specifically, the Commission is interested in whether customers generally are receiving a better execution, both in terms of price and time, using the NYSE system. The Commission also is interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential. The Commission requests that the NYSE provide a report on these questions by April 1, 1990. Further, absent compelling reasons, if SuperDot becomes fully effective during the one-year extension of the pilot period with the ITS best bid or offer as its reference point, the NYSE will be required to conform its odd-lot system to the SuperDot pricing system within a reasonable period of time.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission and utilized by the NYSE for the past two years.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

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[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which will expire on December 7, 1989, to continue without interruption.

[2] See Securities Exchange Act Release No. 25177 (December 7, 1987), 52 FR 47472 (approving File No. SR-NYSE-87-20) ("Approval Order").

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78f(b)(5) (1982).

[5] See Securities Exchange Act Release No. 25177 (December 7, 1987), 52 FR 47472 (approving File No. SR-NYSE-87-20) for a complete description of the Exchange's odd-lot pricing procedures and the Commission's rationale for approving those procedures on a two-year pilot basis. The discussion in that order is incorporated by reference into this order.

[6] No comments were received on the proposed rule change which implemented these procedures. See Securities Exchange Act Release No. 25177 (December 7, 1987), 52 FR 47472.

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 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 at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-40 and should be submitted by December 29, 1989.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change be, and hereby is, approved for a one-year period ending on December 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: December 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28685 Filed 12-7-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2391]

Alabama; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 17, 1989, and the Notice of Amendment dated November 21, 1989, I find that the counties of Madison and Jackson in the State of Alabama constitute a disaster area as a result of damages caused by tornadoes and severe storms on November 15, 1989. Applications for loans for physical damage may be filed until the close of business on January 16, 1990, and for economic injury until the close of business on August 17, 1990, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of De Kalb, Limestone, Marshall, and Morgan in the State of Alabama; Franklin, Lincoln and Marion in the State of Tennessee, and Dade County in the State of Georgia may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Alabama is 239112, and for economic injury the number is 688500. In Tennessee, the economic injury number is 688600 and in Georgia the economic injury number is 689100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 27, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-28698 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2393]

Georgia; Declaration of Disaster Loan Area

The Coweta County and the contiguous counties of Carroll, Fayette, Fulton, Heard, Meriwether, Spalding and Troup, in the State of Georgia, constitute a disaster area as a result of damages from tornadoes, high winds and heavy rains which occurred on November 15, 1989.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 29, 1990 and for economic injury until the close of business on August 29, 1990 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 239312 and for economic injury the number is 688800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 29, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-28699 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2394 and 2395]

Illinois; Declaration of Disaster Loan Area

The St. Clair County and the contiguous counties of Clinton, Madison, Monroe, Randolph, and Washington in the State of Illinois and St. Louis County in the State of Missouri constitute a disaster area as a result of damages from severe thunderstorms containing extremely strong winds which occurred on November 15, 1989.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 29, 1990 and for economic injury until the close of business on July 29, 1990 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1989).

	Percent
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 239411 and for economic injury the number is 688900 in the State of Illinois. For St. Louis County in the State of Missouri, the number assigned for physical damage is 239511 and for economic injury the number is 689000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 29, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-28700 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2392]

Louisiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 22, 1989, I find that the Parishes of Jefferson, Orleans, and St. Charles in the State of Louisiana constitute a disaster area as a result of damages caused by heavy rains and flooding on November 7–9, 1989.

Application for loans for physical damage may be filed until the close of business on January 22, 1990, and for economic injury until the close of business on August 22, 1990, at the address listed below: Disaster Area 3 Office, Small Business Administration, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous Parishes of St. John the Baptist, LaFourche, Plaquemines, St. Bernard, and St. Tammany in the State of Louisiana may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Louisiana is 239206, and for economic injury the number is 688700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 27, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-28701 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2383; Amdt. 3]

Puerto Rico; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with the notice by the Federal Emergency Management Agency dated November 22, 1989, to extend the termination date for filing applications for physical damage until December 6, 1989.

All other information remains the same; i.e., for economic injury the filing deadline is until the close of business on June 21, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 30, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-28702 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 1, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46289.

Date Filed: November 29, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 27, 1989.

Description: Application of Malev Hungarian Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations, for an amendment of its foreign air carrier permit, authorizing it to engage in scheduled foreign air transportation of persons, property and mail, and charter foreign air transportation of persons and property, between Budapest and the co-terminal points New York, Chicago and Los Angeles, via intermediate points in Europe and Canada.

Docket Number: 42217.

Date Filed: December 1, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 29, 1989.

Description: Application of Trans World Airlines, Inc. pursuant to section 401(b) of the Act and subpart Q of the Regulations, requests renewal of its certificate of public convenience and necessity for Route 468 (St. Louis-London).

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-28703 Filed 12-7-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 89-093]

Coast Guard Consumer Program

AGENCY: Coast Guard, DOT.

ACTION: Notice of Coast Guard consumer program update.

SUMMARY: This notice contains updated information on the Coast Guard Consumer Program, which was first published in the Federal Register on December 1, 1980 (45 FR 79674) in response to Executive Order 12160, "Providing for Enhancement and Coordination of Federal Consumer Program."

EFFECTIVE DATE: December 8, 1989.

ADDRESSES: Interested persons may receive a copy of Consumer Fact Sheet #1 by contacting: Chief, Consumer and Regulatory Affairs Branch (G-NAB-5), U.S. Coast Guard Headquarters, Washington, DC 20593-0001. Telephone: Coast Guard Boating Safety Hotline toll

free 800–368–5647 (in Washington, DC call 267–0780).

FOR FURTHER INFORMATION CONTACT: Richard Bergen, (202) 267–0972.

Supplementary Information: This Notice is intended to inform the public that the Coast Guard Consumer Program has been updated to reflect the current Coast Guard organization and other changes (i.e. Rules of the Road Advisory Committee (RORAC), new Hotlines). Coast Guard Consumer Fact Sheet #1 contains the updated information. The Fact Sheet identifies persons in the Coast Guard that are responsible for responding to consumer complaints and inquiries, and explains what consumer-oriented services are provided through Coast Guard programs.

Dated: November 14, 1989.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89–28646 Filed 12–7–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–103]

Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of the twenty-second meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 25, 1990 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, TX. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: November 30, 1989.

W.F. Merlin,

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

[FR Doc. 89–28644 Filed 12–7–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–101]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 4, 1990 at the West Gulf Maritime Association, 1717 East Loop, Suite 200, Houston, TX. The meeting is scheduled to begin at 10:30 a.m. and end at 12 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eight Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: November 30, 1989.

W.F. Merlin,

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

[FR Doc. 89–28644 Filed 12–7–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–102]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 4, 1990 at the West Gulf Maritime Association, 1717 East Loop, Suite 200, Houston, TX. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: November 30, 1989.

W.F. Merlin,

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

[FR Doc. 89–28645 Filed 12–7–89; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 1, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0923.
Form Number: None.
Type of Review: Extension.
Title: Tax-Exempt Entity Leasing.
Description: The regulations are necessary to implement Congressionally enacted elections for certain previously tax-exempt organizations and certain tax-exempt controlled entities.
Respondents: State or local governments, Non-profit institutions.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 28635 Filed 12–7–89; 8:45 am]
BILLING CODE 4810–25–M

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No 5]

Surety Companies Acceptable of Federal Bonds; National American Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1989 Revision, on page 27816 to reflect this addition:

National American Insurance Company

Business Address: P.O. Drawer 9, 1008 Manvel Avenue, Chandler, OK 74834.
Underwriting Limitation b/: $1,435,000.
Surety License: c/: All except As, CT, DE, GU, ME, MA, NH, NJ, NC, PR, VT, and VI.
Incorporated in: Nebraska.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Dated: December 4, 1989.

Mitchell A. Levine,
Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89–28633 Filed 12–7–89; 8:45 am]
BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 235
Friday, December 8, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

December 5, 1989.

DATE AND TIME: Friday, December 15, 1989, 9:00 a.m.–12:00 Noon.

PLACE: 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of October Meeting
Approval of Minutes of November Meeting
III. Announcements
IV. Draft Chapter for and Draft Report on
Economic Status of Black Women: An Exploratory Investigation
V. SAC Reports and Recharters
Southeast Asian Refugees and Their Access to Health and Mental Health Services
Selected Civil Rights Issues in Iowa's Public Education
Civil Rights Implications of Minority Student Dropouts
Indiana, Kansas, and Louisiana SAC Recharters
VI. Commission Subcommittee Reports
VII. Staff Director's Report
A. FOIA Regulations
B. FY 1990 Budget
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Jeffrey P. O'Connell,
Acting Solicitor.

[FR Doc. 89–28769 Filed 12–5–89; 4:28 pm]
BILLING CODE 6335–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 12, 1989, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

OPEN SESSION

1. Consent Calendar:
—Request from the St. Paul BC for equity voting in the election of one director;
—Request for the transfer of direct lending authority from the St. Paul FCB to the Bismarck FLBA;
—Request for the authority to make rural housing loans from the Mountain FLBA, third district;
2. Rules and Regulations:
—Advance Notice of Proposed Ruemaking for the termination of System institution status;
3. California Livestock PCA, eleventh district, request to terminate System institution status;
4. Proposed 1990 Budget, Farm Credit System Building Association;

***CLOSED SESSION**

5. Sections 7.10 and 7.11 of the Farm Credit Act of 1971, as amended;
6. Examination and enforcement matters;
7. Agency litigation matters; and
8. Jackson FLB/FLBA, in receivership.

Dated: December 6, 1989.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

David A. Hill,
Secretary, Farm Credit Administration Board.

[FR Doc. 28834 Filed 12–6–89 2:12 pm]
BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Monday, December 4, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to certain administrative enforcement proceedings.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Mr. Darrell W. Dochow, acting in the place and stead of Director M. Danny Wall (Director of the Office of Thrift Supervision), 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)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: December 5, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 89–28771 Filed 12–5–89; 4:29 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, December 12, 1989, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Bylaws of the Corporation.

Discussion Agenda

Memorandum re: Amendment to the Corporation's Budget for 1989 and the Corporation's Budget for 1990.

Memorandum and resolution re: Proposed interim rule, in the form of a new Part 312 of

the Corporation's rules and regulations, to be entitled "Assessment of Fees Upon Entrance to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund," which would prescribe entrance and exit fees to be paid by insured depository institutions that participate in certain "conversion transactions" authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Memorandum and resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control.

Memorandum and resolution re: Final amendments to Part 338 of the Corporation's rules and regulations, entitled "Fair Housing, which amendments incorporate the changes made by the Fair Housing Amendments Act of 1988 to the Civil Rights Act of 1968 which prohibit discriminatory housing practices based on handicap and familial status and discrimination in "residential real estate-related transactions" as defined in the law.

Memorandum regarding disclosure of final orders with respect to administrative enforcement actions.

Memorandum and resolution re: Notice of solicitation of comments, suggestions and any relevant data or statistics from interested parties for use in a study concerning directors; and officers' liability insurance and depository institution bonds.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: December 5, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–28772 Filed 12–5–89; 4:29 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on December 12, 1989, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (C)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Personnel actions regarding appointments, promotions, administrative pay increases, reassigments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (C)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552B(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: December 5, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–28773 Filed 12–5–89; 4:29 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes 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 open meeting held at 2:00 p.m. on Tuesday, December 5, 1989, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum re: Amendment to the Corporation's Budget for 1989 and the Corporation's Budget for 1990.

Memorandum and resolution re: Notice of withdrawal of proposed amendments to the Corporation's rules and regulations which would have been in the form of a new Part 354, entitled "Deposit Liabilities," and which would have proposed that certain liabilities of a bank are deposit liabilities.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: December 6, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–28904 Filed 12–6–89; 3:57 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of 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 2:30 p.m. on Tuesday, December 5, 1989, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Director M. Danny Wall (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 a certain delegation of authority with respect to a supervisory matter.

The Board further determined, by the same majority vote, that no earlier notice of this 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 subsections (c)(2), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" [5 U.S.C. 552b (c)(2), (c)(8), and (c)(9)(A)(ii)).

Dated: December 6, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-28905 Filed 12-6-89; 3:57 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—December 13, 1989.

PLACE: Hearing Room One—1100 L Street N.W., Washington, D.C. 20573-0001.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Transpacific Trades Malpractices
2. Service Commitments and Damage Provisions in Service Contracts-Circular Letter 1-89.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89-28828 Filed 12-6-89; 2:10 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, December 13, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Streeet entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28790 Filed 12-5-89; 5:00 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Board of Directors meeting will be held on December 15, 1989. The meeting will commence at 9:30 a.m. and continue until all official business is completed.

PLACE: Old Towne Holiday Inn, Brent Room I & II, Fifth Floor, 480 King Street, Alexandria, VA 20314, (703) 549-6080.

STATUS OF MEETING: Open [A portion of the meeting may be closed subject to the recorded vote of a majority of the Board of Directors to discuss privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c)(4), (5), (7), and (10) and 45 CFR 1622.5 (c), (d), (f), and (h)]].

MATTERS TO BE CONSIDERED: A portion of the meeting may be closed for the reasons cited above, subject to an advance recorded vote of a majority of the Board of Directors.

1. Approval of Agenda.
2. Approval of Minutes.
   —December 1, 1989
3. Discussion of LSC FY 1991 Budget Proposals and Action Thereon.
4. Discussion of FY 1990 Appropriations Act and Action Thereon.
5. Report and Action on Requests for Emergency Funding.
6. Review of Office of the Inspector General, Compliance with Inspector General Act Amendment of 1988 and Public Law 95-452, and Activities of Inspector General to Date.
7. Performance Appraisal of President Wear and Action Thereof.
   a. Accomplishments.
   b. Report and Accounting of Use of Outside Law Firms by Corporation Staff.
   c. Report and Accounting of Pursuit of Lobbying Activities by Corporation Staff.
8. Discussion and Action on Whether Corporate Resources Should Continue To Be Expended in Pursuant of Lobbying the Executive As To Nominees For the Board of Directors of the Legal Services Corporation.
9. Election of Board Chairman and Vice Chairman for 1990.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: December 6, 1989.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 89-28908 Filed 12-6-89; 3:58 pm]

BILLING CODE 7050-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, December 14, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Administrative Actions Under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Operational Modifications for the Office of Inspector General. Closed pursuant to exemption (2).
5. Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-28896 Filed 12-6-89; 2:14 pm]

BILLING CODE 7535-01-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 3:18 p.m. on Tuesday, December 5, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clark (Comptroller of the Currency), concurred by Director M. Danny Wall, (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)(8) and (c)(9)(A) and (c)(9)(B) of the "Government in the Sunshine Act" [5 U.S.C. 552b (c)(8) and (c)(9)(A) and (c)(9)(B)].

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, D.C.

Dated: December 5, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-28833 Filed 12-6-89; 2:11 p.m.]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to provisions of the "Government in the Sunshine Act" (5 U.S.C. 552B), Notice is hereby given that the Resolution Trust Corporation's Board of Directors will meet in open session at 2:15 p.m. on Tuesday, December 12, 1989, to consider the following matters:

Summary Agenda

No Cases

Discussion Agenda

A. Resolution Program for Minority Institutions

This program implements provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") to encourage the continued minority ownership of failed minority-owned thrift institutions.

B. Minority and Women Outreach Contracting Program

This program implements provisions of FIRREA to ensure that minority- and women-owned companies or individuals are given the opportunity to participate fully in all contractual activities that the Corporation enters into for the goods and services required to manage and dispose of assets acquired from failed thrift institutions.

C. Memorandum re: Severance Pay Policy for Conservatorship Employees

RTC's policy regarding severance pay agreements made between the Federal Savings and Loan Insurance Corporation and employees of savings and loan associations placed into conservatorship.

D. Memorandum re: Indemnification Policy For Conservatorship Employees

RTC's policy for indemnifying employees handling the disposition of assets for savings and loan associations placed into conservatorship.

E. Standards of Conduct for RTC Employees

Proposed rules governing conflicts of interest, ethical responsibilities, and post-employment restrictions for RTC's Board members, officers, and employees.

The meeting will be held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, D.C.

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) 898–3604.

Dated: December 5, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89–28835 Filed 12–6–89; 2:13 pm]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 54, No. 217
Friday, December 8, 1989

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.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1802]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

Correction

In notice document 89-28114 beginning on page 49796 in the issue of Friday, December 1, 1989, make the following correction:

On page 49797, in the first column, in the eighth line, the deadline for filing petition oppositions should read "December 18, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 442

[Docket No. 89N-0326]

Antibiotic Drugs; Cefuroxime Sodium Injection

Correction

In rule document 89-23214 beginning on page 40653 in the issue of Tuesday, October 3, 1989, make the following correction:

§ 442.18 [Corrected]

On page 40654, in the first column, in the section heading, "89Cefuroxime" should read "Cefuroxime".

BILLING CODE 1505-01-D

federal register

Friday
December 8, 1989

PART II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 27, 29, and 91

Airworthiness Standards; Shoulder Harnesses in Normal and Transport Category Rotorcraft; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 27, 29, and 91

[Docket No. 26078; Notice No. 89-32]

RIN 2120-AC67

Airworthiness Standards; Shoulder Harnesses in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the regulations to require installation of shoulder harnesses at all seats of rotorcraft manufactured after 1 year after publication in the Federal Register of any final rule resulting from this notice. This notice responds to a safety recommendation from the National Transportation Safety Board (NTSB) and would enhance protection of occupants in rotorcraft. Similar rules have been adopted for certain small airplanes.

DATES: Comments must be received on or before June 6, 1990.

ADDRESSES: Comments on the notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, attn: Rules Docket (AGC-10), Docket No. 26078; 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 26078. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J. H. Major, Rotorcraft Directorate, ASW-111, Aircraft Certification Service, Federal Aviation Administration, Fort Worth, Texas 76193-0111, telephone (817) 624-5117 or FTS 734-5117.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates and benefit estimates. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statment is made: "Comments to Docket No. 26078." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, attn: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background and Explanation

This notice proposes amendments to parts 21, 27, 29 and 91 of the Federal Aviation Regulations (FAR) to require installation and use of shoulder harnesses (also called upper torso restraints) at all seats of U.S. civil rotorcraft, manufactured after 1 year after publication in the Federal Register of any final rule resulting from this notice, regardless of the original type certification basis. Based on past experience, the FAA believes that a 1-year period would provide industry adequate time to design, fabricate, and install the proposed shoulder harnesses.

This notice responds to NTSB Safety Recommendation No. A-85-70 to enhance protection of rotorcraft occupants during a minor crash landing as presently defined in the standards of §§ 27.561 and 29.561. Copies of this recommendation and two other associated recommendations are contained in the docket for this notice. Similar standards for shoulder harnesses in certain small airplanes were adopted by amendments 21-58, 23-32, and 91-191 (50 FR 46872; November 13, 1985).

Amendments 27-21 and 29-24 (49 FR 44422; November 6, 1984) revised §§ 27.785 and 29.785 to require a safety belt and harness for each crewmember seat or for each seat beside a crewmember seat (front seat occupants) for new rotorcraft designs for which an application for type certification was submitted after December 6, 1984. Design and performance standards for the safety belt and harness were included in the amendments. A 60/40 percent distribution of the occupant restraint loads was adopted in amendments 27-25 and 29-29 (54 FR 47310; November 13, 1989). The NTSB recommends additional standards (Recommendation No. A-85-70) requiring a safety belt and harness at all seats of normal and transport category rotorcraft manufactured after December 31, 1987. Newly produced, but older designs, would be equipped with a shoulder harness at each seat regardless of the seat location and orientation in the rotorcraft. For example, a side- or aft-facing seat would be equipped with a harness.

Amendment 91-191 revised § 91.14(a)(1), (2), and (3) to address mandatory use of shoulder harnesses in an aircraft whenever they are installed (whether optional or required equipment). Section 91.14 has been recently redesignated as § 91.107 by amendment 91-211 (54 FR 34284; August 18, 1989). This operating rule also applies to rotorcraft, since rotorcraft are aircraft, and would not be changed. Shoulder harnesses have been installed in rotorcraft for many years as optional and also as required equipment because of certain aircraft design features. Section 91.205 would be amended by adding a new paragraph (b)(16) to complement proposed new §§ 27.2 and 29.2. Proposed new §§ 27.2 and 29.2 would require a shoulder harness for each seat, regardless of location and orientation, in U.S. civil rotorcraft manufactured 1 year after publication in the Federal Register of any final rule resulting from this notice. TSO-C114 prescribes minimum performance standards for a safety belt and shoulder harness. This TSO would be an acceptable standard.

The revisions adopted in amendments 27-25 and 29-29 improve occupant protection for certain survivable normal and transport category rotorcraft landing impacts and apply to wholly new rotorcraft designs. The objective of the proposals in this particular notice is to respond to NTSB Recommendation No. A-85-70, which applies to existing designs. This notice responds to this NTSB recommendation except the compliance date would be 1 year after

publication in the Federal Register of any final rule resulting from this notice, rather than December 31, 1987.

Seat Standards

The airworthiness standards in parts 27 and 29, through amendments 27–21 and 29–24, require shoulder harnesses and safety belts for the front seat occupants of rotorcraft. Safety belts and shoulder harnesses or equivalent provisions that protect the other occupants from head injury due to injurious objects are required by §§ 27.785(b) and 29.785(b). These standards apply to wholly new rotorcraft designs and not to newly manufactured aircraft of previously certificated designs.

Prior to amendments 27–21 and 29–24, safety belts were specifically required for all seats. Shoulder harnesses could be installed as a requirement for certification of a particular rotorcraft design or as an optional feature as mentioned before. Many rotorcraft designs are presently equipped with approved harnesses for the front seats. These safety belts and harnesses meet or exceed the strength standards specified in parts 27 and 29 until amendments 27–25 and 29–29 were effective. These strength standards are 4g's down and 4g's forward and also describe, in part, minor crash conditions. These minor crash conditions were not changed from the rotorcraft standards adopted in Civil Air Regulations (CAR) part 6 of January 1951 and part 7 of August 1956 until amendments 27–25 and 29–29 were effective. CAR part 6 contains normal category rotorcraft standards and CAR part 7 contains transport rotorcraft standards. The normal vertical limit and ultimate landing load factors, derived from the prescribed vertical velocity limit landing impact condition, such as 6.55 feet per second (fps) minimum, may override the 4g minor crash (vertical impact) landing condition stated. A flight vertical ultimate load factor prescribed by either § 27.337 or § 29.337 may also override this 4.0g vertical down factor. In summary, the rotorcraft capabilities or characteristics, in many cases, result in occupant seat and belt design standards that exceed the empirical minor crash landing standards that predate amendments 27–25 and 29–29; e.g., 4.0g's down.

Studies

Various studies of small airplane and rotorcraft accidents have been made. One such study is Report No. DOT/FAA/CT–85/11, Analysis of Rotorcraft Crash Dynamics for Development of Improved Crashworthiness Design Criteria, June 1985, contained in the docket for this notice. This report indicates that installation and use of a shoulder harness at each seat of civil rotorcraft designed to comply with the present strength standards such as 4g's down or limit vertical descent speed of 6.5 fps would enhance safety of the occupants.

According to the data in Table 12 and Figure 7 of Report No. DOT/FAA/CT–85/11, 52 percent of survivable rotorcraft accidents occur at less than 6.5 fps vertical impact velocity. According to the data in Table 13 and Figure 9 of the report, 63 percent of the survivable accidents occur at less than 7 fps longitudinal impact velocity. In addition, the report indicates (Figure 23) that approximately 8 percent of the occupants may experience a spinal injury for a vertical impact of 6.5 fps.

Installation and use of a shoulder harness that restrains the occupant from potential secondary impact, and that properly supports the upper torso for the vertical impact loads, when used in conjunction with a safety belt that is designed to the minor crash condition airworthiness standards, should enhance safety of the occupants in 52 to 68 percent of rotorcraft impacts. The use of a harness may alleviate the 8 percent occurrence of the potential spinal injuries associated with vertical impact cases of 6.5 fps or less.

Economic Impact

The following is a summary of the preliminary industry cost impact and benefit evaluation or analysis of the proposed amendments. The estimates in this regulatory evaluation are based on the best information currently available to the FAA. The FAA finds that, with the exception of §§ 21.17 and 21.101, the proposals in this notice would result in increased costs to rotorcraft manufacturers and operators. The proposed amendments to §§ 21.17 and 21.101 merely make those sections consistent with the addition of proposed new §§ 27.2 and 29.2. For the purpose of this economic analysis, §§ 27.2, 27.785, and 91.205 have been examined as if they were a single proposal affecting the manufacture and operation of part 27 normal category rotorcraft. Similarly, §§ 29.2, 29.785, and 91.205 have been examined as if they were a single proposal affecting the manufacture and operation of part 29 transport category rotorcraft.

Expected Benefits and Costs

Adoption of the proposals would be cost effective for both parts 27 and 29 rotorcraft. The expected benefit, in excess of expected manufacturing and aircraft operation costs, over the lifetime of a seat in a rotorcraft, is $2,071 for each part 27 seat manufactured pursuant to the proposal and $966 for each part 29 seat. A sensitivity analysis shows that benefits exceed costs even when worst-case assumptions are used for certain key cost and benefit parameters.

The benefits expected from this rule, if adopted, are benefits to society derived from the value of fewer fatalities and less severe injuries from survivable rotorcraft accidents. Benefits per rotorcraft seat were estimated based on (1) accident rates; (2) fatality and injury rates and the reductions that can be expected in those rates due to harness usage; and (3) the value of reduced injuries and fatalities per accident and over the life of the seat. Survivable accident rates for rotorcraft were calculated using NTSB accident data. Injury and fatality rates with and without shoulder harnesses were estimated from both NTSB accident data and a technical study of accidents contained in Report No. DOT/FAA/CT–85/11 noted previously. The benefit accruing to a seat due to a single accident occurring sometime during the life of the seat was estimated by (1) considering the probability that such an accident would occur at all; (2) apportioning the single-accident benefit over the seat's lifetime by the probability that the single accident will occur in each particular year; and (3) calculating the discounted sum of benefits over the life of a seat (assuming a 10 percent discount rate and a 30-year useful seat life). This resulted in an estimated economic benefit to society over the life cycle of a seat manufactured pursuant to this rule, if adopted, of $2,194 per seat for part 27 rotorcraft and $1,288 per seat for part 29 rotorcraft.

The cost parameters identified for manufacturers and operators consist of (1) one-time only costs (i.e., conducting the initial design, development, and testing; acquiring and installing a shoulder harness/lap belt combination instead of a lap belt only; and strengthening freestanding seats and other seats to support a harness); (2) occasional costs (i.e., maintaining and replacing a harness combination); and (3) annual operating costs (i.e., the fuel consumption and reduced payload associated with the weight penalty of the harness installation). The expected costs, summed and discounted over the expected life of a seat, are estimated to total approximately $123 and $322 per seat for parts 27 and 29 rotorcraft, respectively. Thus, the expected benefits less expected costs of the proposed rule

are $2,071 ($2,194–$123) for part 27 rotorcraft and $966 ($1,288–$322) for part 29 rotorcraft.

The FAA appreciates the effect of potential variations of the expected reduction in fatalities and injuries (benefits) and the expected cost of these changes when implemented. The agency has analyzed the sensitivity of the key assumptions and variables. The values of 18 key parameters were decreased by 20 percent and the resulting percent changes in net benefit were calculated. Only 4 of the 18 parameters were determined to have high sensitivities: The harness utilization rate, the number of seats per rotorcraft, the annual probability of having a survivable injury accident, and the proportion of active rotorcraft. Extreme yet reasonable values for these four parameters and the weight and penalty were then tested. For example, the harness utilization rate of 100 percent was replaced with a rate of 84.6 percent, based on estimates by Simula, Inc., Tempe, Arizona, for the mid 1970's. The weight penalty was tripled as an extreme, worst-case assumption. The other three parameters were similarly changed to reflect the worst case. In all five cases, benefits still exceeded costs for both part 27 and part 29 rotorcraft even under worst-case assumptions. A copy of the preliminary regulatory evaluation is in the docket for this notice.

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the proposed amendments to parts 21, 27, 29, and 91 would not have a significant economic impact, negative or positive, on a substantial number of small entities.

The proposed rules would directly affect rotorcraft manufacturers and rotorcraft operators. The FAA "small entity"-size standards criteria adopted per the RFA define a small helicopter or aircraft parts manufacturer as an independently owned and managed firm having fewer than 75 employees. Under this size standard criterion, only 3 of the 11 helicopter manufacturers in business today are small entities. Accordingly, the proposed amendments to parts 27 and 29 contained in this notice will not impact a substantial number of small entities.

The proposed rule would affect those commercial rotorcraft operators purchasing newly manufactured rotorcraft. The FAA classifies an operator of aircraft for hire as a small entity, hereafter called "small operator," if the operator owns, but not necessarily operates, nine or fewer aircraft. The FAA's threshold criteria for significant economic impact vary according to the aircraft used and the kind of service provided. For example, the annualized cost threshold for a small entity that operates aircraft for hire in nonscheduled service is less than $3,600, whereas in scheduled service it is $51,000.

The total lifetime increase in the operating cost of rotorcraft that comply with the proposed rules is estimated at approximately $71 per normal category rotorcraft and $463 per transport rotorcraft. If a small operator were to purchase nine new part 27 rotorcraft (that comply with the proposed rules) within a 10-year period, the total cost increase resulting from the proposals is estimated to be $639, which is substantially less than either $3,600 or $51,000. A small operator with part 29 transport rotorcraft would only exceed the cost threshold of $3,600 by $104 if the operator replaced at least eight transport rotorcraft of a fleet of nine over a 10-year period. This occurrence would be very unlikely. Nevertheless, if this did occur among all present small U.S. operators with eight to nine transport rotorcraft, only 106 small operators would be affected which is considerably less than one-third of the 810 small U.S. operators. Accordingly, the FAA has determined that the proposed rules would not have a significant impact on more than one-third (i.e., will not impact a substantial number) of the small commercial rotorcraft operators.

International Trade Statement

The additional cost imposed by these proposals, if adopted, is not likely to result in a competitive trade disadvantage or advantage for U.S. manufacturers in domestic or foreign markets. This conclusion is based on the fact that foreign manufacturers must comply with the certification standards of parts 27 and 29 as a condition to entry into U.S. markets. Considering the size of the U.S. market, foreign manufacturers are likely to comply with certification standards of the United States which is the largest segment of their export market. Further, foreign and U.S. rotorcraft manufacturers are expected to pass any new certification costs on to consumers in their respective domestic and foreign markets.

Federalism Implications

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

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR

Part 21

Air transportation, Aircraft, Aviation safety, Safety.

Parts 27 and 29

Aircraft, Aviation safety, Safety, Air transportation, Rotorcraft.

Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air transportation, Cargo, Smoking, Airports, Airworthiness directives and standards.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 21, 27, 29, and 91 of the Federal Aviation Regulations (14 CFR parts 21, 27, 29, and 91) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 21.17 [Amended]

2. By amending § 21.17 by adding ", §§ 27.2, 29.2," immediately after "25.2" in the introductory text of paragraph (a).

§ 21.101 [Amended]

3. By amending § 21.101 by adding ", §§ 27.2, 29.2," immediately after "§ 25.2" in the introductory text of paragraph (a).

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

4. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

5. By adding a new § 27.2 after § 27.1 and before the heading **"Subpart B—Flight"** to read as follows:

§ 27.2 Special retroactive requirements.

Notwithstanding §§ 21.17 and 21.101 of this chapter and irrespective of the type certification basis, each rotorcraft manufactured after (1 year after publication of the amendment in the **Federal Register**), or any such foreign manufactured rotorcraft for entry into the United States, must meet the requirements of § 27.785(b) and (c) in effect (30 days after publication of the amendment in the **Federal Register**). For the purpose of this paragraph, the date of manufacture is—

(a) The date the inspection acceptance records, or equivalent, reflect that the rotorcraft is complete and meets the FAA-Approved Type Design Data; or

(b) In the case of a foreign-manufactured rotorcraft, the date the foreign civil airworthiness authority certifies the rotorcraft is complete and issues an original standard airworthiness certificate, or equivalent, in that country.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

6. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

7. By adding a new § 29.2 after § 29.1 and before the heading **"Subpart B—Flight"** to read as follows:

§ 29.2 Special retroactive requirements.

Notwithstanding §§ 21.17 and 21.101 of this chapter and irrespective of the type certification basis, each rotorcraft manufactured after (1 year after publication of the amendment in the **Federal Register**), or any such foreign manufactured rotorcraft for entry into the United States, must meet the requirements of § 29.785(b) and (c) in effect (30 days after publication of the amendment in the **Federal Register**). For the purpose of this paragraph, the date of manufacture is—

(a) The date the inspection acceptance records, or equivalent, reflect that the rotorcraft is complete and meets the FAA-Approved Type Design Data; or

(b) In the case of a foreign manufactured rotorcraft, the date the foreign civil airworthiness authority certifies the rotorcraft is complete and issues an original standard airworthiness certificate, or equivalent, in that country.

PART 91—GENERAL OPERATING AND FLIGHT RULES

8. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

9. By amending § 91.205[1] by adding a new paragraph (b)(16) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates; instrument and equipment requirements.

* * * * *

(b) * * *

(16) For rotorcraft manufactured after (1 year after publication of the amendment in the **Federal Register**), a shoulder harness for each seat that meets the requirements of § 27.785(b) and (c) or § 29.785(b) and (c) of this chapter in effect (30 days after publication of the amendment in the **Federal Register**).

* * * * *

Issued in Washington, DC, on November 30, 1989.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 89-28554 Filed 12-7-89; 8:45 am]

BILLING CODE 4910-13-M

[1] Note: This amendment would affect § 91.205 which becomes effective August 18, 1990 (see 54 FR 34284, August 18, 1989).

federal register

Friday
December 8, 1989

Part III

Department of Commerce

National Telecommunications and Information Administration

Comprehensive Policy Review of Use and Management of the Radio Frequency Spectrum; Notice of Inquiry and Request for Comments

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Comprehensive Policy Review of Use and Management of the Radio Frequency Spectrum

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: NTIA is conducting a comprehensive policy review of the use and management of the radio frequency spectrum in the United States. Public comment is requested on issues relevant to such a review. After analyzing the comments, NTIA intends to issue a report, which may propose changes in the rules and regulations governing spectrum allocation and assignment.

DATES: Comments should be filed on or before February 23, 1990, and reply comments should be filed on or before March 30, 1990, to receive full consideration.

ADDRESSES: Comments (seven copies) should be sent to: Office of Policy Analysis and Development, NTIA, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., room 4725, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joseph L. Gattuso, Office of Policy Analysis and Development, 202–377–1880, or Michael Allen, Office of Spectrum Management, 202–377–0805.

Table of Contents

I. Introduction

1. The National Telecommunications and Information Administration (NTIA) is the Executive Branch Agency principally responsible for developing and articulating domestic and international telecommunications policies. Under Executive Order 12046, NTIA acts as the principal adviser to the President on telecommunications policies. Accordingly, NTIA conducts studies and makes recommendations regarding telecommunications policies, activities, and opportunities, and presents Executive Branch views on telecommunications matters to the Congress, the Federal Communications Commission (the FCC), state and local governments, and members of the public.

2. NTIA is undertaking a comprehensive policy review of the use and management of the radio frequency spectrum in the United States. NTIA has previously analyzed many aspects of spectrum use and management, both in the context of particular allocation and assignment decisions and as part of its long-range planning responsibility. This review, however, is the first major examination of fundamental spectrum policy objectives and issues by NTIA since its organization in 1978.

3. The value of spectrum, as an invisible resource, is sometimes overlooked. Yet over the years, demand for spectrum for both commercial and governmental purposes has continued to increase. Spectrum use underlies some of the most competitive and technologically sophisticated industries in the United States and is of great importance to the national economy. Radio communications and detection equipment shipments in the United States were valued at $54 billion in 1988,[1] and represent only a portion of industries that could be considered spectrum-related. For example, spectrum provides the backbone for many consumer and business services, including radio and television broadcasting, cellular telephones, and taxicab dispatch and other radio-based services. As a result, the effective use and management of the spectrum will increasingly play a critical role in promoting U.S. economic well-being and global competitiveness. In light of this, we request information on the role of spectrum use and management in the U.S. economy.

4. In addition, many key government services rely on the use of the spectrum to control air traffic; aid the public in law enforcement, public safety, and disaster relief; contribute to national security through command and control of military forces; protect our national parks and forests; and assist in the goals of the national space program. Clearly, in light of the broad range of critical public and private activities dependent on the spectrum, the effective use and management of this valuable and scarce resource should be a national policy objective.

5. Historically, U.S. spectrum management policies were designed to minimize interference among different radio systems and to create an efficient structure in which demand for spectrum could be met. Over time, the process has become increasingly complex as it has sought to accommodate a growing and increasingly diverse set of competing user demands and policy objectives. Ideally, spectrum policies should provide incentives for efficient use of the spectrum resource. At the same time, the spectrum management system should respond flexibly to changes in demand and technology. In particular, it should permit the rapid introduction of new services as they are developed. Finally, the system must also accommodate important public services, such as national defense, public safety, and law enforcement, among others.

6. While spectrum management in the United States continues to accommodate new users and telecommunications technologies, it does so through a variety of overlapping jurisdictions, processes, and standards. There is growing concern in the spectrum policy community that the present system may not always be operating in the most effective, efficient, and equitable manner. Accordingly, NTIA believes the U.S. spectrum management system should be reviewed, and potential improvements developed and evaluated, particularly in light of increases in the demand for

[1] By comparison, the total cost of plant added in 1988 by local exchange carriers reporting to the FCC was $17.9 billion, and the total revenues of those carriers were $81.5 billion. (Unpublished data from FCC's Common Carrier Bureau, Industry Analysis Division.)

spectrum, rapidly changing developments in spectrum-related technology, and the new forms of spectrum management implemented in other countries.

7. Specific controversies pervade the spectrum management process, including whether or how much additional U.S. spectrum should be allocated for land mobile radio or "personal communications"; whether current use of the UHF television band should be amended to include additional sharing with land mobile and other services; and whether additional spectrum is required for Advanced Television (ATV). While we anticipate that comments on this Notice will address such conflicts, this study will focus on the broader and fundamental issues of spectrum management that underlie such conflicts, such as whether the current system has been successful in apportioning the spectrum resource in a way that achieves the greatest value for society; how Government and non-Government uses of the spectrum could be better coordinated and shared; and whether certain current uses of the spectrum might be more appropriate for other media, particularly in light of technological advances such as fiber optic cable. As discussed in detail below, we seek specific comments on these issues.

II. Background: Radio Frequency Use and Management

8. Spectrum management comprises two fundamental activities: (1) allocation—determining *how* a particular radio frequency band should be used by the various radio services; and (2) assignment—deciding who is authorized to use a discrete radio frequency or frequency channel under specified conditions.[2] As a resource, the spectrum has two characteristics that affect its management. First, given a specific level of technological development, the portion of the spectrum suitable for radiocommunication and other applications is finite, but can be re-used throughout the world with proper coordination and management. Second, the physical properties of various portions of the spectrum make some portions more suitable than others for specific communications functions.[3] As a result, demand for the use of some portions may be quite high, while other portions of the spectrum may be unused.

9. Historically, the spectrum has been treated as a public resource, subject to extensive management on both a national and international scale. Three major entities directly affect use of spectrum in the United States: The FCC, NTIA, and the International Telecommunication Union (ITU). The ITU establishes treaty-level obligations that affect both the nature and timing of any changes to domestic spectrum use. For example, the ITU classifies uses of the radio spectrum into 34 "Radio Services" (e.g., Broadcasting, Land Mobile, and Fixed). The International Table of Frequency Allocations represents the consensus of ITU member administrations, including the United States, regarding the frequency bands that specific services should use and acts as guidance for national plans of member nations.[4]

10. The FCC and NTIA share the ongoing U.S. spectrum management responsibilities. NTIA manages the Federal Government ("federal") uses, and the FCC manages all other U.S. uses, including state and local government ("non-federal" or "private sector").[5] This jurisdictional division, established under the Communications Act of 1934,[6] has a direct effect on the way spectrum is used and managed in the United States. Many formal and informal linkages exist between the FCC and NTIA in spectrum management, to determine the services in U.S. frequency bands through the National Table of Frequency Allocations. The most extensive is within the Interdepartment Radio Advisory Committee (IRAC) forum, which NTIA chairs.[7] The FCC has a liaison representative to the IRAC and the IRAC's major subcommittees. The FCC coordinates with the IRAC on non-federal spectrum issues that involve shared or exclusive federal bands or in bands where there might be an impact on or from federal operations.

11. Problems arise when there appear to be insufficient resources available to meet all requirements. This leads to questions as to whether the current system is sufficiently flexible to meet demands of accelerating technological developments, or whether alternative systems of allocating and assigning spectrum might better meet these demands. In addition, there are questions about how to encourage efficient technologies, whether the current organizational structures are adequate, and what planning techniques can be developed to help identify and meet future requirements. The following paragraphs discuss these issues in greater detail and request comment.

III. Areas of Inquiry

A. The Regulatory Process

1. Domestic Structure

12. NTIA relies heavily on advice from the IRAC to manage federal use of the spectrum.[8] Each federal agency (as with private sector spectrum users) usually has a direct interest in only limited portions of the spectrum. For example, some federal agencies operate extensive land mobile networks, but have only minor interests in other uses of the spectrum, while other agencies have extensive interests in radionavigation and radiolocation applications.

13. The FCC's operating bureaus manage non-federal spectrum for the numerous services within their jurisdictions.[9] For example, the Mass Media Bureau manages the licensing process for broadcasting spectrum, the Common Carrier Bureau manages the process for cellular radiotelephone licenses, and the Private Radio Bureau manages the process for non-common-carrier land mobile systems. The Field Operations Bureau performs

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[2] An authorization given by the FCC for operation on a specified frequency is known as a "license." The term "assignment" will generally be used in this document for clarity in describing both federal and non-federal spectrum uses.

[3] Largely because of physical characteristics such as propagation path loss, and technological factors, such as availability (or lack thereof) of high-powered amplifiers, some parts of the spectrum are more suited and desirable for some telecommunications applications than others. For example, operations at frequencies above 20 GHz are susceptible to higher propagation path loss plus potential losses due to precipitation. In addition, amplifier technology is not as advanced as it is in lower bands. As a result, for example, bands above 20 GHz are not as suited or desirable for terrestrial television as are the VHF or UHF bands. Thus, frequency bands, particularly when they differ by several orders of magnitude, are not always interchangeable for the same service.

[4] Each nation retains the right to depart from the guidance of the International Table of Frequency Allocations in meeting its particular needs, subject to interference considerations.

[5] The terms "Government" and "Non-Government" are usually employed to express this division. Since the NTIA manages Federal Government spectrum use only and the FCC manages state and local government spectrum use, the terms "federal" and "nonfederal" will generally be used in this Notice.

[6] 47 U.S.C. 305.

[7] The IRAC provides advice to NTIA on federal spectrum management issues. See *infra*, note 8.

[8] The role of the IRAC was recognized in Exec. Order 12046, 3 CFR, 1978 Comp. 158, reprinted in 47 U.S.C. 305 app. at 115 (1989). The IRAC advises NTIA on a wide variety of spectrum management issues. One IRAC subcommittee advises NTIA on which frequency assignment requests it should grant. Another provides advice on whether spectrum requirements for major new federal systems can be satisfied. A third develops and coordinates Federal Government technical standards. See generally, Manual of Regulations & Procedures for Federal Radio Frequency ("NTIA Manual") (May 1989), incorporated by reference into 47 CFR part 300.

[9] See generally, 47 CFR part 0, Commission Organization.

enforcement and other public contact information functions. The Office of Engineering Technology (OET) is responsible for coordinating, with NTIA, the development of national policies regarding use of the spectrum. OET also performs an international coordinating liaison function with the ITU. It develops non-federal, technical standards for the "type acceptance" of equipment and maintains the frequency assignment files for most non-federal assignments.[10]

14. Although the FCC's allocation and assignment processes can sometimes move quickly when all parties agree, these processes can be laborious and time-consuming when there is a dispute among the parties, as is frequently the case when the agency attempts to change the rules governing use of particular blocks of spectrum. For non-federal users, an FCC proceeding, which is governed by the Administrative Procedure Act,[11] and applies the "public interest" standard in allocating or assigning spectrum, can take years.[12] While regulatory procedures may serve an important purpose in ensuring due process and public participation in spectrum management, they may also act as unnecessary obstacles to radio service introduction, especially if regulatory procedures could address spectrum management concerns by other means. The assignment process is generally shorter than the allocation process, but can still be lengthy and can impose costs that affect the eventual development of a service. How could spectrum management procedures be streamlined to accommodate new services and technologies in a timely manner? What laws, regulations, or policies would have to be changed to do so?

15. In some cases, the FCC relies on private user groups for specific spectrum management functions. The FCC rules permit private groups to manage some assignments in the private land mobile radio service via certified coordinators.[13] In addition, coordination of frequency use by satellite earth stations in frequency bands shared with terrestrial microwave radio relay stations is performed by private companies. Such companies have developed extensive data bases, associated frequency management models, and automated coordination techniques. We invite parties to comment on the appropriate role of private groups and companies in spectrum management. How effective have these user groups been in equitably approving license requests for nonmembers? Should such user group frequency management be encouraged? Is it necessary to modify current processes so that the interests of parties not already using the spectrum are advanced? Could other types of services be managed through the use of private groups? What type of government oversight over such groups is needed?

16. The NTIA spectrum management process can be more rapid than the FCC process because NTIA manages fewer users and because NTIA's management procedures are not subject to the Administrative Procedure Act. The legal standards governing the FCC process provide for public comment and require the FCC to publish detailed rationales for its management decisions. On the other hand, the NTIA process is not open to the public because classified information may be involved.[14] Similarly, although NTIA rationales for its management decisions are generally provided to the IRAC, they are not published as public documents. Are the FCC and NTIA spectrum management processes effective and efficient? If not, what can be done to make them so? Should the NTIA process be more accessible to the private sector? How might this be done?

17. There is no direct avenue for private sector requests for use of federal spectrum. The current procedure is a two-step process: The private sector requests federal spectrum by contacting the FCC, which then requests such spectrum from NTIA. Should there be a formal procedure that addresses private sector requirements for federal spectrum?

2. Domestic Coordination

18. The jurisdictional division between NTIA and the FCC can make management of the spectrum complicated and possibly provides another obstacle to more efficient spectrum use. As previously discussed, there has been increased sharing of spectrum between jurisdictions. Nationally, the spectrum (up to 300 GHz) is allocated as follows: 1.4 percent is federal exclusive, 5.5 percent is non-federal exclusive, and 93.1 percent is shared between the two. When considering the more desirable spectrum below 30 GHz, about 7.5 percent is federal exclusive, 33 percent is non-federal exclusive, and 59.5 percent is shared.

19. It should be noted, however, that for many shared allocations, there are both primary and secondary services. Stations in the primary service have the highest rank. Stations in the secondary service cannot interfere with stations in the primary service or claim protection from such stations. In a shared band, the federal and non-federal allocated services may be both primary, or one primary and the other secondary.

20. While NTIA and the FCC expend considerable efforts on coordination of their spectrum activities, the division of management responsibilities between the two agencies can make efficient spectrum sharing more difficult in certain respects. For example, the absence of unified databases or a single source of information about spectrum use makes evaluations of such use more difficult. This split of jurisdiction and of information data bases also tends to make it more difficult for technology innovators and developers to find spectrum that might be used for a particular purpose, regardless of whether it is categorized as federal or non-federal.

21. NTIA seeks additional information on the strengths and weaknesses of the existing domestic coordination process as well as possible actions to correct any weaknesses. Parties should address in detail the administrative, economic, and technical factors that affect both perceived problems and possible solutions. Is the present sharing arrangement adequate to effectively manage the spectrum in a timely manner? If not, what improvements should be made? What steps should be taken to improve the process through which a potential new user can obtain information concerning the use or

[10] The Private Radio Bureau maintains the frequency assignment files for some non-federal assignments.

[11] 5 U.S.C. 551–59, 701–706.

[12] Cellular telephone service is an often cited example of the long time it takes to institute a new use of spectrum. The first proceeding to allocate spectrum for cellular telephony was commenced in 1968; the spectrum allocation was made in 1975, although the first commercial cellular license was not granted until 1981. As part of that process, for example, the comparative analysis of non-wireline cellular applications in the 30 largest markets consumed, on average, 412 days (13.7 months) from hearing designation to grant of a construction permit. See Rural Cellular Non-Wireline Licensing: Hearings Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation, 100th Cong., 2d Sess. 6 (1988) (testimony of G. Brock, FCC Common Carrier Bureau).

[13] See 47 CFR, part 90, subpart H, *Policies Governing the Assignment of Frequencies*. Congress recognized the role of advisory coordinating committees when it amended the Communications Act in 1982. 47 U.S.C. 332(b). Congress has encouraged the Commission to develop mechanisms to monitor the performance of coordinating committees. The FCC has undertaken several proceedings since 1982. See, *e.g.*, Notice of Proposed Rulemaking, *Frequency Coordination in the Private Land Mobile Radio Service*, PR Docket No. 88–548 (released August 15, 1989).

[14] The FCC represents the non-federal sector interests in the NTIA process.

occupancy on specific frequencies or in the band(s) of interest? Should general data bases of frequency assignments and equipment characteristics be kept and made publicly accessible? Should there be a single authority to centralize or focus national telecommunications policy and coordination? If so, how should it be structured?

3. International Structure and Coordination

22. The ITU holds regional or world administrative radio conferences (RARCs or WARCs) to revise the International Table of Frequency Allocations and the rules, regulations, and procedures that have treaty status among the signatories of the ITU. International coordination of frequencies and satellite orbital positions are performed under the auspices of the ITU. We request comment on how this process could be improved.

23. Preparation of U.S. proposals and positions for ITU conferences is a multi-year process of negotiation and planning by U.S. organizations involved in spectrum use and management, including NTIA, the FCC, and the Department of State. The agencies coordinate closely in developing the U.S. positions and proposals. The FCC issues notices of inquiry to obtain public comments and normally establishes a public advisory committee for additional advice. NTIA prepares its proposals and positions through the IRAC. Is the present planning for U.S. participation in international conferences satisfactory for advancing U.S. positions relative to international spectrum policies? How could this process be improved? What are the alternative processes that could make the conference preparation and implementation more effective, timely, and efficient? How could the United States more effectively participate in the ITU?

24. Other international events also require the U.S. to plan carefully its spectrum management policies. For example, the European Community is implementing a program to harmonize internal markets by 1992. This is likely to have an impact on European positions and proposals for spectrum use and management. In addition, unification could strengthen European advocacy of specific proposals for international spectrum regulation and standards development. NTIA requests comment on the effects of such developments on U.S. spectrum policies.

B. "Block" Allocation System Issues

25. The International and National Tables of Frequency Allocation divide spectrum into "blocks" for use by particular radio services. Some advantages of the block allocation system are that it apportions spectrum to meet predicted future demand; allows relatively easy development of coordination procedures to avoid interference; increases design certainty for equipment manufacturers; and reserves spectrum for socially desirable, but otherwise uneconomic, uses. The block system also has the advantage of familiarity, since the allocations are well known, and its administration is proceeding on an ongoing basis, nationally and internationally.[15]

26. The block system also has several disadvantages, including a tendency to become rigid and difficult to change. This may retard innovation. There may be excess demand for spectrum in particular blocks or in particular geographic areas. In addition, once settled in a block, the same stability that allows design certainty for equipment manufacturers, entrenches user investment in the equipment needed for a particular service and commits use of that band to those services regardless of subsequent technological or marketplace developments. We ask parties to comment on the strengths and weaknesses of the block allocation system and to address the specific issues we raise below.

1. Impediments to Innovation

27. The current block allocation system is designed to provide simple technical and service rules for avoiding harmful interference. Since similar devices and radio services operate in a given allocation band, it is possible to establish a set of standard rules for their compatible development and operation. These rules permit straightforward management and use of the spectrum, since little or no interpretation or technical calculations are required to permit the interference-free operation of a new system. Over time, however, the rules become rigid and difficult to change to accommodate new technologies and services.

28. The current block allocation system operates with some flexibility through the use of "footnotes," which are exceptions to the allocations, and through accommodations performed on a case-by-case basis.[16] However, there is some question as to whether these measures address the needs of innovative services. How successfully does the current block allocation system accommodate growth of expanding and new services?

29. A rigid allocation structure can cause problems. New radio systems may be developed that, while more efficient, are not compatible with present systems, do not clearly fall into a single allocated service, or for which there is no suitable allocation at all. Restrictions in the current structure may cause users to operate out of band or to be denied use of the spectrum altogether. The frequency allocation process must be more responsive if it is to accommodate increasing demand and complexity of spectrum use as technology evolves. Would allocation flexibility improve if the definitions of certain radio services were amended? If so, which services? How should their definitions be amended?

30. A block allocation system can impose a considerable burden on the innovator—that is, the creator of a "new" radiocommunications service. The current system permits innovators to obtain experimental authorizations for developmental purposes. However, an innovator usually must determine what spectrum is potentially available in both the non-federal and federal sectors. Then, once the system is sufficiently developed, the innovator must petition for reallocation of the spectrum for the service, if necessary, and new service rules must be implemented before the product can be brought to market. Depending on the technical characteristics of the new service, spectrum may not be readily available. If so, the innovator must participate in an administrative process for reallocation of the spectrum. The outcome of such a proceeding is uncertain, and the innovator cannot be assured that any suitable spectrum will eventually be made available for the new service.

31. The accommodation of new technologies is particularly difficult when a radiocommunication application is developed that does not conform to one of the existing defined services. The existing users of the spectrum have little incentive to make room for such a new service. Examples are seen in the efforts to find spectrum for Lo-Jack [17] and

[15] See, *e.g.*, A. Felker and K. Gordon, *A Framework for Decentralized Radio Service*, Federal Communications Commission, Office of Plans And Policy (September 1983); W. Longman, *Flexible Allocation of the Radio Spectrum*, in Telecommunication Journal, Vol. 55, no. X (1988) at 692–695.

[16] In recent years both NTIA and the FCC have addressed some congestion concerns by introducing additional flexibility in the way assignments are made in certain blocks. See *infra*, paras. 45–62.

[17] See Report and Order, *Amendment of the Commission's Rules to Provide for Stolen Vehicle Recovery Systems*, Gen. Docket 88–566 (released October 16, 1989), otherwise known as "Lo-Jack."

Continued

BETRS.[18] Another example of inflexibility in the allocation table occurs when a system is multiservice and capable of performing several functions.[19]

32. The current system may reduce incentives for the development of innovative, efficient, or new services. What types of services and users does the block allocation system favor? Which does it disadvantage? Can the process of introducing new and experimental systems be streamlined, particularly when a reallocation of spectrum would be required under the current system? If a new service is offered in a band that is allocated primarily for some other use, when should the service be moved? Alternatively, should the allocation be changed?

2. Excess Demand

33. Demand for a particular block of spectrum may exceed available supply in a given geographical area, especially in congested urban areas. For example, additional assignments within the VHF television allocation are not available in most metropolitan areas, a fact that cannot be changed without changing the underlying technical standards of the VHF television service. Similarly, the rapid growth in demand for services such as land mobile radio and cellular telephony, and the potential demand for an even greater number of mobile communications systems, places pressure on other allocations.[20] Does the block system adequately provide for future spectrum demand? What modifications might be desirable?

34. Most frequency blocks are allocated to the same services throughout the United States. Such allocations do not accommodate regional differences in spectrum use, and some blocks may be lightly used in certain geographic areas or at certain times of the day and heavily used in other areas or at other times. Moreover, lightly-used frequency blocks may not always be in the most desirable portions of the spectrum or in the geographic areas where overall demand for spectrum is greatest. What changes in the current system would enable it to more effectively accommodate regional, temporal, and other variations in spectrum usage?

3. Entrenched Technologies

35. In addition to limiting a service to a block of spectrum, the current system also tends to set *de facto* technical standards for equipment to be used in that block, based on the capabilities of the technology at the time the spectrum was allocated. A standard technology for a block provides certainty to equipment manufacturers and can result in heavy user investment in conforming equipment. Conversely, such standardization commits use of that band to that service. As a result, existing users may have few incentives to change to new, more spectrum-efficient technologies. The outdated technology thus becomes entrenched, since the current users would incur seemingly unwarranted costs to update their equipment. On the other hand, the costs to prospective users of introducing new technology can be high. The implementation of newer, more efficient communications systems can be hampered by the presence of older, less efficient ones. What is the effect of the current allocation system on such investment decisions?

36. Transitions from old to new technologies in specific bands do occur. In the land mobile services, conditions became sufficiently crowded and technology improved through the years that federal channel plans for using the allocated bands, which were initially based on 100 kHz channels, were modified to channels of 50 kHz, then 25 kHz and now 12.5 kHz. The initial 100 kHz channel width was the minimum width technologically feasible in the 1940s. However, the combination of advancing technology and crowded spectrum produced a pressure for more channels and hence a narrower channel width. There have been similar decreases in channel widths in the non-federal land mobile arena.[21] How can spectrum managers most efficiently expedite a transition from older, less efficient technologies, to newer, more efficient technologies under the existing block system? How could the current system be altered to encourage the deployment of "spectrum-conserving" technologies when crowding occurs? When new, more spectrum-efficient technologies or services are developed in bands where there is little crowding, should spectrum managers seek to force or encourage conversion to the new technology? What modifications to the present system would provide the right signals to spectrum managers and users to anticipate possible spectrum shortages in presently non-crowded bands and implement new technologies before shortages occur?

C. Alternatives to Apportioning and Valuing Spectrum

37. We recognize both the strengths and weaknesses of the existing allocation and assignment system and its usefulness in apportioning the spectrum resource. Apportionment[22] involves choosing among competing uses or users of the spectrum. While ideally the requirements of all spectrum users should be met, any spectrum management process explicitly or implicitly establishes priorities for spectrum use in apportioning usable spectrum. We seek to examine the criteria used in the present management system and alternative systems for making apportionment decisions.

38. We request information regarding alternatives to the present system for apportioning spectrum among competing uses and users, the current issues that

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After several years with an experimental license, the FCC granted the Lo-Jack system an allocation (by footnote to the allocation tables) on a co-primary basis with federal users in a previously exclusive federal land mobile allocation. This was after the FCC determined that it could not find a suitable nationwide allocation in non-federal allocations and NTIA provided federal spectrum for use on a permanent basis.

[18] Report and Order, *In the Matter of Basic Exchange Telecommunications Radio Service*, 3 FCC Rcd 214 (64 Rad. Reg.2d (P&F) 368) (1987) (referred to as "BETRS"). A BETRS system is used to extend basic telephone service to areas where, because of factors such as remoteness and geography, it is prohibitively expensive to provide such services over wires. The BETRS decision allowed Rural Radio Services (RRS), of which BETRS is a part, to construct radio loops between fixed subscriber points using frequencies allocated for land mobile use. RRS was upgraded to a co-primary user in two separate Public Land Mobile Service (PLMS) bands.

[19] Some new radars are used for both radiolocation and radionavigation functions. The radar may be able to operate in a radiolocation band on a primary basis, but its radionavigation functions would be on a non-interference basis only.

[20] An example of this type of pressure over the years is reflected in the FCC's decisions to increase sharing and reallocate use of the UHF broadcasting spectrum to help relieve congestion in land mobile bands. In 1970, the FCC approved sharing of broadcast channels 14–20 with land mobile. First Report and Order, *Land Mobile UHF-TV Channel Sharing*, Docket No. 18261, 23 FCC 2d 325 (19 Rad. Reg.2d (P&F) 1585) (1970), and reallocated channels 70–83 exclusively to land mobile. First Report and Order and Second Notice of Inquiry, *Future Use of the Frequency Band 806–960 MHz*, Docket No. 18262, 35 FR 8644 (19 Rad. Reg 2d (P&F) 1663) (1970). In 1985, the FCC proposed further sharing of the UHF broadcast spectrum, again to relieve congestion in the private land mobile frequency bands, particularly in the nation's largest metropolitan areas. In 1987, broadcast interests successfully petitioned the FCC to delay making a decision on further sharing of the UHF broadcasting band pending the completion of the FCC's ATV inquiry. Order, *Further Sharing of the UHF Television Band by Private Land Mobile Radio Service*, 2 FCC Rcd 6441 (63 Rad. Reg. 2d (P&F) 1695) (1987).

[21] Some private land mobile services currently use 12.5 kHz bandwidths. Both government and private sector land mobile users are testing 5 kHz "narrowband" technologies.

[22] The term "apportionment," as used in this paper, refers to the overall process of spectrum resource distribution and as such, subsumes both "allocation" and "assignment."

such alternatives would address, and comparison of their costs and benefits. As part of such an analysis, we request information on the effects of changing the system on existing spectrum users. Should any new apportionment scheme be applied to the entire spectrum or only specific portions? What role would federal users play in any alternative allocation scheme? Should such a scheme be applied in exactly the same fashion to private and federal users? If not, what differences would apply? How would any alternative scheme preserve the strengths of the block allocation system—particularly its success in controlling interference and in promoting uniform national radio standards? Would gains in U.S. competitiveness result?

39. We also request parties to comment on the new spectrum management systems and techniques being introduced in other countries—such as New Zealand, Canada, and Australia.[23] What are the strengths and weaknesses of such systems? Could some or all of these techniques be adapted to the U.S. environment?

40. In addition, we invite parties to comment on what legal authority exists or would be needed to permit the FCC or NTIA to implement any proposed alternatives for apportioning spectrum. For example, would current statutory provisions provide the basis for implementing alternatives or would new statutory authority be necessary?

1. Present Apportionment Criteria: Equity Issues

41. Historically, the United States has managed spectrum for the public "in trust." Spectrum licensees under the Communications Act have been called "temporary permittees—fiduciaries—of this great public resource." [24] The Communications Act charges the FCC with determining whether a non-federal spectrum use serves "the public interest, convenience, or necessity." [25] An administrative finding of "the public interest" constitutes the primary formal standard for apportioning non-federal spectrum.

42. The Communications Act does not define the criteria by which the FCC is to judge the public interest; the FCC has broad discretion to elucidate and give specific content to the public interest standard.[26]

43. The specific criteria used by the FCC in making frequency assignments vary for the different services. For some services, such as private land mobile radio below 800 MHz or the amateur radio service, users are not assigned use of a frequency, there are no set limits on the number of applicants, and there are no competing applications for licenses.[27] Where there are competing applications for an exclusive license in a particular service, the FCC primarily uses two procedures for making assignments: comparative hearings [28] and lotteries.[29] The comparative hearing procedure, used for broadcast licenses, considers public interest factors such as "diversification of control" and "best practicable service to the public." [30] The lottery process was adopted both to expedite the assignment process and to choose fairly among applicants.[31] To date it has been employed for such services as cellular telephone, low power television, and specialized mobile radio.[32] Under the current U.S. spectrum management system, the FCC makes spectrum assignments essentially without charge to users, although it assesses certain administrative and other license fees to applicants for certain radio services.[33]

44. NTIA apportions spectrum among federal users with the advice of the IRAC.[34] The basic role of representatives appointed to serve on the IRAC is to function "in the interest of the United States as a whole." [35] The IRAC negotiates a consensus among the various federal agencies, taking guidance from the goals, and in accordance with the procedures, set forth in the NTIA manual.[36] NTIA assigns spectrum to federal users with no charges or fees.

45. NTIA seeks comment on the current criteria for apportioning spectrum. Do these criteria provide for the efficient and fair use of spectrum? Is demand for spectrum being met? In what spectrum bands is demand not being met? What particular services require additional spectrum? Are new services and users being accommodated?

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[23] *See infra*, note 62, regarding innovative spectrum management in Canada, New Zealand and Australia.

[24] *Office of Communications of the United Church of Christ* v. *FCC*, 425 F.2d 543, 548 (D.C. Cir. 1969) (broadcast regulation).

[25] See 47 U.S.C. 303, 307, 309(a), 310(d).

[26] See, *e.g.*, *FCC* v. *WNCN Listeners Guild*, 450 U.S. 582 (1981).

[27] For a discussion of sharing in the private land mobile radio services, see Report and Order, *Frequency Coordination in the Private Land Mobile Radio Services*, 103 FCC 2d 1093, 1095 (60 Rad. Reg.2d (P&F) 41) (1986).

[28] 47 U.S.C. 307, 309(e); *see also Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945); *Johnston Broadcasting* v. *FCC*, 175 F.2d 351 (D.C. Cir. 1949).

[29] 47 U.S.C. 309(i). The FCC first employed lotteries in 1983 to process cellular telephone and low power television applications, and has increased the number of services licensed by random selection. In March 1989, the FCC proposed to introduce lottery procedures to the assignment of radio and television licenses. *Amendment of the Commission's Rules to Allow the Selection from Among Competing Applicants for New AM, FM, and Television Stations by Random Selection (Lottery)*, MM Docket No. 89–15, 4 FCC Rcd 2256 (1989).

[30] Using the comparative criteria, an administrative law judge must compare applicants and award preferences that ultimately will decide the assignment. The basic elements upon which evidence is taken at a comparative hearing were established in the FCC's *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (5 Rad. Reg.2d (P&F) 1901) (1965). Six specific factors are discussed in the *Policy Statement*: (1) Diversification of control of the media of mass communications, (2) full time participation in station operation by owners, (3) proposed program service, (4) past broadcast record, (5) efficient use of frequency, and (6) character. See also *West Michigan Broadcasting Co.* v. *FCC* 735 F.2d 601, 604–605 (D.C. Cir. 1984) *cert. den.* 470 U.S. 1027 (1985). In addition, the Commission considers other factors in the comparative setting, including minority or female ownership, which were added by case law. *See, e.g., TV 9, Inc.* v. *FCC*, 495 F2d 929, 936–938 (D.C. Cir. 1973) *cert. den.* 419 U.S. 986 (1974), (merit for minority ownership), *Winter Park Communications, Inc.* v. *FCC*, 873 F.2d 601

[31] Under 1982 legislation, preferences may be awarded to applicants who would increase the diversification of ownership of mass media communications and additional significant preferences awarded to applicants controlled by members of minority groups. 47 U.S.C. 309(i)(3)(A).

[32] In the past decade, the FCC has moved away from pervasive management of non-federal spectrum through such deregulatory initiatives as giving operational and technical flexibility to licensees and by permitting frequency coordination by private organizations and privately negotiated interference agreements. See *infra*, para. 45–52 and *supra*, para 15. For an extensive discussion of recent FCC deregulatory measures, see D. Webbink, "Spectrum Deregulation and Market Forces," paper presented at a conference on "The Consequences of Current US Electromagnetic Spectrum Allocation Policies and Processes," Center for Telecommunications and Information Studies, Columbia University, (October 14, 1988, revised July 8, 1989).

[33] See generally, 47 CFR 1.1101 *et seq.* In addition, there may be costs incurred in securing a license (e.g., engineering and legal fees).

[34] See Exec. Order 12046, *supra*, note 8; see also NTIA Manual, *supra*, note 8, at 1.2, 1.3.

[35] NTIA Manual, *supra*, note 8, at 1.3.4, 1.4.2.

[36] The authority and organization of the IRAC are set out in Chapter 1 of the NTIA manual. Chapter 2 identifies the following objectives to be followed in spectrum management: "(a) to enhance the conduct of foreign affairs; (b) to serve the national security and defense; (c) to safeguard life and property; (d) to support crime prevention and law enforcement; (e) to support the national and international transportation systems; (f) to foster conservation of natural resources; (g) to provide for the national and international dissemination of educational, general, and public interest information and entertainment; (h) to make available rapid, efficient, nationwide and worldwide radiocommunication services; (i) to promote scientific research, development, and exploration; (j) to stimulate social and economic progress; and (k) in summary, to improve the well being of man." *Id.* at 2.1.

2. Flexible Use Proposals

46. As noted above, under a rigid allocation scheme, new technologies and services may develop that do not satisfy the requirements of existing blocks. To meet these needs, flexible use proposals for apportioning spectrum focus on encouraging flexibility in spectrum use, without substantially overhauling the spectrum management system.

47. Throughout the 1980s, spectrum managers have been moving toward permitting greater technical flexibility within frequency blocks, while not changing the block allocation system in its entirety. The FCC has addressed some congestion concerns by permitting certain new systems that employ advanced technologies to meet more flexible technical standards. For example, under rules established in 1982, cellular radio operators have flexibility to install innovative cellular technology that is neither based on older technical specifications nor otherwise defined by the FCC's regulations.[37] Alternatively, flexibility theoretically could be improved by redefining the radio services. Would allocation flexibility improve if the definitions of additional radio services were amended? If so, how should the definitions be amended? How should services that perform one or more functions, e.g. communications and navigation, be defined?

48. Other "flexible use" proposals would permit the operation of multiple systems, determined primarily by users, in one frequency block. For example, the FCC has allowed broadcasters to offer "auxiliary services" on their assigned frequency when the primary services they provide remain unchanged. Thus, FM stations may use their so-called subsidiary communications authorization (SCA) for both broadcasting and other non-broadcast uses such as paging.[38] In 1985, the FCC proposed to give certain UHF television licensees a high degree of flexibility in determining how to use their assigned channels.[39] This proposal, which is pending until the completion of the FCC's Advanced Television (ATV) inquiry [40], would allow licensees to decide whether to (a) maintain certain neighboring channels now set aside for interference protection in their current "unused" status, (b) operate other services (such as land mobile) in those channels, or (c) allow others to operate on those channels. The proposal would have allowed the user, rather than the FCC, a limited degree of choice in providing spectrum access to new users. In a separate proceeding, the FCC has suggested granting AM broadcast licensees permission to reduce interference by mutual agreement.[41]

49. We seek comment on the extent to which such flexible use proposals would increase spectrum efficiency and fairness. Could these proposals be adapted for portions of spectrum other than those already proposed? Are such proposals workable? What problems are associated with them?

50. An increasingly important method of allocating spectrum relies on the avoidance of interference as its apportionment criterion. This can be used to make the existing block allocation system more flexible by responding to the introduction of new technologies on the basis of whether they meet technical "interference limits." For example, radio services could be allowed to operate within a given band of frequencies, with limitations only on emissions outside of the band or out of the user's authorized geographic area. As long as any station in any service does not affect the spectrum in another service by more than a predetermined interference limit, that station would be acceptable. NTIA seeks information on how the current block allocation system can be made more flexible through the use of interference criteria to provide spectrum to new users. How useful would such a method be in providing spectrum to new systems? Which existing bands could accommodate new users through interference criteria and which could not? What types of new users could these bands accommodate? How should the use of interference criteria in management decisions be combined with other existing criteria?

51. A more limited example of a system based on "interference criteria" is one that operates today for assignments in the Low Power Television (LPTV) service. Each new LPTV station is "engineered" into the existing assignments, with new locations defined on the basis of predicted desired-to-undesired (D/U) signal strength at the edge of the stations' service areas.[42] This provides more flexibility since the location of stations is not predetermined, but is designated to fit into the service areas of existing stations.[43] This concept does not eliminate the need for band boundaries and services, but may allow new technologies to be accommodated in previously unavailable frequency bands. We request comment on the degree to which such a scheme promotes efficiency and fairness.

52. Finally, the FCC's rules already permit flexibility in the operation of certain devices that emit low levels of radio frequency energy but are not regulated as authorized radio services. These range from systems that transmit low-power signals for communications purposes (such as garage door openers), to systems that emit signals incidental to their operation (for example, the low-level signals emitted by personal computers). Such systems are covered by part 15 of the FCC rules and are non-licensed. Part 18 of the FCC Rules covers a similar group known as Industrial, Scientific, and Medical (ISM) equipment, which is also non-licensed. ISM equipment, such as microwave ovens and industrial heaters, uses radio frequency technology. As non-licensed equipment, these devices and systems operate without radio service status. They must not cause harmful interference to authorized services, and must accept interference from such services. In some cases, such as powerline-carrier systems, continued electrical service to the community depends on such "nonstatus" equipment.

53. As use of such non-licensed devices proliferates, the potential for their interference with radio services also increases. At the same time, pressure from users of these devices is becoming a significant factor in resolving interference problems. How

[37] Second Report and Order, *800 MHz Reserve Channel Release, Private Land Mobile Radio Service*, 90 FCC 2d 1281 (52 Rad. Reg.2d (P&F) (1) (1982). For other examples of current and proposed technical flexibility see Webbink, *supra*, note 32.

[38] See Report and Order, *Subsidiary Communications Authorization*, BC Docket No. 81-352, 47 Fed. Reg. 1386 (50 Rad. Reg. 2d (P&F) 1169) (1982); First Report and Order, *Subsidiary Communications Authorization*, BC Docket No. 82-536, 48 Fed. Reg. 28445, 53 Rad. Reg.2d (P&F) 1519 (1983). Operational flexibility using the SCA has progressed incrementally since 1955. For a discussion of this area, see Webbink, *supra*, note 32 at 9.

[39] Notice of Proposed Rulemaking, *Further Sharing of the UHF Television Band by Private Land Mobile Radio Services*, Gen. Docket 85-172, 50 Fed. Reg. 25587 (released June 10, 1985). See generally Felker and Gordon *supra*, note 15.

[40] Order, *Further Sharing of the UHF Television Band by Private Land Mobile Radio Service*, *supra*, 2 FCC Rcd 6441. See also, *supra*, note 20.

[41] Notice of Proposed Rulemaking, *Policies to Encourage Interference Reduction Between AM Broadcast Stations*, MM Docket 89-46, 54 Fed. Reg. 11972 (released March 17, 1989).

[42] See Felker and Gordon, *supra*, note 15, at 17, 18.

[43] This process would be somewhat limited since the technical characteristics of certain types of services may preclude the operation of other services within the same band.

does the increasing use of spectrum by non-licensed devices affect other spectrum users? How should the value of non-licensed devices be determined in comparison to authorized radio services for purposes of spectrum management? How should the spectrum manager consider desires of consumers? What role should technical standards play, whether for the non-licensed devices or the authorized radio equipment? In cases of interference to or from authorized services, should the burden of eliminating the interference be changed, and if so, how? Should non-licensed safety or security devices continue to operate on an unprotected basis?

3. Market-Based Systems General Principles—Auctions

54. For years there have been proposals to manage spectrum through a market system—that is, by using economic value to the user as a criterion for setting priorities among competing demands for the spectrum resource. Under such proposals, decisions concerning spectrum use would be based, at least in part, on users' willingness to pay for spectrum, rather than on administrative determinations of what constitutes appropriate allocations for types of service and assignments for individual users.[44] One commonly advanced proposal is for the FCC to distribute currently unassigned frequency channels in certain bands through auctions.[45] A bill now pending in the Senate, for example, would authorize competitive bidding on an experimental basis for part of the currently unassigned spectrum.[46] Auctions, however, constitute just one type of market-based approach to spectrum management. Other specific market-based proposals have been made over the years.[47]

55. Proponents of market-based spectrum management argue that it would provide an efficient and equitable way of apportioning the spectrum resource. Such a system, they claim, would allow users to determine how spectrum should be allocated and assigned based on their perceived needs as expressed by willingness to pay, thus bringing demand into equilibrium with supply. Allocations of spectrum would tend to increase for uses with the highest economic value to society and decrease for those with the lowest value. Since users are paying for spectrum, they would have incentives to employ the resource efficiently by, for example, not seeking more spectrum than they need and deploying cost-effective spectrum-conserving technology.[48]

56. Some claim that an organized market system would also add flexibility by allowing usage to change with technology and consumer demand. Such a system, supporters claim, could be administratively less burdensome than comparative hearings, and under some proposals, could be self-regulating, requiring fewer management resources.[49]

57. Opponents of the use of market principles question their fairness and efficacy and, among other things, contend that such a system would favor users with "deep pockets."[50] They also express concern whether the "public interest" standard of the Communications Act could be satisfied if there were wholesale conversion to market principles as the basis for allocating spectrum or assigning frequencies. For example, comparative hearings for broadcast licenses consider "non-economic" public interest factors, such as minority ownership, to promote social goals. Furthermore, the present system is designed to accommodate socially desirable uses such as public safety communications and remote sensing of weather that might not compete successfully in a market environment.

58. Opponents also contend that a market-based process would in fact require greater resources than the present system to perform the basic tasks of spectrum management: limiting interference and protecting the rights of users. They also argue that a change to a market system could cause coordination problems with neighboring countries such as Canada and Mexico and in the ITU process.

59. NTIA seeks comment on the extent to which further application of market principles to spectrum management is appropriate. Would such a proposed system be any more efficient or fair than the current system? How could such a system more effectively prevent "warehousing" of spectrum by users? To what degree can reliance on market principles be reconciled with the public interest requirement of the Communications Act? What would be the role of NTIA, and of federal spectrum users, in such a system? Who is likely to gain, and who is likely to lose, from such a system? How would spectrum needs for such purposes as public safety uses be accommodated? Are such principles more appropriate for some types of services than others? Should such principles be applied to current, as well as new, users? What modification would be necessary to the present system of shared and exclusive allocations?

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[44] *See, e.g.*, R. Coase, *The Federal Communications Commission*, 2 J. of L. and Econ. 1 (Oct. 1959); A.S. DeVany, et al., *A Property System for Market Allocation of the Electromagnetic Spectrum: a Legal-Economic-Engineering Study*, 21 Stan. L. Rev. 1499 (June 1969); D.R. Ewing, *Economic Efficiency: The Objective of Spectrum Management*, IEEE Transactions on Electromagnetic Compatibility, Vol. 20 (Nov. 1978); J.R. Minasian, *Property Rights in Radiation: An Alternative Approach to Radio Frequency Allocation*, 18 J. of L. and Econ. 221 (April 1975); M. Mueller, *Property Rights in Radio Communication: The Key to the Reform of Telecommunications Regulation* (CATO Institute) (1982).

[45] See E. Kwerel and A.D. Felker, *Using Auctions to Select FCC Licensees*, Federal Communications Commission, Office of Plans and Policy (working paper, May 1985).

[46] S. 170, the *Spectrum Assignment Improvements Act of 1989*. 101st Cong., 1st Sess. (1989).

[47] Numerous proposals for using market principles have been considered by the Congress in recent years. The views of both proponents and opponents of such proposals are contained in the testimony given in the Congress. See, *e.g.*, *Spectrum Auctions: FCC Proposals for the Airwaves: Hearing Before Subcomm. on Telecommunications, Consumer Protection, and Finance of the House Comm. on Energy and Commerce*, 99th Cong., 2d Sess. (Oct. 1, 1986); and *Communications Transfer Fee Act of 1987: Hearing on S. 1935 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 100th Cong., 2d Sess. (April 27, 1988).

Market principles have also been studied previously within the Executive Branch, particularly in the late 1960s and early 1970s. See, *e.g.*, E. Rostow, *Final Report: President's Task Force on Communications Policy* (Dec. 7, 1968); Office of Telecommunications Policy, Executive Office of the President, *Economic Efficiency and the Allocation, Allotment and Assignment of Government Spectrum-Space* (report by C.B. Thompson, consultant) (March 1973); Office of Telecommunications Policy, Executive Office of the President, *Management of Federal Spectrum Use Through Shadow Prices: Can it be Rendered Practicable?* (technical proposal submitted by General Electric Company—TEMPO Center for Advanced Studies) (April 3, 1972); and Office of Telecommunications Policy, Executive Office of the President, *Paying for Airwaves Use—Concept and Experiment for Including the Economic Value of Spectrum in OTP/IRAC Process to Allocate and Assign Airwaves Use within the U.S. Government* (June 1973).

[48] By "cost-effective," we mean that users would have spectrum-conserving incentives to deploy technology up to, but not beyond, the point at which the cost of saving an additional unit of spectrum through technology equals the cost of "purchasing" an equivalent unit through the market-based spectrum management system.

[49] Market-based systems for spectrum allocation and assignment could also produce significant revenues for the public Treasury. The issues raised by such potential "revenue enhancement" are discussed *infra*, at subsection 4, para. 67–70.

[50] See, e.g., testimony given in *Spectrum Auctions: FCC Proposals for the Airwaves*, *supra*, note 47, (statement of John J. McDonnell, Jr. on behalf of the Information and Telecommunications Technologies Group of the Electronic Industries Association at 81–83). See also statements of Emmett B. Kitchen Jr. on behalf of the National Association of Business and Educational Radio, Inc., and Michael E. Brunner, on behalf of the National Telephone Cooperative Association.

60. Finally, some foreign countries, such as New Zealand and Australia, have recently adopted market-based systems for apportioning at least part of their spectrum. We wish to examine the experiences of these and other countries in this area. What types of market-based systems have been employed? What benefits were realized and what problems were encountered? How relevant to U.S. spectrum issues is the experience of these other countries?

Property Rights

61. Proposals for using market principles in spectrum management often include the creation of unambiguous and enforceable spectrum "property rights" that could be more or less freely transferred at a price. Such transferable rights, it is argued, would permit a true market in spectrum to develop in which the value of various parts of spectrum would be determined through their sale. Currently, a non-federal licensee has no recognized property right in its assigned spectrum and may not "buy" or "sell" spectrum rights.[51] In practice, however, existing assignments have substantial monetary value on a "secondary market" among private users, and are bought and sold in what have been called "private auctions." [52] Such "auctions" are possible because non-federal licenses are transferable. Frequently, licensees transfer their assignments as part of a sale of a spectrum-related business to another firm.[53] While such transfers are subject to FCC review and approval, it is rare for such a license transfer to be disapproved.[54] The prices paid by the acquiring firms in such cases suggest that often the economic value of the spectrum assignment represents a substantial part of the value of the overall transaction.[55]

62. The current system may be said to create "quasi-property rights" in spectrum. To the extent that the current system is unsatisfactory, is it because these rights operate within the current allocation and assignment system, with the disadvantages described above? Is it because the value of spectrum is captured by private parties receiving a "windfall" in receiving a license, and not by the public?

63. While proponents argue that broad spectrum property rights are necessary to an effective market-based apportionment system, others object that instituting property rights for spectrum users would be a major and unwarranted departure from the traditional "public trust" theory of spectrum management. They question the fairness of such a move, which would alter the current status of spectrum users as "fiduciaries" of the public. Opponents of recognizing property rights in spectrum argue that while license revocations, failure to renew, and denials of transfers of licenses are all rare, they do occur [56] and serve the salutary purpose of deterring behavior by licenses that is inconsistent with the public interest. We seek comment on the extent to which property rights in spectrum should be recognized. To what extent are such rights desirable? To what extent should they be limited or conditioned by the imposition of some of the public interest obligations that apply in the present system? Would the existence of such rights add efficiency to the use of spectrum? Are they more appropriate for some types of users than others (for example, mobile communications v. broadcasting)?

Leases

64. One specific market-based apportionment alternative we wish to examine is the assessment of a fee on use of a particular portion of spectrum, in exchange for the right to operate on that spectrum for a defined duration—in effect, a "lease" of spectrum.

65. Such an approach may be an appropriate way to make spectrum currently allocated for federal use available to the private sector, while maintaining the government's ability to reclaim the spectrum at a later date if needed. The process would be akin to common Federal Government leases of various economic rights to resources, such as rights to oil, minerals, grazing land, timber, or water.[57] It appears that, if well-designed, these leases, by permitting the economic exploitation of valuable resources under government control while preserving the rights and interests of the government in the underlying property, could well serve the interests of both the private and public sectors. In the present context, federal leases potentially could provide spectrum for valuable commercial purposes while still allowing the government the right to reclaim the spectrum if future demands or critical public purposes, such as national defense or public safety, so require.

66. Leases might also provide an attractive alternative to innovators and entrepreneurs who find it difficult to obtain any spectrum under the present regulatory system, but who might not be able to afford to "purchase" spectrum in an alternative system based on auctions.[58]

67. NTIA seeks comment on whether spectrum leases would be a viable spectrum management alternative. What types of users would be best served by spectrum leases? What terms (for

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[51] 47 U.S.C. 301. See also, *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940).

[52] For example, *see Spectrum Auctions: FCC Proposals for the Airwaves, Hearing Before the Subcomm. on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce: supra*, note 47 (statement of Mark S. Fowler, Chairman of the Federal Communications Commission at 8–12, and opening statement of Hon. Thomas J. Tauke at 16.) See also discussion in H. Geller and D. Lampert, *Charging for Spectrum Use*, Benton Foundation Project on Communications and Information Policy Options, at 13 (1989).

[53] It has been estimated that over 65 percent of commercial TV stations and 75 percent of commercial radio stations are not owned by the initial licensee, with similar turnover in the newer cellular and SMRS markets. *Spectrum Auctions: FCC Proposals for the Airwaves: Hearing Before the Subcomm. on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce, supra*, note 47 (testimony of Mark S. Fowler, Chairman, Federal Communications Commission, at 9).

[54] In 1982 the FCC eliminated its antitrafficking policy and rule requiring that applications for assignment of broadcast facilities held less than three years be designated for hearing and substituted a one-year rule for licenses obtained in a comparative hearing or license lottery. Report and Order, *Broadcast Station Voluntary Assignments or Transfers of Control*, BC Docket No. 81–897, 47 Fed. Reg. 55924 (52 Rad. Reg. 2d (P&F) 1081) (1982), *recon. den.* 50 Fed. Reg. 6944 (57 Rad. Reg. 2d (P&F) 1149 (1985). In 1983, the FCC also eliminated its antitrafficking rules with respect to common carrier paging systems. Report and Order, *Public Mobile Services Rule Revision*, CC Docket No. 80–57, 95 FCC 2d 769 (54 Rad. Reg. 2d (P&F) 1661) (1983).

[55] It has been estimated over half the value of a mass media property is attributable to its license, as opposed to physical assets. *Communications Transfer Fee Act of 1987: Hearing on S. 1935 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science and Transportation, supra*, note 47 (statement of Charles H. Kadlec at 59). Mr. Kadlec also stated that mass media accounts for two-thirds to three quarters of total communications spectrum transactions, and that the average broadcast (radio or television) station sale was for $4.3 million. He stated, however, that averages are misleading, citing examples of transactions with much higher sales prices, including the purchase of VHF television station KTLA in Los Angeles for more than $500 million.

[56] *See, e.g.*, *Fidelity Television, Inc.* v. *FCC*, 502 F. 2d 443 (D.C. Cir. 1974); *Fidelity Television, Inc.* v. *FCC*, 515 F. 2d 684 (D.C. Cir.), *cert. den.* 423 U.S. 926 (1975); RKO General, Inc. v. FCC, 670 F. 2d 215 (D.C. Cir. 1981), *cert. den.* 456 U.S. 927, 457 U.S. 1119 (1982).

[57] For example, under 43 U.S.C. 1337(a)(1), the Secretary of the Interior is authorized to grant certain oil and gas leases to the highest bidder by a competitive bidding process. The Secretary may, under this section, accept several types of bids, including "cash bonus" bids with an accompanying royalty or "variable royalty" bids. See also the Mineral Leasing Act of 1920, 30 U.S.C. 181–287.

[58] A lease system allowing for an up-front payment with the payment of a fee (or royalty) based on gross revenues thereafter, similar to oil and gas leases (*supra*, previous note), could benefit entrepreneurial spectrum users by lowering barriers to entry.

example, length, conditions, termination rights, subleasing rights) would make leases attractive? [59] What would be the best method of setting lease rates?

4. Revenue Enhancement Proposals

68. Distinct from the use of market principles to achieve the goals of economically efficient spectrum use and equitable spectrum apportionment, certain proposals for spectrum management reform include revenue enhancement for the Federal Government as an explicit goal. Under the current spectrum management system, the question arises whether the United States, as the nation's "supplier" of spectrum, should earn a return on spectrum used by the public. Such use fees or other mechanisms could potentially be a large source of revenue for the government.[60] We request comment on how such a system could operate.

69. Most market-based proposals for spectrum reform would produce revenue enhancement benefits, as well as the efficiency and equity benefits discussed above. However, revenue enhancement does not require a market-based solution. Recent proposals for realizing revenue from spectrum assignments would use a variety of mechanisms for assessing spectrum use charges. One proposal for broadcasting suggests granting licenses for 30 to 40 years, and charging licensees an annual fee of one or two percent of gross revenues for the duration of the license.[61] We also note that certain other countries [62] are considering or have implemented proposals to sell or lease the spectrum or obtain revenues from license fees. We request comment on whether the current spectrum management system should be modified for purposes of revenue enhancement, or whether a new system should be established. What would be an appropriate and accurate way to assess charges for spectrum use? How would such proposals affect current and future users? Should government spectrum users be included in any such proposals?

70. While some revenue enhancement proposals are designed to raise general revenue for the Treasury, others would use the proceeds from any fees to establish specialized telecommunications programs. For example, a bill introduced in the Senate in 1987 would have imposed a fee on license transfers and used the proceeds to fund public broadcasting.[63]

71. Opponents of fees question their appropriateness, especially when applied to non-commercial services, such as amateur radio or public safety, or for federal users. We request comment on whether proceeds from any such fee program should be targeted, and, if so, for what purposes?

D. Spectrum Conservation: Technology Issues

1. Accommodating Demand for Spectrum Through Technology

72. Under the current allocation system, technological innovations can increase the supply of usable spectrum, through either the use of spectrum at higher frequencies, or techniques that allow more users in the same frequency bands. Since, as noted above, certain frequency bands have physical properties more desirable than others for some uses, continuous expansion to higher frequencies over time becomes difficult.[64] Under these conditions, the most feasible options are either to develop technologies that use the spectrum more efficiently or to reallocate portions of the spectrum.

73. Although advanced technologies can allow more options and potentially greater use of the spectrum, existing rules and regulations are not always able to accommodate this flexibility. We request comment on how policy-makers can develop spectrum management techniques that accommodate unanticipated innovative use in order to avoid spectrum waste.

74. One of the difficulties with evaluating spectrum conservation techniques is in quantifying spectrum use. Several models that do so have been proposed.[65] NTIA has also developed computer models that graphically portray spectrum use and assess spectrum conservation techniques.[66] One of these models is the Spectrum Use Measure (SUM), which graphically illustrates spectrum use (by using assignment data) as a function of geography and frequency bands. SUM can be used as an indicator for planning the use of frequency bands in certain parts of the country and determining locations for the application of tighter spectrum standards to accommodate increased demand. How effective are such models? What are their strengths and limitations? Are there other models that might be more effective? We request information and procedures on how to assess relative levels of spectrum use by different services. How can one evaluate efficient use of the spectrum when comparing disparate services, such as land mobile to broadcasting?

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[59] While long-term leases provide certainty to a lessee, they also increase the risk to the lessor that needed spectrum will be unavailable in the future should circumstances change. We ask commenters to address various lease alternatives that could satisfy both the need of the lessee for certainty (so that investment in equipment and, if a new offering, start-up costs can be prudently made), with the need of the lessor for protection against future contingencies. For example, would "rolling" lease terms, with an initial specified period (e.g., five years) renewable annually thereafter for additional one-year periods, provide sufficient stability to permit private investment in their use for at least some applications?

[60] For example, FCC Chairman Alfred C. Sikes recently testified that "the 200 MHz of spectrum which H.R. 2965 proposed to transfer to non-Government use could be valued as high as $100 billion." *The Emerging Technologies Act of 1989: Hearings on H.R. 2965 before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce*, Nov. 2, 1989, (prepared statement of Alfred C. Sikes, Chairman of the Federal Communications Commission, at 11).

Moreover, the Administration's 1990 budget package contains a competitive bidding proposal for licenses in unassigned UHF spectrum, for the revenue-enhancement reasons discussed above. *See Building a Better America* at 154 (Feb. 9, 1989). Estimates of revenues generated by auctions vary from $500 million for the sale of four megahertz (Congressional Budget Office, *Reducing the Deficit: Spending and Revenue Options*, at 226) to $3.38 billion for the six megahertz that would be auctioned under the proposal in S. 170 (*supra*, note 46). *See* generally, *Raising Revenues with the Auction Option for the Telecommunications Spectrum*, Heritage Foundation Issue Bulletin (May 1989) at 8.

[61] Geller and Lampert, *supra*, note 52, at 14–15.

[62] Canada, for example, is currently charging both private and public sector entities for use of the spectrum, with prices set at a rate that covers the cost of spectrum management operations. New Zealand plans to begin implementation of a free market system of auctioning spectrum by the end of the year. We also understand that Australia has recently auctioned, in a closed tender limited to existing AM broadcasters, the use of 2 FM broadcast stations in 4 cities, with the intention to auction additional FM stations next year.

[63] S. 1935, the *Communications Transfer Fee Act of 1987*, 100th Cong., 1st Sess. (1987); *see* Hearings cited *supra*, note 47. *See also Broadcasting Magazine* (May 2, 1988) at 68. It has also been suggested that any proceeds derived from competitive bidding could be used for the same purpose.

[64] In addition, as noted above, the current U.S. block allocation plan restricts the frequencies available to users in each class.

[65] CCIR, *Definition of Spectrum Use and Efficiency*, Report 602–2, Vol 1., XVIth Plenary Assembly, Dubrovnik, Yugoslavia, International Radio Consultative Committee, International Telecommunication Union, Geneva, Switzerland, (1986); R.L. Hinkle and A. Farrar, *Spectrum Conservation Techniques for Fixed Microwave Systems*, NTIA Report No. 89–243, National Telecommunications and Information Administration, U.S. Department of Commerce, (May 1989).

[66] R. Mayher, R. Haines, et al., *The SUM Data Base: A New Measure of Spectrum Use*, NTIA Report 88–236, National Telecommunications and Information Administration, U.S. Department of Commerce, (Aug. 1988); R. Haines and Litts, *The SUM Land Mobile Model: Application of the Spectrum Use Measure to the Land Mobile Model*, NTIA Report 89–248, National Telecommunications and Information Administration, U.S. Department of Commerce, (Sept. 1989).

75. Direct measurement of spectrum usage using computer controlled monitoring or measuring equipment is another way of determining whether particular frequency bands are becoming crowded. To measure actual use of an assigned frequency, NTIA uses the Radio Spectrum Measurement System (RSMS), a van equipped with radiocommunication measurement devices, capable of measuring radio signals within most of the usable spectrum. The RSMS provides information that assists in determining the level of spectrum occupancy, assuring compliance with standards, evaluating whether equipment will interfere with operations in other bands, and assessing the extent of sharing within a particular frequency band. This information, while valuable, is necessarily limited because there is only one RSMS van for the entire United States. The FCC has several monitoring vans used primarily for enforcement and interference resolution. These vans are equipped for limited occupancy studies, but are not fully automated. Is direct measurement a worthwhile technique for determining band crowding? Should the government use an RSMS-type of system to monitor and evaluate the use of the spectrum on a more comprehensive basis? If so, how should it be funded? Would more comprehensive governmental monitoring by either NTIA or the FCC lead to improved assignment practices and thus assist in more efficient use of the spectrum or would it in some way contribute to unnecessary regulatory or administrative burden? Would market-based apportionment of frequencies increase the need for this type of monitoring (for example, to detect spurious emissions and larger-than-permitted bandwidths), or would it permit government to rely more on private enforcement activities?

2. The Role of Technical Standards

76. Technical standards for radiocommunication operations, which directly affect the adoption of new technologies, are established for a number of reasons. First, individual users seek to establish an acceptable level of quality in the systems offered to them by vendors. Second, several users may seek to minimize their individual costs and increase their flexibility by procuring similar equipment from several vendors. Third, operators may need to maintain interoperability with other systems throughout an area, country, region, or the world, as in the services used by broadcasters, police, or common carriers. Fourth, manufacturers may seek to minimize the costs of producing equipment by establishing regional or worldwide standards that ensure larger markets for their products. Fifth, standards are used to "conserve spectrum" by adopting technologies that use less bandwidth, such as narrowband technology. On the other hand, standard-setting may be avoided when the benefits to particular parties are too small to justify participation in developing or using a standard.[67]

77. If set prematurely, standards can restrict the development of a technology. If set too rigidly, they can restrict the development of new replacement technologies. When standards are set they may be selected so that most of the existing equipment can meet them or so that one particularly desirable technology is used.

78. Standards based on norms for existing technologies can be clear and detailed. In theory, they act to preclude the offering of equipment inferior to the standard. In fact, they may remove a manufacturer's motivation to exceed the standard with a new, more effective, or efficient technology. Depending on the extent to which a standard is enforced and actively implemented, instead of being a "floor" for technological development, a standard may become a "ceiling," controlling technology subsequently made available. Are there effective alternatives to such standards for radiocommunication systems?

79. Standards that attempt to promote a specific technology often do so while restricting innovation of newer and possibly more desirable technologies. For example, the establishment of standards for UHF television channels 40 years ago created a number of "taboo" channels that cannot be used in a given geographic area. Television receivers, although improved since that time, are designed to rely on such taboos, even though better designs are feasible. As a result, a large portion of the UHF broadcasting band cannot be used. This represents an inefficient use of a very valuable portion of the spectrum. While technological advances, such as improved television receiver design, could allow some of the taboos to be relaxed, changes in the UHF service could not occur without significant impact on the industry and, potentially, millions of households with television sets. In light of this example, what are the costs and benefits of the existing types for standards of radiocommunication systems? How can standards be set to encourage innovation while retaining other benefits of standardization?

80. NTIA also wishes to examine the effects of standards established for one radio service on other services. For example, new, more spectrum-efficient technologies are sometimes more sensitive to interference than older, less efficient technologies. As a result, stations in one service that use new state-of-the-art technology may be sensitive to extraneous emissions from stations in another service operating in a nearby frequency band, even though the latter fully conforms to all existing standards. Conversely, new technology might cause interference to stations in other services. U.S. spectrum management policies have usually given priority to existing users, and new uses have been expected to adjust to the existing environment. As technology develops and the spectrum become more crowded, should existing users be required to adjust their operations to accommodate new users deploying more efficient technology? Who should bear economic costs of replacing or refitting the existing systems? Can flexible standards be designed so that they change as technology changes?

81. Standards are also important in terms of trade and U.S. competitiveness in industries that rely on spectrum use. We request comments on whether other countries' spectrum standards serve as trade barriers. If so, what actions should the United States take to eliminate these barriers?

3. Alternatives to Spectrum Use

82. The primary alternatives to spectrum use are wire or fiberbased technologies. Wire and fiber are, by their nature, fixed communications links, and therefore cannot entirely replace use of spectrum for mobile or radar applications. For applications where both the transmission facility and the receiver are fixed, however, wire seems a logical choice for a transmission medium. This is especially true when radio spectrum is in short supply relative to demand. In the past, certain technical characteristics of wire, including both bandwidth limitations of copper wires into the home and amplification requirements of coaxial cables in long distance, made radio a preferred communications medium for certain applications. Fiber optic cables have neither limitation. For many applications—when reliability and security are crucial, when very wide bandwidths or high data rates are required, or when digital transmission is desired—fiber may be a more desirable medium than radio, even putting aside

[67] See S. Besen and G. Saloner, "The Economics of Telecommunications Standards," in *Changing the Rules*, R.W. Crandall and K. Flamm (eds.), The Brookings Institution, Washington, DC, (1989).

any consideration of potential spectrum shortages.[68] What are the general trends in the shifts from radiocommunications to wire or fiber or vice versa? How will these trends affect the management and use of the spectrum? How do current spectrum management practices encourage or discourage these trends?

83. Deployment of fiber optic cable in telecommunication networks has grown rapidly in recent years, creating large amounts of capacity available for point-to-point communications, particularly in the long distance telephone market. In this particular market, is it realistic to assume that fiber could soon replace or at least reduce the importance of microwave communications, both terrestrial and satellite? Could this be possible for other than long distance uses of microwave technologies? What other types of services could use this spectrum? Should radiocommunication uses be granted when nonradio means are readily available?

84. Further deployment of fiber networks, throughout the public network and also to the home, could have the effect of preserving the finite spectrum resource for those applications for which it is better suited. The growth of fiber communications, where appropriate, and the reclamation of spectrum previously used for such communications could ultimately free additional spectrum for services more suited to radio. Future types of advanced television systems might be better suited to transmission over fiber than radio, both because of potentially wider bandwidth requirements than current broadcast television, which may be difficult to accommodate in the radio spectrum, and because of the fixed nature of television.[69] It is important to note, however, that each of these potential transitions from spectrum use to fiber use, in particular that for television, are infused with public interest concerns.[70] These concerns should be carefully evaluated before taking steps to encourage such transitions from spectrum use to fiber. Are there any conditions under which the government should take action to encourage trends toward using technologies other than radio? What types of policies could be implemented to reclaim spectrum that is not being used or is determined to be under used? How should the government allocate reclaimed spectrum to new, competing uses?

E. Forecasting Future Spectrum Requirements

85. Two of the goals of any spectrum management system are to provide for the current and future requirements of spectrum users and to avoid congestion and interference. In order to ensure that spectrum is available for these requirements, the management process must be accessible and responsive to user needs. This depends on the adequacy and timeliness of the information that spectrum managers receive on specific requirements. The radiocommunications environment is extremely dynamic. There has been tremendous technological growth during the past three decades, expanding the level and variety of spectrum use. Growth and expansion are expected to accelerate in the future, and will make the need for timely information and better foreasting methods even greater.

1. Planning Spectrum Allocations Through Requirements Identification

86. In order to satisfy U.S. spectrum requirements, NTIA and the FCC must identify current and future needs within their individual spheres of oversight and jointly determine how these needs can best be accommodated. When requirements for new allocations of the spectrum are identified, are the existing procedures used by the FCC and NTIA adequate to provide timely access to spectrum when the requirement (a) is within an existing radio service; (b) creates a new radio service; or (c) introduces a new government agency or type of user not represented in either the FCC or NTIA plans?

(a) Federal Requirements Planning

87. NTIA maintains information on federal frequency assignments within the "Government Master File." In order to accommodate new requirements of federal agencies on an ongoing basis, NTIA relies on the IRAC Spectrum Planning Subcommittee. The IRAC's member agencies submit documentation of major new systems for review. Consideration is given to changing the allocation table if the new system cannot be otherwise accommodated. The Spectrum Planning Subcommittee essentially provides a short-to-medium term forecast of federal spectrum use, since systems proposed to it will be deployed in 2 to 5 years and will remain in use for 5 to 10 years. NTIA also periodically conducts spectrum assessments to study the adequacy of the allocation tables to meet demand for particular services. These data could provide the basis for more accurate forecasts if all, rather than only major, new systems were included. Furthermore, there is no formal process for considering any potential non-federal demand for the spectrum in bands that are shared.

88. NTIA seeks comment on the adequacy of these processes in determining requirements for federal spectrum. Does the Spectrum Planning Subcommittee process adequately identify legitimate requirements for Federal Government spectrum? If not, in what ways can it be improved? What improvements can be made to contribute to the realistic portrayal of current federal spectrum use through assignment data?

(b) Non-Federal Requirements Planning

89. The FCC's source of information for present spectrum requirements is its files of non-federal license information.[71] Non-federal users must petition the FCC for changes to the allocation table when their needs cannot be met because of limitations in the table, and these petitions are subject to comment and FCC decision. Does the FCC process of responding to petitions for changes to the allocation table adequately identify and define non-federal requirements for spectrum? If not, what are potential ways for the FCC to improve its process of forecasting spectrum requirements? What improvements can be made to contribute to the realistic portrayal of current spectrum use through license data?

2. Spectrum Use Forecasting

90. Past efforts to forecast spectrum use have been only marginally successful. In the early 1980s, terrestrial services were shifted in order to accommodate direct broadcast satellites (DBS), for which serious demand in the United States has yet to materialize. On the other hand, most forecasts of the market for cellular telephone service failed to anticipate the phenomenal

[68] For example, consortia of electrical utilities, such as Norlight in the Midwest, have replaced their utilities' private microwave radio networks with fiber networks for reliability reasons.

[69] There is some use of portable television today (such as through Sony "Watchman" and similar receivers). This use, we believe, is still quite small compared both to overall television viewing and other broadcast uses, including AM and FM radio.

[70] Television broadcast "over-the-air" (i.e., using the radio spectrum) has traditionally been fully funded by advertisers, or, in the case of public television, by government grants and private donations, and provided to viewers at no charge. Television delivered over wire—i.e., cable television—has traditionally been supported in substantial part by charges to viewers. This difference raises substantial public interest concerns about a shift of television from spectrum-based to wire- or fiber-based delivery systems.

[71] If the FCC has permitted the control of spectrum uses to user groups, such groups maintain the data themselves.

popularity and growth of this technology and thus the need for additional spectrum to support it.

91. Little progress has been made toward planning spectrum allocations based upon methods of forecasting other than projections based on what spectrum has been used in the past. Not only is it sometimes difficult to determine what spectrum use has been in the past, since data is collected by assignment only and not by actual use of the assignment, but these projections make certain assumptions about growth patterns. Such "straightline" projections of future use based upon past activity appear to have limited success in such a rapidly changing field.

92. NTIA seeks information on forecasting techniques and methodologies available from other disciplines that, using spectrum use data as input, can contribute most effectively to a realistic portrayal of future spectrum requirements. What heuristic and non-heuristic analysis methods could be applied to spectrum forecasting? What data formats would be most useful.

93. Another important component of forecasting is the ability to define the eventual market for spectrum-based services. Generally, market assessments use historical data about licenses and radiocommunications systems and components, interviews with the potential participants in new equipment markets, and estimates by persons most familiar with support requirements. Often market assessments have relied on trend analysis in combination with highly qualitative subjective judgment. How can market assessments be made more rigorous and objective and thus provide a sounder basis for identifying future use? Are there ways to incorporate computer-based techniques, such as expert systems, into market assessment models?

94. Research and development (R&D) activities are often important indications of the general direction of the technology, missing, however, the crucial market demand component. Can monitoring of such activities prove useful in predicting future requirements? Are there useful and proven ways of determining the relationship of current R&D to the eventual marketplace and thus demand? Are there any areas of spectrum use in which significant changes in use can be predicted?

95. Not all spectrum requirements are anticipated in the spectrum management process. The demands on certain portions of the spectrum may actually depend on decisions not yet made or on technology not yet developed. As a result, managers may not accommodate some existing requirements and may not foresee other future requirements. Are any radiocommunications requirements currently unsatisfied due to the lack of available spectrum? If so, what requirements? Are any future requirements envisioned to go unmet due to the lack of available spectrum? If so, what requirements? In making such projections, commenters are asked to consider future requirements based both on the growth of current technologies and on technologies yet to be developed. How can spectrum be provided for unforeseen requirements? Are resources sufficient to identify and accommodate radiocommunications requirements? If not, where are they lacking?

3. Long-Range Planning

96. Long-range planning by spectrum managers is an important part of an efficient and equitable management system. Indeed, NTIA is required to "[d]evelop, in cooperation with the [FCC], a comprehensive long-range plan for improved management of all electromagnetic spectrum resources." [72] NTIA, with the FCC, developed a long-range plan for federal spectrum issues in June, 1989.[73]

97. We believe that a long-range plan, if properly formulated, can provide an important "window to the future" of spectrum use. Such a plan must be developed not to define rigidly the technologies of the future, but to promote flexibility and innovative spectrum developments. Such a plan should reduce, as much as possible, reliance on *ad hoc* decision-making on management questions. How can NTIA best plan to permit innovation and new developments in spectrum use while still maintaining order and continuity in the process? How would the existence of classified information regarding some federal uses affect such planning? How can the current long-range planning process be improved? How can cooperation between the FCC and NTIA be improved? How can the public best be included in the long-range planning process?

IV. Conclusion

98. NTIA hereby requests comments in this inquiry to be filed on or before February 23, 1990, and reply comments to be filed on or before March 30, 1990.

Dated: December 4, 1989.

Janice Obuchowski,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc 89-28675 Filed 12-7-89; 8:45 am]

BILLING CODE 3510-60-M

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[72] Exec. Order 12046, *supra*, note 8.

[73] *Long Range Plan for Management and Use of the Radio Spectrum by Agencies and Establishments of the Federal Government*, NTIA Special Publication 89-22 (June 1989).

federal register

Friday
December 8, 1989

Part IV

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 326

Permit Regulations for Controlling Certain Activities in Waters of the United States; Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 326

RIN 0710-AA15

Permit Regulations for Controlling Certain Activities in Waters of the United States

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army amends the Corps of Engineers permit regulations at 33 CFR part 326 to adopt a new section to implement the Secretary of the Army's Class I administrative civil penalties authority under section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g). The Army is taking this action in response to amendments to the Act made by the Water Quality Act of 1987, which authorize the Secretary of the Army to assess administrative civil penalties for a violation of any condition or limitation in a permit issued under section 404 of the Act. The provisions will provide a new enforcement tool offering Corps District Engineers the ability to bring timely, and cost efficient enforcement proceedings against Corps issued Clean Water Act permit condition violations.

EFFECTIVE DATE: January 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Chowning, HQUSACECW–OR, Washington, DC, 20314–1000, (202) 272–0199, or Mr. Martin Cohen, Office of the Chief Counsel, Washington, DC, 20314–1000, (202) 272–0027.

SUPPLEMENTARY INFORMATION: These regulations finalize the draft regulations published in the **Federal Register** for comment May 12, 1989 and complete the rulemaking process for the Class I administrative penalty authority provided in section 309(g) of the Water Quality Act of 1987, 33 U.S.C. 1319 (g). Only one comment letter was received concerning the draft regulation. The changes made in the final regulation reflect that comment letter and demonstrate the Corps desire to ensure that the procedures for these penalties are implemented in an effective and efficient manner. Transcription errors are also corrected.

Discussion of Comment and Changes

Part 326—Enforcement

The Authority line for this section is changed to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2101.

This change recognizes the civil penalty authority provided for in section 25 of the National Fishing Enhancement Act of 1984. This Act provided the Corps with authority to assess a civil penalty for violations of the terms and conditions of Corps section 10 and section 404 permits issued for artificial reefs. This section of the National Fishing Enhancement Act is compatible with Class I administrative penalties provided for in section 309(g) of the Clean Water Act and therefore these procedures apply to both authorities.

Section 326.6 (a)(2): This section has been reworded to clarify that an administrative penalty may be pursued in conjunction with cease and desist orders and requests for restoration and/or mitigation. The intent is to insure that the intensity of the effort required in pursuit of the action is commensurate with the severity of the violation. Thus, a cease and desist order may be issued and an administrative penalty assessed. If the cease and desist order is complied with, the administrative penalty action could continue to completion. However, if a violation continues and requires seeking a judicial injunction, then it may be more appropriate to continue the action in a judicial setting rather than seeking the administrative penalty. In such instance, the administrative penalty would be discontinued and a case filed in court. It is not intended that an administrative penalty action precludes seeking judicial action for future violations by the same permittee. Each violation should be evaluated on its own merits and in the light of past action by the permittee.

Section 326.6 (a)(3)(i): The definition of "agency" has been deleted and a definition of "Corps" substituted to be consistent with the rest of the Corps regulation.

Section 326.6 (a)(3)(iv): A definition of "permittee" has been inserted that defines permittee as the person alleged to be responsible for the violation. The term permittee has been inserted in lieu of each use of the term respondent in the draft. The remaining sections were renumbered to accommodate this insertion.

Section 326.6 (a)(2)(v): This section has been changed to indicate that the Presiding Officer will be chosen by the District Engineer (DE). The DE may choose to use a member of the Corps counsel staff or any other qualified person designated by the DE. This change will allow the DE greater flexibility in appointing Presiding Officers and will avoid delays by ensuring that cases can be referred to a wider group of qualified individuals.

Section 326.6 (c)(4): This section has been changed to eliminate the requirement that a legal notice be placed in a paper of general circulation in the area. This was done in the interest of reducing the cost of implementing the penalty authority. Also, the public notice mailing lists maintained for regulatory purposes may be used or modified for use as the mailing list for a proposed penalty notice. The description of the content of the public notice has been simplified by referencing the information to be provided the permittee at the time of notice of the proposed penalty.

Section 326.6 (c)(4)(ii): This section was modified to indicate that the same public notice mailing lists used for the evaluation process may be used in developing the mailing lists for administrative penalty notices.

Section 326.6 (c)(5): This section was modified to require the same information in the public notice that is required in the notice to the permittee.

Section 326.6 (g)(4): This section was modified to indicate the district engineer could hold the hearing at a location of his choice.

Section 326.6 (h): This section was changed to reflect a requirement that the Presiding Officer shall be any qualified person designated by the DE.

Section 326.6 (h)(8): This section has been changed to eliminate the prohibition against cross-examination of the permittee. This was done to respond to the concern that the permittee was given special consideration in being allowed to cross-examine witnesses without being subject to the same rule.

Section 326.6 (j)(3): This section was modified to clarify that communications between the district engineer and his staff prior to the issuance of a proposed order do not constitute "ex parte communications."

Note 1: The Department of the Army has determined that the regulations do not contain a major provision requiring the preparation of a regulatory impact analysis under E.O. 12291.

Note 2: The Department of the Army has determined that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note 3: The Department of the Army has determined that these regulations will not affect the use or value of private property and therefore do not require a "Takings Impact Assessment" under Executive Order 12630.

Note 4: The use of the term "he" and its derivatives used in these regulations is generic and should be considered as applying to both male and female.

List of Subjects in 33 CFR Part 326

Investigations, Intergovernmental relations, Law enforcement, Navigation, Water, Pollution control, Waterways.

Dated: November 28, 1989.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

Accordingly, the Department of the Army is amending 33 CFR part 326 as follows:

PART 326—ENFORCEMENT

The authority citation for part 326 is revised to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2101.

2. Section 326.6 is added to read as follows:

§ 326.6 Class I Administrative penalties.

(a) *Introduction.* (1) This section sets forth procedures for initiation and administration of Class I administrative penalty orders under section 309(g) of the Clean Water Act, and section 205 of the National Fishing Enhancement Act. Section 309(g)(2)(A) specifies that Class I civil penalties may not exceed $10,000 per violation, except that the maximum amount of any Class I civil penalty shall not exceed $25,000. The National Fishing Enhancement Act, section 205(e), provides that penalties for violations of permits issued in accordance with that Act shall not exceed $10,000 for each violation.

(2) These procedures supplement the existing enforcement procedures at §§ 326.1 through 326.5. However, as a matter of Corps enforcement discretion once the Corps decides to proceed with an administrative penalty under these procedures it shall not subsequently pursue judicial action pursuant to § 326.5. Therefore, an administrative penalty should not be pursued if a subsequent judicial action for civil penalties is desired. An administrative civil penalty may be pursued in conjunction with a compliance order; request for restoration and/or request for mitigation issued under § 326.4.

(3) Definitions. For the purposes of this section of the regulation:

(i) "Corps" means the Secretary of the Army, acting through the U.S. Army Corps of Engineers, with respect to the matters covered by this regulation.

(ii) "Interested person outside the Corps" includes the permittee, any person who filed written comments on the proposed penalty order, and any other person not employed by the Corps with an interest in the subject of proposed penalty order, and any attorney of record for those persons.

(iii) "Interested Corps staff" means those Corps employees, whether temporary or permanent, who may investigate, litigate, or present evidence, arguments, or the position of the Corps in the hearing or who participated in the preparation, investigation or deliberations concerning the proposed penalty order, including any employee, contractor, or consultant who may be called as a witness.

(iv) "Permittee" means the person to whom the Corps issued a permit under section 404 of the Clean Water Act, (or section 10 of the Rivers and Harbors Act for an Artificial Reef) the conditions and limitations of which permit have allegedly been violated.

(v) "Presiding Officer" means a member of Corps Counsel staff or any other qualified person designated by the District Engineer (DE), to hold a hearing on a proposed administrative civil penalty order (hereinafter referred to as "proposed order") in accordance with the rules set forth in this regulation and to make such recommendations to the DE as prescribed in this regulation.

(vi) "Ex parte communication" means any communication, written or oral, relating to the merits of the proceeding, between the Presiding Officer and an interested person outside the Corps or the interested Corps staff, which was not originally filed or stated in the administrative record or in the hearing. Such communication is not an "ex parte communication" if all parties have received prior written notice of the proposed communication and have been given the opportunity to participate herein.

(b) *Initiation of action.* (1) If the DE or a delegatee of the DE finds that a recipient of a Department of the Army permit (hereinafter referred to as "the permittee") has violated any permit condition or limitation contained in that permit, the DE is authorized to prepare and process a proposed order in accordance with these procedures. The proposed order shall specify the amount of the penalty which the permittee may be assessed and shall describe with reasonable specificity the nature of the violation.

(2) The permittee will be provided actual notice, in writing, of the DE's proposal to issue an administrative civil penalty and will be advised of the right to request a hearing and to present evidence on the alleged violation. Notice to the permittee will be provided by certified mail, return receipt requested, or other notice, at the discretion of the DE when he determines justice so requires. This notice will be accompanied by a copy of the proposed order, and will include the following information:

(i) A description of the alleged violation and copies of the applicable law and regulations;

(ii) An explanation of the authority to initiate the proceeding;

(iii) An explanation, in general terms, of the procedure for assessing civil penalties, including opportunities for public participation;

(iv) A statement of the amount of the penalty that is proposed and a statement of the maximum amount of the penalty which the DE is authorized to assess for the violations alleged;

(v) A statement that the permittee may within 30 calendar days of receipt of the notice provided under this subparagraph, request a hearing prior to issuance of any final order. Further, that the permittee must request a hearing within 30 calendar days of receipt of the notice provided under this subparagraph in order to be entitled to receive such a hearing;

(vi) The name and address of the person to whom the permittee must send a request for hearing;

(vii) Notification that the DE may issue the final order on or after 30 calendar days following receipt of the notice provided under these rules, if the permittee does not request a hearing; and

(viii) An explanation that any final order issued under this section shall become effective 30 calendar days following its issuance unless a petition to set aside the order and to hold a hearing is filed by a person who commented on the proposed order and such petition is granted or an appeal is taken under section 309(g)(8) of the Clean Water Act.

(3) At the same time that actual notice is provided to the permittee, the DE shall give public notice of the proposed order, and provide reasonable opportunity for public comment on the proposed order, prior to issuing a final order assessing an administrative civil penalty. Procedures for giving public notice and providing the opportunity for public comment are contained in § 326.6(c).

(4) At the same time that actual notice is provided to the permittee, the DE shall provide actual notice, in writing, to the appropriate state agency for the state in which the violation occurred. Procedures for providing actual notice to and consulting with the appropriate state agency are contained in § 326.6(d).

(c) *Public notice and comment.* (1) At the same time the permittee and the appropriate state agency are provided actual notice, the DE shall provide

public notice of and a reasonable opportunity to comment on the DE's proposal to issue an administrative civil penalty against the permittee.

(2) A 30 day public comment period shall be provided. Any person may submit written comments on the proposed administrative penalty order. The DE shall include all written comments in an administrative record relating to the proposed order. Any person who comments on a proposed order shall be given notice of any hearing held on the proposed order. Such persons shall have a reasonable opportunity to be heard and to present evidence in such hearings.

(3) If no hearing is requested by the permittee, any person who has submitted comments on the proposed order shall be given notice by the DE of any final order issued, and will be given 30 calendar days in which to petition the DE to set aside the order and to provide a hearing on the penalty. The DE shall set aside the order and provide a hearing in accordance with these rules if the evidence presented by the commenter in support of the commenter's petition for a hearing is material and was not considered when the order was issued. If the DE denies a hearing, the DE shall provide notice to the commenter filing the petition for the hearing, together with the reasons for the denial. Notice of the denial and the reasons for the denial shall be published in the **Federal Register** by the DE.

(4) The DE shall give public notice by mailing a copy of the information listed in paragraph (c)(5), of this section to:

(i) Any person who requests notice;

(ii) Other persons on a mailing list developed to include some or all of the following sources:

(A) Persons who request in writing to be on the list;

(B) Persons on "area lists" developed from lists of participants in past similar proceedings in that area, including hearings or other actions related to section 404 permit issuance as required by § 325.3(d)(1). The DE may update the mailing list from time to time by requesting written indication of continued interest from those listed. The DE may delete from the list the name of any person who fails to respond to such a request.

(5) All public notices under this subpart shall contain at a minimum the information provided to the permittee as described in § 326.6(b)(2) and:

(i) A statement of the opportunity to submit written comments on the proposed order and the deadline for submission of such comments;

(ii) Any procedures through which the public may comment on or participate in proceedings to reach a final decision on the order;

(iii) The location of the administrative record referenced in § 326.6(e), the times at which the administrative record will be available for public inspection, and a statement that all information submitted by the permittee and persons commenting on the proposed order is available as part of the administrative record, subject to provisions of law restricting the public disclosure of confidential information.

(d) *State consultation.* (1) At the same time that the permittee is provided actual notice, the DE shall send the appropriate state agency written notice of proposal to issue an administrative civil penalty order. This notice will include the same information required pursuant to § 326.6(c)(5).

(2) For the purposes of this regulation, the appropriate State agency will be the agency administering the 401 certification program, unless another state agency is agreed to by the District and the respective state through formal/informal agreement with the state.

(3) The appropriate state agency will be provided the same opportunity to comment on the proposed order and participate in any hearing that is provided pursuant to § 326.6(c).

(e) *Availability of the administrative record.* (1) At any time after the public notice of a proposed penalty order is given under § 326.6(c), the DE shall make available the administrative record at reasonable times for inspection and copying by any interested person, subject to provisions of law restricting the public disclosure of confidential information. Any person requesting copies of the administrative record or portions of the administrative record may be required by the DE to pay reasonable charges for reproducing the information requested.

(2) The administrative record shall include the following:

(i) Documentation relied on by the DE to support the violations alleged in the proposed penalty order with a summary of violations, if a summary has been prepared;

(ii) Proposed penalty order or assessment notice;

(iii) Public notice of the proposed order with evidence of notice to the permittee and to the public;

(iv) Comments by the permittee and/or the public on the proposed penalty order, including any requests for a hearing;

(v) All orders or notices of the Presiding Officer;

(vi) Subpoenas issued, if any, for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with any hearings;

(vii) All submittals or responses of any persons or comments to the proceeding, including exhibits, if any;

(viii) A complete and accurate record or transcription of any hearing;

(ix) The recommended decision of the Presiding Officer and final decision and/or order of the Corps issued by the DE; and

(x) Any other appropriate documents related to the administrative proceeding.

(f) *Counsel.* A permittee may be represented at all stages of the proceeding by counsel. After receiving notification that a permittee or any other party or commenter is represented by counsel, the Presiding Officer and DE shall direct all further communications to that counsel.

(g) *Opportunity for hearing.* (1) The permittee may request a hearing and may provide written comments on the proposed administrative penalty order at any time within 30 calendar days after receipt of the notice set forth in § 326.6(b)(2). The permittee must request the hearing in writing, specifying in summary form the factual and legal issues which are in dispute and the specific factual and legal grounds for the permittee's defense.

(2) The permittee waives the right to a hearing to present evidence on the alleged violation or violations if the permittee does not submit the request for the hearing to the official designated in the notice of the proposed order within 30 calendar days of receipt of the notice. The DE shall determine the date of receipt of notice by permittee's signed and dated return receipt or such other evidence that constitutes proof of actual notice on a certain date.

(3) The DE shall promptly schedule requested hearings and provide reasonable notice of the hearing schedule to all participants, except that no hearing shall be scheduled prior to the end of the thirty day public comment period provided in § 326.6(c)(2). The DE may grant any delays or continuances necessary or desirable to resolve the case fairly.

(4) The hearing shall be held at the district office or a location chosen by the DE, except the permittee may request in writing upon a showing of good cause that the hearing be held at an alternative location. Action on such request is at the discretion of the DE.

(h) *Hearing.* (1) Hearings shall afford permittees with an opportunity to present evidence on alleged violations and shall be informal, adjudicatory hearings and shall not be subject to section 554 or 556 of the Administrative

Procedure Act. Permittees may present evidence either orally or in written form in accordance with the hearing procedures specified in § 326.6(i).

(2) The DE shall give written notice of any hearing to be held under these rules to any person who commented on the proposed administrative penalty order under § 326.6(c). This notice shall specify a reasonable time prior to the hearing within which the commenter may request an opportunity to be heard and to present oral evidence or to make comments in writing in any such hearing. The notice shall require that any such request specify the facts or issues which the commenter wishes to address. Any commenter who files comments pursuant to § 326.6(c)(2) shall have a right to be heard and to present evidence at the hearing in conformance with these procedures.

(3) The DE shall select a member of the Corps counsel staff or other qualified person to serve as Presiding Officer of the hearing. The Presiding Officer shall exercise no other responsibility, direct or supervisory, for the investigation or prosecution of any case before him. The Presiding Officer shall conduct hearings as specified by these rules and make a recommended decision to the DE.

(4) The Presiding Officer shall consider each case on the basis of the evidence presented, and must have no prior connection with the case. The Presiding Officer is solely responsible for the recommended decision in each case.

(5) Ex Parte Communications. (i) No interested person outside the Corps or member of the interested Corps staff shall make, or knowingly cause to be made, any ex parte communication on the merits of the proceeding.

(ii) The Presiding Officer shall not make, or knowingly cause to be made, any ex parte communication on the proceeding to any interested person outside the Corps or to any member of the interested Corps staff.

(iii) The DE may replace the Presiding Officer in any proceeding in which it is demonstrated to the DE's satisfaction that the Presiding Officer has engaged in prohibited ex parte communications to the prejudice of any participant.

(iv) Whenever an ex parte communication in violation of this section is received by the Presiding Officer or made known to the Presiding Officer, the Presiding Officer shall immediately notify all participants in the proceeding of the circumstances and substance of the communication and may require the person who made the communication or caused it to be made, or the party whose representative made the communication or caused it to be made, to the extent consistent with justice and the policies of the Clean Water Act, to show cause why that person or party's claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(v) The prohibitions of this paragraph apply upon designation of the Presiding Officer and terminate on the date of final action or the final order.

(i) *Hearing Procedures.* (1) The Presiding Officer shall conduct a fair and impartial proceeding in which the participants are given a reasonable opportunity to present evidence.

(2) The Presiding Officer may subpoena witnesses and issue subpoenas for documents pursuant to the provisions of the Clean Water Act.

(3) The Presiding Officer shall provide interested parties a reasonable opportunity to be heard and to present evidence. Interested parties include the permittee, any person who filed a request to participate under 33 CFR 326.6(c), and any other person attending the hearing. The Presiding Officer may establish reasonable time limits for oral testimony.

(4) The permittee may not challenge the permit condition or limitation which is the subject matter of the administrative penalty order.

(5) Prior to the commencement of the hearing, the DE shall provide to the Presiding Officer the complete administrative record as of that date. During the hearing, the DE, or an authorized representative of the DE may summarize the basis for the proposed administrative order. Thereafter, the administrative record shall be admitted into evidence and the Presiding Officer shall maintain the administrative record of the proceedings and shall include in that record all documentary evidence, written statements, correspondence, the record of hearing, and any other relevant matter.

(6) The Presiding Officer shall cause a tape recording, written transcript or other permanent, verbatim record of the hearing to be made, which shall be included in the administrative record, and shall, upon written request, be made available, for inspection or copying, to the permittee or any person, subject to provisions of law restricting the public disclosure of confidential information. Any person making a request may be required to pay reasonable charges for copies of the administrative record or portions thereof.

(7) In receiving evidence, the Presiding Officer is not bound by strict rules of evidence. The Presiding Officer may determine the weight to be accorded the evidence.

(8) The permittee has the right to examine, and to respond to the administrative record. The permittee may offer into evidence, in written form or through oral testimony, a response to the administrative record including, any facts, statements, explanations, documents, testimony, or other exculpatory items which bear on any appropriate issues. The Presiding Officer may question the permittee and require the authentication of any written exhibit or statement. The Presiding Officer may exclude any repetitive or irrelevant matter.

(9) At the close of the permittee's presentation of evidence, the Presiding Officer should allow the introduction of rebuttal evidence. The Presiding Officer may allow the permittee to respond to any such rebuttal evidence submitted and to cross-examine any witness.

(10) The Presiding Officer may take official notice of matters that are not reasonably in dispute and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking official notice of a matter, the Presiding Officer shall give the Corps and the permittee an opportunity to show why such notice should not be taken. In any case in which official notice is taken, the Presiding Officer shall place a written statement of the matters as to which such notice was taken in the record, including the basis for such notice and a statement that the Corps or permittee consented to such notice being taken or a summary of the objections of the Corps or the permittee.

(11) After all evidence has been presented, any participant may present argument on any relevant issue, subject to reasonable time limitations set at the discretion of the Presiding Officer.

(12) The hearing record shall remain open for a period of 10 business days from the date of the hearing so that the permittee or any person who has submitted comments on the proposed order may examine and submit responses for the record.

(13) At the close of this 10 business day period, the Presiding Officer may allow the introduction of rebuttal evidence. The Presiding Officer may hold the record open for an additional 10 business days to allow the presentation of such rebuttal evidence.

(j) *The decision.* (1) Within a reasonable time following the close of the hearing and receipt of any statements following the hearing and after consultation with the state pursuant to § 326.6(d), the Presiding

Officer shall forward a recommended decision accompanied by a written statement of reasons to the DE. The decision shall recommend that the DE withdraw, issue, or modify and issue the proposed order as a final order. The recommended decision shall be based on a preponderance of the evidence in the administrative record. If the Presiding Officer finds that there is not a preponderance of evidence in the record to support the penalty or the amount of the penalty in a proposed order, the Presiding Officer may recommend that the order be withdrawn or modified and then issued on terms that are supported by a preponderance of evidence on the record. The Presiding Officer also shall make the complete administrative record available to the DE for review.

(2) The Presiding Officer's recommended decision to the DE shall become part of the administrative record and shall be made available to the parties to the proceeding at the time the DE's decision is released pursuant to § 326.6(j)(5). The Presiding Officer's recommended decision shall not become part of the administrative record until the DE's final decision is issued, and shall not be made available to the permittee or public prior to that time.

(3) The rules applicable to Presiding Officers under § 326.6(h)(5) regarding ex parte communications are also applicable to the DE and to any person who advises the DE on the decision or the order, except that communications between the DE and the Presiding Officer do not constitute ex parte communications, nor do communications between the DE and his staff prior to issuance of the proposed order.

(4) The DE may request additional information on specified issues from the participants, in whatever form the DE designates, giving all participants a fair opportunity to be heard on such additional matters. The DE shall include this additional information in the administrative record.

(5) Within a reasonable time following receipt of the Presiding Officer's recommended decision, the DE shall withdraw, issue, or modify and issue the proposed order as a final order. The DE's decision shall be based on a preponderance of the evidence in the administrative record, shall consider the penalty factors set out in section 309(g)(3) of the CWA, shall be in writing, shall include a clear and concise statement of reasons for the decision, and shall include any final order assessing a penalty. The DE's decision, once issued, shall constitute final Corps action for purposes of judicial review.

(6) The DE shall issue the final order by sending the order, or written notice of its withdrawal, to the permittee by certified mail. Issuance of the order under this subparagraph constitutes final Corps action for purposes of judicial review.

(7) The DE shall provide written notice of the issuance, modification and issuance, or withdrawal of the proposed order to every person who submitted written comments on the proposed order.

(8) The notice shall include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review. The notice shall also note the right of a commenter to petition for a hearing pursuant to 33 CFR 326.6(c)(3) if no hearing was previously held.

(k) *Effective date of order.* (1) Any final order issued under this subpart shall become effective 30 calendar days following its issuance unless an appeal is taken pursuant to section 309(g)(8) of the Clean Water Act, or in the case where no hearing was held prior to the final order, and a petition for hearing is filed by a prior commenter.

(2) If a petition for hearing is received within 30 days after the final order is issued, the DE shall:

(i) Review the evidence presented by the petitioner.

(ii) If the evidence is material and was not considered in the issuance of the order, the DE shall immediately set aside the final order and schedule a hearing. In that case, a hearing will be held, a new recommendation will be made by the Presiding Officer to the DE and a new final decision issued by the DE.

(iii) If the DE denies a hearing under this subparagraph, the DE shall provide to the petitioner, and publish in the **Federal Register**, notice of, and the reasons for, such denial.

(l) *Judicial review.* (1) Any permittee against whom a final order assessing a civil penalty under these regulations or any person who provided written comments on a proposed order may obtain judicial review of the final order.

(2) In order to obtain judicial review, the permittee or commenter must file a notice of appeal in the United States District Court for either the District of Columbia, or the district in which the violation was alleged to have occurred, within 30 calendar days after the date of issuance of the final order.

(3) Simultaneously with the filing of the notice of appeal, the permittee or commenter must send a copy of such notice by certified mail to the DE and the Attorney General.

[FR Doc. 89-28613 Filed 12-7-89; 8:45 am]
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federal register

Friday
December 8, 1989

Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Explosives and Blasting; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA16

Safety Standards For Explosives And Blasting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Mine Safety and Health Administration's (MSHA) existing safety standards for explosives and blasting in underground coal mines. These amendments would update and clarify the following provisions: First, proposed § 75.1301(a)(2) would recognize an alternative method of gaining experience for blasting certification for different types of mines. Second, proposed § 75.1316(a) would clarify how to measure the 50 foot distance for removal of mobile electric equipment and deenergization of stationary electric equipment. Last, § 75.1325(b) would be revised to allow multiface blasting under limited conditions.

DATES: All comments and information should be submitted by February 16, 1990.

ADDRESS: Comments should be sent to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, room 627, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule would amend the Mine Safety and Health Administration's existing safety standards for explosives and blasting in underground coal mines. These amendments are proposed under section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act).

On November 18, 1988, MSHA published a final rule in the **Federal Register** (53 FR 46768) which became effective on January 17, 1989. Prior to the effective date of the final rule, MSHA received comments from the coal mining industry regarding 30 CFR 75.1316(a) and 75.1325(b) which raised questions concerning the jurisdiction and interpretation of these provisions. Consequently, the Agency reevaluated these provisions and published a stay of one provision, 30 CFR 75.1325(b), in the **Federal Register** on January 13, 1989 (54 FR 1360). No stay of § 75.1316(a) was issued and that provision is currently in effect. Since that time, the Agency has also received questions regarding the application of the "qualified person" provision contained in 30 CFR 75.1301. As a result of these comments and questions, certain changes to these provisions are being proposed.

II. Section-by-Section Discussion of the Proposed Rule Section

Section 75.1301 Qualified Persons.

This section sets forth requirements for becoming qualified to safely use permissible explosives or approved sheathed explosive units in underground coal mines. The present standard allows for the qualification of persons with experience in mines where production blasting is performed. MSHA has received comments that a large number of the Nation's coal mines which do not perform production blasting, do utilize explosives routinely for construction of overcast, undercasts, boom holes, sump holes, and for breaking up roof falls or performing similar activities which may include the use of sheathed explosive units. The existing standard for qualified persons does not adequately address the needs of these operations. Therefore, the Agency proposes alternative experience requirements for becoming a qualified person to perform construction blasting.

Paragraph (a)(2) currently specified minimum experience requirements for qualified persons in States that do not certify or qualify persons to use explosives. Under the proposal, paragraph (a)(2) would be divided into subparagraphs (i) and (ii) containing the requirements for persons to be qualified as production blasters and construction blasters respectively. Under the proposal, paragraph (a)(2)(i) would continue to require qualified persons performing production blasting to have at least one year of experience working underground on a coal producing section of a mine where explosives are used and demonstrate to an authorized representative of the Secretary the ability to safely use permissible explosives. Paragraph (a)(2)(ii) would be new and would require qualified persons who will only be performing construction blasting to have at least one year of experience working underground in a mine where construction blasting is performed. Similarly, persons to be qualified as construction blasters would also have to demonstrate to an authorized representative of the Secretary the ability to safely use permissible explosives.

Under the proposal, a person qualified by MSHA to only perform construction blasting would not be permitted to blast coal for production purposes. The "qualified person" card issued by MSHA for these persons would restrict the person to the performance of construction blasting only. A person with this type qualification would have to be re-qualified in order to perform production blasting and would also be required to have the specific experience stipulated in paragraph (a)(2)(i). However, a person qualified to perform production blasting would also be considered qualified to perform construction blasting under this subpart.

Section 75.1316 Preparation Before Blasting

This section proposes to clarify requirements for deenergizing or removing electric equipment from areas where blasting is to be performed. Like the current rule, it is intended to address the hazard of accidental initiation of detonators caused by stray electric current originating from contact with energized electric equipment.

Paragraph (a) of the current rule requires that before priming any explosive, all mobile electric equipment be removed to a distance of at least 50 feet from the "working place or other areas where blasting is to be performed." In addition, all stationary equipment within this distance must be deenergized. Proposed paragraph (a) would require that all mobile electric equipment be removed to a distance of at least 50 feet from "boreholes to be loaded with explosives or the sites where sheathed explosive units are to be placed and fired." Stationary equipment within this distance would also have to be deenergized.

This modification is being processed in response to industry questions regarding interpretation of this provision following publication of the rule. Commenters questioned how this distance was to be measured. Specifically, they asked whether this is a "line of sight" measurement and whether it is to be measured through solid coal or rock.

The proposed change from "working place or other area where blasting is to be performed" to "boreholes to be loaded with explosives or sites where sheathed explosives units are to be placed and fired" is intended to specify the exact location from which the 50-foot distance is to be measured. Further,

it would explicitly state that the removal or deenergization with respect to the 50-foot applies not only when firing loaded boreholes but also when firing sheathed explosive units. This distance is intended to extend through open spaces in all directions, except through solid coal or rock. Thus, compliance with § 75.1316(a) generally will not restrict mining activities in adjacent working places separated from the blasting area by a solid block of coal. Only when such mining activity is within 50 feet as measured through opened spaces will electric equipment need to be moved or deenergized.

Fifty feet is recommended by the National Safety Council as the minimum separation between the blast area and electrical power sources. A 50-foot distance is also used in metal and non-metal blasting standards (30 CFR 57.6127) and OSHA construction regulations (29 CFR Part 1926) as a safe distance to protect loaded boreholes against premature detonation by stray current from electrical power sources.

Another issue raised by operators was whether the provisions of § 75.1316(a) apply to trailing cables. Trailing cables are considered to be an integral component of the equipment to which they are attached and are a potential source of stray current. Therefore, trailing cables would be subject to the same requirements as mobile and stationary equipment and the proposal would clarify this point by adding the phrase "including trailing cables" to both paragraphs (a)(1) and (a)(2) of § 75.1316(a).

Section 75.1325 Firing Procedure

Section 75.1325(b) was published as a final rule in the **Federal Register** on November 18, 1988, and allowed only one face to be blasted at a time. However, on January 13, 1989, MSHA published a stay of this provision so that it did not become effective on January 17, 1989 with the other explosives and blasting safety standards. This action was based on comments from segments of the mining industry who questioned the basis for prohibiting firing more than one face at a time since, in their view, this blasting practice has been conducted safely in several mines. In conjunction with issuing a stay of this provision, MSHA indicated that additional substantive information relative to this blasting practice was needed. Since issuance of the stay, the Agency has taken a number of actions to further examine this issue.

In relation to this provision, MSHA conducted a reevaluation of the available record of blasting accidents occurring since 1952 to determine whether any of these accidents were related to multiface blasting. In no instance did this review find that multiface blasting was cited as the sole factor or as a contributing cause in an accident. The only reference to multiface blasting was used to describe activities underway at the time of certain accidents which occurred when blasting off the solid. No mention was made of multiface blasting in reports or data relative to accidents occurring when blasting cut coal.

In addition, MSHA conducted a literature search specifically seeking published materials related to the issue of single versus multiface blasting. No pertinent information on this issue was found which was not previously reviewed by the Agency and already a part of the rulemaking record.

MSHA also surveyed various states where explosives are used for production. An analysis of this data shows that almost two thirds of the conventional bituminous mining sections blast cut coal only. Nearly all of the mines that blast coal off the solid are located in Kentucky or West Virginia. In Kentucky, multiface blasting is prohibited when blasting off the solid. However, Kentucky has no prohibition against multiface blasting in cut coal. There is no provision limiting blasting to only one face in West Virginia. However, a permit is required to blast more than 10 boreholes per round. This has the effect of limiting multiface blasting since blasting more than 10 boreholes is only allowed under certain conditions. Several states, e.g. Virginia, Wyoming, and Colorado, do not prohibit multiface blasting, but limit the number of shots per round to 20. A review of Pennsylvania mining regulations found no specific prohibition against multiface blasting although state inspectors have broad discretionary authority to address such practices.

Following the review of accidents in the United States, MSHA surveyed other coal producing nations for possible restrictions on multiface blasting. In discussions with mining experts from Australia, apparently no restrictions are being imposed on mine operators to limit blasting to one face only. The majority of the coal mining operations are single face developments remote from each other. Polish mining operations are limited to blasting only one face at a time because of a potential gas or dust explosion and problems with roof support. However, in blasting of rock or coal with rock partings, up to 70 boreholes per round may be fired. Although firing more than one face at a time is not prohibited in England, it is not a common practice since little room and pillar mining is conducted.

Based on this reexamination of single versus multiface blasting, MSHA is proposing in paragraph (b) to limit blasting in a working place to one face at a time with one exception. Under the proposal, an exception would be allowed to permit up to three faces to be blasted at a time provided that each face has a separate kerf and a total of no more than 20 boreholes connected in a single series are fired in the round. Blasting multiple faces when shooting off the solid would not be permitted because this is a difficult blasting technique with greater potential for blown out holes that can ignite gas and dust released by the blasting off adjacent faces. This prohibition would not apply to shooting of cut coal because boreholes in this type of shooting have relief provided by the kerf which greatly diminishes the potential for blown out holes. This position would be consistent with the specific prohibition against multiface blasting in off the solid shooting in the state of Kentucky and the restriction on such blasting in West Virginia where the number of boreholes permitted to be fired in a round is limited to 10. Approximately 96 percent of all the bituminous mines conducting off the solid shooting are located in these two states.

Concern has been expressed that if multiface blasting were permitted, the firing of one face could cause disruption of the blasting circuit in another face resulting in undetonated explosives. However, in accordance with § 75.1323(i), when 20 or fewer boreholes are fired in a round, the blasting circuit must be wired in a single series without regard to the number of faces being fired. This ensures that firing energy is applied to all detonators at the same time preventing blast circuit disruption caused by the blast.

This paragraph would also specify that a permit to fire more than 20 boreholes in a round when blasting multiple faces may not be obtained from the District Manager under the provisions of § 75.1321. MSHA's past experience has shown that mine operators generally seek permits to use nonpermissible blasting units to fire more than 20 boreholes during construction blasting in rock. Presently, no mine has permission to blast more than 20 boreholes in a round in the coal face nor does the Agency foresee a need for such a permit in the future. For these reasons, the Agency proposes not to grant permits to fire more than 20 boreholes in a round when blasting

multiple faces. Should such a need arise, the operator may request a modification of this provision under part 44.

II. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA prepared an analysis in November 1988 to identify potential costs and benefits associated with the changes to its explosives and blasting standards for underground coal mines. That analysis determined that the final rule would result in a major cost increase or have an incremental effect of $100 million or more on the economy. This proposal would amend three of those standards issued in November. First, proposed § 75.1301(a)[2] would recognize an alternative method of gaining experience for blasting certification for different types of mines. Second, proposed § 75.1316(a) would clarify how to measure the 50 foot distance for removal of mobile electric equipment and deenergization of stationary electric equipment. Last, § 75.1325(b) would be revised to allow multiface blasting under limited conditions. These proposals would not have an associated cost factor that would affect a change in the original analysis. A copy of the full analysis prepared at the time of promulgation of Subpart N in November 1988 is available upon request.

III. Paperwork Reduction Act

These proposals do not contain additional collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mine, Explosives and blasting.

Dated: April 12, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, it is proposed to amend part 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations under U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

2. Section 75.1301 is amended by revising paragraph (a)(2) to read as follows:

§ 75.1301 Qualified person.

(a) * * *

(2) In States that do not certify or qualify persons to use explosives required by this section—

(i) Has at least one year of experience working underground on a coal producing section of a mine where explosives are used for production and demonstrates to an authorized representative of the Secretary the ability to safely use permissible explosives to perform production blasting; or

(ii) Has at least one year of experience working underground in a mine where explosives are used for construction purposes and demonstrates to an authorized representative of the Secretary the ability to safely use permissible explosives for construction blasting.

* * * * *

3. Section 75.1316 is amended by revising paragraph (a) to read as follows:

§ 75.1316 Preparations before blasting.

(a) Before priming any explosives—

(1) All mobile electric equipment, including trailing cables, shall be removed to a distance of at least 50 feet from boreholes to be loaded with explosives or the sites where sheathed explosive units are to be placed and fired; and

(2) All stationary electric equipment, including trailing cables, within 50 feet of boreholes to be loaded with explosives or the sites where sheathed explosive units are to be placed and fired shall be deenergized.

* * * * *

4. Section 75.1325 is amended by revising paragraph (b) to read as follows:

§ 75.1325 Firing Procedures.

* * * * *

(b) Only one face in a working place shall be blasted at a time, except that when blasting cut coal up to three faces may be blasted in a round if each face has a separate kerf and no more than a total of 20 shots connected in a single series are fired in the round. Notwithstanding the provisions of § 75.1320, a permit to fire more than 20 boreholes in a round under the provisions of 30 CFR 75.1321 may not be obtained for use when blasting multiple faces.

* * * * *

[FR Doc. 89-28695 Filed 12-7-89; 8:45 am]

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federal register

Friday
December 8. 1989

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1, et al

Federal Acquisition Regulation (FAR); Procurement Integrity Act Suspension; Technical Amendment and Suspension of Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52

[Federal Acquisition Circular 84-54]

RIN 9000-AD01

Federal Acquisition Regulation (FAR); Procurement Integrity Act Suspension

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendment and suspension of interim rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-47, which implemented section 27 of the Office of Federal Procurement Policy Act (the Act) dealing with Procurement Integrity, and which was published in the **Federal Register** on May 11, 1989 (54 FR 20488), is hereby temporarily suspended. Pursuant to section 507 of the Ethics Reform Act of 1989 (Pub. L. 101-194), the provisions of "the Act" and of the FAR implementing regulations are suspended for the 1-year period beginning December 1, 1989, and ending November 30, 1990.

Section 27 of "the Act", and the regulations implementing that section, are suspended for a 1-year period. However, the suspension of the "the Act" does not mean that the conduct prohibited by "the Act" is now permitted. Much of the conduct that was prohibited by "the Act" is covered by various statutes and regulations that remain in effect. For example, the offer or acceptance of a bribe or gratuity is prohibited by existing statutes and regulations, including 18 U.S.C. 201, 10 U.S.C. 2207, and 5 CFR part 735. Similarly, FAR parts 14 and 15 place restrictions on the release of information related to procurements and contractor proprietary information. In addition, there are statutory penalties associated with improperly obtaining or disclosing proprietary and procurement sensitive information. With regard to engaging in employment discussions, 18 U.S.C. 208 precludes a Government employee from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is negotiating for employment. Also, with respect to post-employment restrictions, 18 U.S.C. 207 prohibits certain representational activities by former Government employees, including representation of a contractor before the Government in relation to any contract on which the former employee worked while employed by the Government. This list of proscriptions is not necessarily exhaustive.

DATES: The technical amendments to sections 8.104-2 and 3.104-10, are effective December 1, 1989.

In the interim rule published May 11, 1989 (54 FR 20488), in section 1.105, the entries for sections "3.104-9", "52.203-8", "52.203-9", and "52.237-9", and sections 3.104-1, 3.104-3 through 3.104-9, 3.104-11, 3.104-12, 4.802(e), 9.105-3(c), 9.106-3(b), 15.805-5 (j) and (k) (redesignated from (l) and (m) in FAC 84-51 on August 21, 1989 (FR 34750)), 37.207(f), 37.208, 43.106, 52.203-8, 52.203-10, and 52.237-9 are suspended for the period December 1, 1989, through November 30, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-54.

SUPPLEMENTARY INFORMATION:

Background

FR Doc. 89-11472, FAC 84-47, published in the **Federal Register** on May 11, 1989, implemented section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) with respect to Procurement Integrity. Pub. L. 101-28 extended the effective date of the Procurement Integrity provisions to July 16, 1989 ((FR Doc. 89-12391 published in the **Federal Register** on May 23, 1989) (54 FR 22282)).

List of Subjects in 48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52

Government procurement.

Dated: December 5, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Unless otherwise specified, the technical amendments to sections 3.104-2 and 3.104-10, and suspension of the interim rule in the Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-47 are effective December 1, 1989.

In section 1.105, the entries for sections "3.104-9", "52.203-8", "52.203-9", and "52.237-9", and sections 3.104-1, 3.104-3 through 3.104-9, 3.104-11, 3.104-12, 4.802(e), 9.105-3(c), 9.106-3(b), 15.805-5 (j) and (k) (redesignated from (l) and (m) in FAC 84-51 on August 21, 1989 (54 FR 34750)), 37.207(f), 37.208, 43.106, 52.203-8, 52.203-9, 52.203-10, and 52.237-9 are suspended for the period December 1, 1989 through November 30, 1990.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, GSA.

L. E. Hopkins,

Deputy Assistant Administrator for Procurement, NASA.

The Administrator Designate of the Office of Federal Procurement Policy, Office of Management and Budget, concurs.

Allan V. Burman.

Therefore, 48 CFR parts 1, 3, 4, 9, 15, 37, 43, and 52 are amended as set forth below.

Item—Procurement Integrity

FAR 3.104-2 and 3.104-10 are revised, and 1.105, 3.104-1, 3.104-3 through 3.104-9, 3.104-11, 3.104-12, 4.802(e), 9.105-3(c), 9.106-3(b), 15.805-5 (j) and (k) (redesignated from (l) and (m) in FAC 84-51 on August 21, 1989 (54 FR 34750)), 37.207(f), 37.208, 43.106, and the provision and clauses at 52.203-8, 52.203-9, 52.203-10, and 52.237-9 are suspended for the period December 1, 1989 through November 30, 1990, to implement the Ethics Reform Act of 1989, which suspends the requirements of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (Procurement Integrity) for a 1-year period.

Solicitations issued prior to December 1, 1989, for which bids have not been opened or proposals received before December 1, 1989, shall be amended, wherever practicable, to delete the provision of 52.203-8, and the clauses at 52.203-9, 52.203-10, and 52.237-9.

For solicitations for which bids have been opened or for offers that have been received prior to December 1, 1989, but where award has not been made, the contracting officer shall disregard the lack of a certification in determining eligiblity for award and shall delete the provision at 52.203-8, and the clauses at 52.203-9, 52.203-10, and 52.237-9 by administrative change.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for 48 CFR part 3 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

2. Section 3.104-2 is amended by adding a second sentence to read as follows:

3.104-2 Applicability.

* * * Pursuant to section 507 of the Ethics Reform Act of 1989 (Pub. L. 101-194), the requirements of this section are suspended for the period December 1, 1989 through November 30, 1990.

3. Section 3.104-10 is amended by adding the introductory text to read as follows:

3.104-10 Solicitation provision and contract clauses.

Pursuant to section 507 of the Ethics Reform Act of 1989, the reqirement to include the provision and clauses at 52.203-8, 52.203-9, 52.203-10, and 52.237-9 in solicitations and contracts is suspended for the period December 1, 1989 through November 30, 1990.

* * * * *

[FR Doc. 89-28789 Filed 12-6-89; 10:20 am]

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federal register

Friday
December 8, 1989

Part VII

Department of Transportation

Federal Highway Administration

49 CFR Part 396

Inspection, Repair and Maintenance; Periodic Motor Vehicle Inspections; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 396

[FHWA Docket No. MC-113]

RIN 2125-AC47

Inspection, Repair and Maintenance; Periodic Inspections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; delay in compliance date; request for comments.

SUMMARY: The FHWA is delaying the compliance date to July 1, 1990, when motor carriers are required to implement the periodic inspection requirements contained in the final rule, Inspection, Repair and Maintenance, published on December 7, 1988 (53 FR 49402). On December 12, 1988, the FHWA clarified that provisions of the final rule were to be complied with by December 7, 1989 (53 FR 49968) except as provided for in part 396.

This document also includes recent interpretations, makes minor technical amendments to clarify the rule and eliminates certain items from the inspection report. These interpretations are made in response to many requests the FHWA has received to clarify the intent of the final rule. The elimination of some of the items that were to be included in the inspection report is being made to simplify the recordkeeping requirements.

Although this document is a final rule, a request for public comment is being sought. Due to the complexity of the procedures, the FHWA will conduct an on-going review of the procedures to determine if further revision is warranted.

DATES: Effective date: This final rule is effective on December 7, 1989. Comments must be received not later than February 6, 1990. Motor carriers must ensure all commercial motor vehicles are inspected in accordance with the requirements of the final rule, Inspection, Repair, and Maintenance, published on December 7, 1988, and modified by this final rule, no later than July 1, 1990.

ADDRESS: Submit written, signed comments to FHWA Docket No. MC-113, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect, WordStar, or the Macintosh version of Word. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagan, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-1353, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1988, the FHWA issued a final rule requiring all commercial motor vehicles to pass an annual inspection based on Federal standards by qualified inspectors at least annually and that documentation of such inspections be maintained. (Note effective date correction at 53 FR 49968). The requirement for an annual inspection was included in the Federal Motor Carrier Safety Regulations (FMCSRs) in response to Section 210 of the Motor Carrier Safety Act of 1984. (Pub. L. 98-554, 98 Stat. 2829). The annual inspection rule is to become effective on December 7, 1989.

The FHWA has received requests for interpretations and clarifications of the final rule. The requests have generally addressed the requirement that a copy of the inspection report be maintained on the vehicle and other issues relating to documentation. Requests were also received regarding the applicability of existing inspection procedures and requirements to the new annual inspection requirement.

The American Trucking Associations (ATA) petitioned the FHWA on July 19, 1989, to extend the date for compliance with the periodic inspection requirements until one year from the date that the FHWA resolves several outstanding issues relating to this regulation.

Elsewhere in today's **Federal Register** the FHWA is publishing the list of States that have periodic inspection programs for commercial motor vehicles that have been determined by the FHWA to be as effective as the requirements contained in the final rule published on December 7, 1988.

Delay in Implementation Date

The FHWA is delaying the implementation date to July 1, 1990. This action is being taken for a number of reasons. The FHWA received a petition from the ATA requesting that the implementation date be extended to one year beyond the date the FHWA resolves several issues relating to the periodic inspection rule. The FHWA believes that the issues raised by the ATA did in fact need to be resolved before implementation became mandatory. To require industry to comply with the inspection rule without the benefit of a resolution to the issues raised would place an undue burden on the industry. With the resolution of the issues in this final rule, the FHWA believes an approximately 7 month delay in implementation is justifiable. The decision to extend the implementation date is also based in part on the confusion caused by the initial implementation date published (3/7/90). Although the date was corrected by the **Federal Register**, it is evident from the numerous inquiries received by the FHWA that the March 7, 1990, date was still considered to be the effective date by a substantial number of the inquirers.

The FHWA believes that there is sufficient time to implement the requirements of the final rule, as amended by this notice, by July 1, 1990, and therefore, the one year period requested by the ATA is denied. The FHWA has received many telephone calls and letters regarding implementation of the rule by motor carriers who intend on meeting the requirements by the previous implementation date, December 7, 1989. With the interpretations and amendments included in this final rule the FHWA believes an extension to December 8, 1990 is unwarranted. Motor carriers are already required to inspect and maintain their commercial motor vehicles to standards similar to the inspection standards contained in this rule. Further delay in the implementation of this rule would be contrary to public safety.

Interpretations

The FHWA believes the requests for interpretations and clarifications have merit and general applicability. Therefore, the requests and FHWA's responses are being published today. In order to make the interpretations broadly applicable, the specific questions received are being rephrased. The FHWA is modifying §§ 396.17(c) and 396.21(b) in the rule to codify the

interpretations. The FHWA believes these modifications are technical in nature and do not require public comment.

The FHWA is further amending the final rule by eliminating some of the items that were required to be included on the inspection form § 396.21(a)). These amendments are intended to reduce the paperwork requirements and do not affect the statutory mandate or compromise safety. Because of these reasons and to ensure that the requirements for an annual inspection are in place without delay, the amendments are being made without prior public comment. A thorough discussion of these amendments is contained in the section entitled, "Amendments."

Question 1: May stickers or decals be used in lieu of the requirement that the original or copy of the inspection report be maintained on the vehicle?

Response: Yes, provided that the sticker, decal or other form of documentation contains sufficient information to clearly indicate that the vehicle is in compliance with the annual inspection requirements of Part 396 and to allow an enforcement official to obtain a copy of the full inspection report. The information that FHWA believes is sufficient includes the following:

(1) The Date of Inspection (month and year) the vehicle passed an inspection consistent with the requirements of this rule or the dates individual components passed the inspection consistent with the requirements of this rule;

(2) The Name and Address of Motor Carrier or Other Entity who is maintaining the inspection report;

(3) A Certification that the vehicle has passed a periodic inspection in accordance with the requirements of 49 CFR Part 396; and

(4) Vehicle Identification information sufficient to uniquely identify the vehicle if such information is not readily and clearly marked on the vehicle.

These four items will provide enough information to obtain a copy of the inspection report if an enforcement official is interested in checking the validity of the sticker or decal. Each of these items are discussed in greater detail below.

Date of inspection.—If the date is given in the month/year format vehicles with inspection documentation dated earlier than the current month and previous year are considered to be in violation. Example: a vehicle inspected on 9/90 (September 1990) will be due for another inspection on October 1, 1991. If the date is given in the month, day, year format the inspection is only valid for one year. Example: a vehicle inspection dated September 1, 1990, will be due for another inspection on September 1, 1991.

Multiple dates are allowed if different components are inspected at different times. The FHWA recognizes that many motor carriers have inspection, repair and preventive maintenance programs that do not provide for a one time comprehensive inspection of the vehicle. In such cases, separate dates along with the components which passed the inspection on that date may be listed. However, all components addressed in the periodic inspection standards must pass an inspection each year. If all the components are not identified or the inspection date exceeds the one-year period of the motor carrier is not in compliance with the periodic inspection requirements of part 396.

Name and address of motor carrier or other entity.—A motor carrier must be able to provide a copy of the inspection report upon request by the FHWA, or other authorized state or local officials. If a motor carrier is operating a commercial motor vehicle (CMV) which has a decal and has been inspected by another entity it is still the responsibility of the motor carrier operating the CMV to provide a copy of the inspection report when requested.

If the decal clearly indicates that the inspection report is being maintained by the motor carrier operating the vehicle and the motor carrier's name, address and motor carrier identification number as required by 49 CFR 390.21 or the Interstate Commerce Commission "MC" number are clearly and readily visible on the power unit, then such information is not required to be on decals on either the power unit or the trailer(s). The FHWA anticipates that many CMVs, especially trailers, will be inspected by entities other than motor carriers. In such cases motor carriers will have to assure themselves that the CMVs they are using have been properly inspected and that a copy of the inspection report may be quickly obtained from the inspecting entity when requested.

Motor carriers are required to produce copies of inspection reports to substantiate decals or stickers upon demand of authorized federal, state or local officials. The FHWA does not anticipate that motor carriers will be required to produce the inspection reports at the time of the roadside inspection, but within a reasonable time. In such cases the motor carrier is required to provide a copy of the annual inspection report within the time frame established by the official requesting the form. The FHWA is interested in comments on what the time limit should be for a motor carrier to provide this information.

Certification.—A statement similar to the following must be included on the sticker or decal if the vehicle passed a comprehensive inspection of all the components listed in Appendix G: "This vehicle has passed an inspection in accordance with 49 CFR 396.17 through 396.23." If only certain components passed the inspection (because only certain components were inspected or for any other reason), then the certification must list those components and the date they passed the inspection. The motor carrier is responsible for the validity of any certification.

Vehicle identification.—The FHWA is revising Paragraph 396.21(a)(5) (Now redesignated as paragraph 396.21(a)(4)) to allow forms of vehicle identification information other than license plate number and vehicle identification number. (See additional discussion under the section entitled, "Amendments.") If the vehicle is not readily, clearly and permanently marked with a unique identification, such as, a number established by the motor carrier, VIN, license or registration information, then the sticker must include this information. This same information must be included on the inspection report. That is, if a vehicle is identified with a motor carrier vehicle number on the decal or sticker, the same information must be contained on the inspection report.

The driver of the vehicle is responsible for providing the vehicle identification information to the inspector if this information is not contained on the decal or sticker.

Inspector identification.—The FHWA continues to believe that the person performing the inspection is critical, and the requirement that the inspector be identified is being retained. However, the inspector's signature on the decal is considered to be unnecessary paperwork and will not be required. While the inspector's identification is not required on the decal, it is required on the report. The motor carrier continues to be responsible for ensuring that the inspector is qualified to perform the inspection. Required production of inspection reports will generally include documentation on the qualifications of the inspector.

Motor carriers and others (i.e. commercial motor vehicle leasing companies, vehicle inspection firms, etc.) must ensure that distribution of periodic inspection decals are controlled and that only authorized individuals have access to these decals.

Question 2: Some of a motor carrier's vehicles are registered in a State with a mandated inspection program, which has been determined to be as effective as the Federal program. However, these vehicles are not used in that State. Is the motor carrier required to make sure the vehicles are inspected under that State's program each year in order to meet the Federal periodic inspection requirements?

Response: Those commercial motor vehicles that are subject to a mandatory State inspection program must meet the periodic inspection requirement of this rule through that State's inspection program. Motor carriers with vehicles registered in a State but are not subject to the State's periodic inspection program for whatever reason, need not have the vehicle inspected through the registering State's program to meet the Federal periodic inspection requirements of 49 CFR part 396. The 49 CFR part 396 requirements may be met through either a motor carrier self-inspection, a third party inspection, a CVSA inspection or a periodic inspection performed in any State with a program that FHWA determines is as effective as the 49 CFR part 396 requirements.

Question 3: May the due date for the next inspection satisfy the requirements for the inspection date on the sticker or decal?

Response: No. The rule requires that the date of the inspection be included on the report and sticker or decal. This date may be in the format of month and year. While the FHWA recognizes that some motor carriers may be using "due date" format for their existing inspection procedures, for purposes of uniformity of enforcement and to minimize any misunderstanding, such formats would not meet the requirements of the rule.

Question 4: Must each vehicle in a combination carry separate documentation as required by the rule?

Response: Separate documentation (either a sticker or inspection report) is not needed if a single document clearly identifies all the vehicles in the commercial motor vehicle combination (i.e., tractor, trailers and dollies). The FHWA anticipates that such combined documentation will only be applicable to "married vehicles" and that in general each vehicle will have separate documentation. If vehicles with combined inspection documentation are separated, each vehicle will have to have a copy of the documentation.

Question 5: If a vehicle does not receive a Commercial Vehicle Safety Alliance (CVSA) decal because of driver violations, not vehicle violations, is the vehicle considered to have met the requirements of the annual inspection? If so, is the inspector required to place a CVSA decal on the vehicle?

Response: While a vehicle may have passed an inspection, the requirements of this rule are not met if the inspection procedures do not provide any record of such inspection. In such cases as described, an inspection report will be completed and may serve as the documentation under this rule even though a decal is not placed on the vehicle. This rule does not modify in any way State or CVSA inspection procedures.

Question 6: Does the sticker have to be located in any certain spot on the vehicle?

Response: No. The rule does not require that the sticker or other forms of documentation be located in a certain spot on the vehicle. It is the responsibility of the driver to produce the documentation when requested. Therefore, the driver must know the location of the sticker and ensure that all information on it is legible and current. The driver must also be able to produce the inspection report if that form of documentation is used.

Question 7: Must brand new equipment also pass an annual inspection? Must such vehicle meet the inspection requirements immediately?

Response: Yes, all commercial motor vehicles, including brand new vehicles, must meet the annual inspection requirement as soon as the vehicles are placed in service. Section 396.15, Driveaway-towaway operations and inspections, provides that a vehicle which is part of a shipment being delivered need not meet the annual inspection requirements.

Amendments

The FHWA is amending the final rule, Inspection, Repair and Maintenance, published on December 7, 1988, to clarify certain requirements of the rule and to reduce unnecessary paperwork burdens.

Paragraph 396.17(c) is being revised by adding paragraphs (1) and (2) to clarify the types of documentation that may be carried on the vehicle and the information that must be included in the documentation. Paragraph 396.17(c)(1) specifies that if the actual inspection report is carried on the vehicle the information contained in the report must be consistent with paragraph 396.21(a). If another form of documentation is carried on the vehicle, such as a decal or sticker, such documentation must contain the following information: (1) The date of inspection, (2) name and address of motor carrier or the entity who is maintaining the inspection report, (3) information to uniquely identify the vehicle if such information is not readily and clearly marked on the vehicle, and (4) a certification that the vehicle has passed an inspection in accordance with the requirements of §§ 396.17 through 396.23. Each of these items are discussed in detail in the response to question 1 under the section entitled, "Interpretations."

Paragraph 396.21(b)(1) is being revised to ensure that a copy of the inspection report is maintained or is readily available to the motor carrier operating the commercial motor vehicle for a period of 14 months from the date of the inspection. This time period is included to provide the enforcement agency an opportunity to obtain a copy of the inspection report to verify inspection of a vehicle up to two months after the expiration of the inspection period. The FHWA emphasizes that while the motor carrier need not maintain copies of the actual inspection reports that are the bases for decals, the motor carrier must make the necessary arrangements with the entity performing the inspection to make copies of the inspection report available to the motor carrier. The current requirement contained in paragraph 396.21(b)(1) that a motor carrier retain a copy of the inspection report for all vehicles under the motor carrier's control for more than 30 days is being deleted.

Paragraph 396.21(b)(2) is being revised to clarify that all motor carriers are required to provide a copy of the inspection report when requested regardless of the time they are in control of the vehicle. The FHWA intends that the motor carrier in control of a vehicle for any period of time is responsible during that period for knowing the location of the inspection report and for producing it if requested to do so. The FHWA further intends that there be no doubt that the motor carrier in control of a vehicle when it is due for re-inspection will be responsible for its reinspection before returning the vehicle to service.

This final rule incorporates revisions to paragraph 396.21(a). These revisions reduce unnecessary paperwork burdens and therefore make the rule more effective. Comments are requested on these revisions.

Paragraph 396.21(a)(1) is being revised by eliminating the requirement that the inspector sign the inspection report. This increase in flexibility will allow the use of electronic recordkeeping procedures in use in many motor carrier operations and reduce the paperwork burdens of this rule. The requirement for the identification of the inspector is maintained. This paragraph is further

revised to acknowledge that more than one person may perform the inspection and to require only the identification of the person responsible for the inspection.

Paragraph 396.21(a)(2) is being deleted. Since the motor carrier is responsible for the annual inspection, information regarding ownership of the vehicle is unnecessary. Eliminating this requirement will reduce the paperwork burden of this rule.

Paragraph 396.21(a)(3) is being revised by deleting the clause, "if other than the registered owner" since the information on ownership in paragraph 396.21(a)(2) is being deleted.

Paragraph 396.21(a)(4) is being revised by deleting the reference to location of inspection since it serves no useful purpose.

Paragraph 396.21(a)(5) (now redesignated as paragraph 396.21(a)(4)) is revised to allow other forms of vehicle identification information provided the vehicle is uniquely identified.

Regulatory Impacts

The FHWA has considered the impacts of this final rule and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the December 7, 1988, final rule, by clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this document have already been considered by the impact documentation prepared for the December 7, 1988, final rule. Any changes to the December 7, 1988 final rule resulting from this document would not appreciably affect the impact documentation initially prepared except for reducing unnecessary paperwork. The Regulatory Evaluation prepared for the December 7, 1988, rulemaking is available for inspection in the headquarters office of FHWA, 400 Seventh Street SW., Washington, DC.

For the same reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The amendments contained in this document clarify, interpret, reduce paperwork burdens and delay implementation of the provisions of the December 7, 1988, final rule. In view of the statutory mandate for this rulemaking and the desire to have the December 7, 1988, final rule implemented in a timely manner, the FHWA believes that these amendments should become effective concurrently with the December 7, 1988, final rule which is December 7, 1989. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act (5 U.S.C. section 553). Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information because of the ministerial nature of this rulemaking action. However, as discussed above, public comment is requested on the procedures being established to augment the FHWA's on-going review.

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.

Federalism Impact

In promulgating the December 7, 1988, final rule, the FHWA considered the President's Executive Order on "Federalism" issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the Executive Order is to assure the appropriate division of governmental responsibilities between the national government and the States. The final rule implements a specific legislative directive to establish minimum Federal safety standards for commercial motor vehicles in interstate commerce contained in sections 206 and 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 2505 and 2509). Therefore, it was determined that the Federalism implications to be considered under the Executive Order did not apply.

List of Subjects in 49 CFR Part 396

Highway safety, Highways and roads, Motor carrier periodic inspection, Motor carriers, Motor vehicle maintenance, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: December 5, 1989.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, subtitle B, chapter III, part 396, as follows:

PART 396—[AMENDED]

1. The authority citation for part 396 continues to read as follows:

Authority: Section 210 of Pub. L. 98–554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2509); 49 U.S.C. 3102; 49 CFR 1.48.

2. Section 396.17 is amended by revising paragraph (c) to read as follows:

§ 396.17 Periodic inspection.

* * * * *

(c) A motor carrier shall not use a commercial motor vehicle unless each component identified in appendix G has passed an inspection in accordance with the terms of this section at least once during the preceding 12 months and documentation of such inspection is on the vehicle. The documentation may be:

(1) The inspection report prepared in accordance with paragraph 396.21(a), or

(2) Other forms of documentation, based on the inspection report (e.g., sticker or decal), which contains the following information:

(i) The date of inspection;

(ii) Name and address of the motor carrier or other entity where the inspection report is maintained;

(iii) Information uniquely identifying the vehicle inspected if not clearly marked on the motor vehicle; and

(iv) A certification that the vehicle has passed an inspection in accordance with § 396.17.

* * * * *

3. Section 396.21 is revised to read as follows:

§ 396.21 Periodic inspection recordkeeping requirements.

(a) The qualified inspector performing the inspection shall prepare a report which:

(1) Identifies the individual performing the inspection;

(2) Identifies the motor carrier operating the vehicle;

(3) Identifies the date of the inspection;

(4) Identifies the vehicle inspected;

(5) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in appendix G to this subchapter; and

(6) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section.

(b) (1) The original or a copy of the inspection report shall be retained by the motor carrier or other entity who is responsible for the inspection for a period of fourteen months from the date of the inspection report. The original or a copy of the inspection report shall be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report shall be available for inspection upon demand of an authorized Federal, State or local official.

(3) *Exception.* Where the motor carrier operating the commercial motor vehicles did not perform the commercial motor vehicle's last annual inspection, the motor carrier shall be responsible for obtaining the original or a copy of the last annual inspection report upon demand of an authorized Federal, State, or local official.

[FR Doc. 89-28770 Filed 12-6-89; 10:27 am]
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DEPARTMENT OF TRANSPORTATION

49 CFR Part 396

[FHWA Docket No. MC-89-10]

Inspection, Repair and Maintenance; Periodic Motor Vehicle Inspection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to commercial motor vehicle carriers on state periodic inspection programs.

SUMMARY: On March 16, 1989, the FHWA published a notice in the **Federal Register** (54 FR 11020) which requested States and other interested parties to identify and/or provide any information or source materials that would describe the type of periodic inspection (PI) programs now being performed in their States for commercial motor vehicles (CMVs). In addition, the FHWA requested that all States with PI programs provide an initial assessment of whether their State programs are comparable to, or as effective as, the PI requisites contained in 49 CFR 396.15 through 396.23.

This notice provides (1) information on the process of determining the effectiveness of State programs and (2) notification of the FHWA's determination of those State PI programs which are comparable to, or as effective as, the Federal standards.

DATE: Docket will remain open until further notification.

ADDRESS: Submit written, signed comments to the FHWA Docket No. MC-89-10, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or WordStar or the Macintosh version of Word. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Hagan, Office of Motor Carrier Standards, (202) 366-2981; or Paul L. Brennan, Office of the Chief Counsel, HCC-10, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 210 of the Motor Carrier Safety Act of 1984 (the Act) Public Law 98-554, 98 Stat. 2829, 2839, required the Secretary of Transportation to establish standards for annual or more frequent inspection of CMVs, and for the retention, by motor carriers, of the records of such inspections. On December 7, 1988, the FHWA published a final rule in the **Federal Register** (53 FR 49402) addressing PIs which implemented the statutory requirements of the Act and amended part 396, "Inspection, Repair, and Maintenance, of the Federal Motor Carrier Safety Regulations (FMCSRs). That final rule requires that all CMVs operating under a motor carrier's control in interstate commerce be inspected and meet the vehicle component standards at least once every 12 months.

This inspection is to be based on Federal inspection standards (also being added to part 396 of the FMCSRs), or a State inspection program determined by the FHWA to be as effective as the Federal standards. Accordingly, if the FHWA determines that the State's PI program is as effective as the requirements of part 396, then a motor carrier's commercial motor vehicles required by the state to be inspected through the state's inspection program must use that program to meet the requirements of this rule. Commercial motor vehicle inspections may be conducted: (a) By State personnel, (b) at State authorized commercial facilities, or (c) by the motor carrier itself under the auspices of a self-inspection program supervised by the State inspection authority.

If the FHWA determines that the State inspection program is not as effective as the Federal requirements then a motor carrier must ensure that the PI is performed on all commercial motor vehicles under its control as specified in part 396. This requirement may be achieved through reliance upon alternative inspection procedures, such as: (1) Self-inspection at a carrier's facility(ies); (2) a roadside inspection; or (3) inspection at a commercial garage, fleet leasing company, truck stop, or other similar commercial business. A carrier's ability to use the commercial alternative is contingent upon the business' operating and maintaining facilities appropriate for CMV inspections and employing qualified inspectors, as required by § 396.19.

Nothing in the final rule was intended to imply that the FHWA seeks to preempt a State from conducting PIs of CMVs, or that a State's inspection program does not improve highway safety. The FHWA believes that any inspection of a vehicle, even under programs not as effective as this rule, should contribute to the removal of unsafe vehicles from the highway.

Elsewhere published in today's **Federal Register** is a final rule on the subject of periodic inspection. The rule contains a revised date for implementation of the Periodic Inspection requirement, July 1, 1990. Previously, implementation was slated for December 7, 1989.

The March 16, 1989, Notice (54 FR 11020), which solicited information about existing PI programs, cited 21 States and the District of Columbia which the National Highway Traffic Safety Administration (NHTSA) had noted were performing some type of periodic inspection of passenger vehicles, small trucks, and/or commercial motor vehicles. These States are:

Arkansas	North Carolina
Delaware	Oklahoma
Hawaii	Pennsylvania
Louisiana	Rhode Island
Maine	South Carolina
Massachusetts	Texas
Mississippi	Utah
Missouri	Virginia
New Hampshire	Vermont
New Jersey	West Virginia
New York	

The NHTSA also indicated that programs for CMVs only are operated

by Illinois and Maryland. The FHWA asked for information that would confirm the existence and type of PI program performed in these jurisdictions.

In response to the March 16, 1989, Notice and subsequent communication with State inspection officials, the FHWA received responses from all 50 States and the District of Columbia. Comments were also received from other groups; these included the New Jersey Motor Truck Association, Virginia Trucking Association, Coalition for Safer, Cleaner Vehicles, ALCO Equipment, Incorporated, and Yellow Freight Systems, Incorporated. Respondents tended to clarify the extent of the individual State PI programs. Several State agencies with programs provided the requested assessment of program effectiveness to the FHWA and enclosed a copy of their most recent inspection guidelines for the FHWA's review.

Responses from the other groups varied from espousing the merits of a particular State's PI program to advocating further investigation and research into inspection requirements and technologies. Both the New Jersey Motor Trucking Association and the Virginia Trucking Association supported the FHWA's effort and encouraged the FHWA to approve their respective State's PI programs as equivalent to the standards contained in part 396. The Virginia Trucking Association also advocated changes to current FHWA requirements for inspection documentation kept with the truck, truck-tractor, bus or trailer.

Both ALCO Equipment and Yellow Freight cited the critical importance of qualified inspectors to the success of State PI programs. The FHWA agrees and inspection requirements were considered as a part of the FHWA's overall assessment of State PI programs.

The Coalition for Safer, Cleaner Vehicles (CSCV) presented a number of recommendations for improving the PI program. These included calls for: auditing procedures for fleet self-inspections programs that would ensure that inspectors are qualified and inspections properly performed and documented; a study of small fleet self-inspections; documenting individual vehicle inspections in a Statewide or national database (e.g., something like SAFETYNET), especially in States without equivalent PI programs; and undertaking demonstration projects to test and evaluate new inspection methods and equipment, with one possible goal being the merging of safety and emission inspections into one periodic inspection program. All the comments received will be used in the FHWA's evaluation of the periodic and roadside inspection programs.

Using the information provided by the respondents, the FHWA compared the documentation received with the requirements of part 396 and determined the relative comparability of each State program with Federal standards. During this effort, the FHWA endeavored to assess each State's program on its own merits without drawing comparisons with those programs offered by other States.

One discovery during the review was the variety of State instructional and procedural guidelines in use. Frequently, these concentrated on providing procedural tips for inspectors on the handling of inspection equipment or manually testing various vehicle components; in some cases, to the exclusion of any language identifying deficiencies. To ensure that inspectors capture all appropriate deficiencies in the course of their inspections, these States may wish to consider adding appropriate language to their manuals that will detail the potential defects that may be found in commercial vehicle systems, as well as the methods needed to detect them.

During the assessment process, the FHWA occasionally was unable to locate sufficient documentation of certain inspection activities. When this situation occurred, the FHWA endeavored to determine from alternative sources at the Federal, State and/or local level that a particular inspection criterion was, in fact, addressed, and that it met the requirements of part 396. Thus, the FHWA's review was not limited strictly to the documentation received from respondents. However, if a defect or deficiency described in part 396, appendix G, was either omitted from the State PI manual or inadequately documented, and no subsequent evidence could be obtained to indicate that the activity was being carried out at a level equivalent to the Federal standard, this finding was noted for consideration in making the final determination of the relative conformance of the State's program to part 396.

On this point, the majority of State inspection manuals currently do not adequately address three inspection areas described in Appendix G: "2. Coupling devices", "4. Fuel Systems", and "6. Safe Loading." The FHWA recognizes that "safe loading" is not a priority issue for review in the PIs, as most vehicles are normally checked in an unloaded condition. Nevertheless, the security of such items as the vehicle headboard, side rails, or other load protection devices must be reviewed to ensure the safe operation of the CMV. Likewise, with tractor and trailer connected, the ability to visually check the fifth wheel plate, pintle hooks, or drawbar is restricted. The danger of failing to thoroughly check these items is self-evident and should be acknowledged through appropriate documentation in the manual. In addition, fuel system checks need better documentation to ensure the timely detection of deficiencies. The FHWA urges States to include language in their manuals to provide inspectors with appropriate criteria to adequately inspect these vehicle systems.

During its review, the FHWA weighed the presence or absence of certain inspection criteria more critically than others. For example, the absence of effective criteria for brake inspections was considered by the FHWA to be a more critical deficiency than the State's insufficient consideration of "safe loading." Thus, in determining the comparability or effectiveness of a State's PI program, the FHWA gave less weight to a State's program if its manual documented a less than an effective inspection of such CMV systems as brakes, steering, lights, tires, and suspension.

Determination

Based on the review of submitted documentation and discussions with various officials, the FHWA determined that the District of Columbia and the States of Maine, Maryland, Michigan, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, Virginia and West Virginia have PI programs that are comparable to, or as effective as the standards outlined in part 396.

Included among those States judged as comparable to the Federal standards are those States with PI programs which are limited to a particular CMV category or type (e.g., buses only). For motor carriers State's operating CMVs that are not captured by States' limited PI program, a alternative means, such as those described above and in the December 7, 1988 final rule, must be used to satisfy PI requirements. In addition, three States with equivalent PI programs, Arkansas, Illinois and Oklahoma, apply their programs only to intrastate motor carriers. In these three States, those interstate motor carriers that elect to have their vehicles inspected under the States' PI programs may avail themselves of State CMV inspection facilities and will be deemed

to have complied with the Federal requirement.

Of the above States, Michigan, New Jersey, and New York, have PI programs which do not cover all commercial motor vehicles. Michigan's equivalent CMV program covers only buses. New Jersey's equivalent CMV program covers only gasoline-powered vehicles. CMVs powered with other types of fuel (e.g. diesel, liquefied petroleum gas, etc.) are subject to self-inspection by the carrier, which is verified by either random roadside inspection or a "terminal audit" (safety review). Motor carriers with CMVs based in New Jersey, using fuels other than gasoline, must comply with the Federal standards through the self-inspection requirements of the State of New Jersey. In New York, the equivalent CMV program applies only to CMVs with a GVWR greater than 18,000 pounds. Motor carriers CMVs based in New York between 10,001 and 18,000 GVWR may use the State program or find alternate methods, as specified in the final rule, to periodically inspect their vehicles to comply with the Federal requirement. The FHWA has determined that the New York State periodic inspection program for buses meets the requirements of part 396.

Motor carriers with CMVs required to be inspected in these 12 States and the District of Columbia must satisfy their periodic inspection requirement through the State PI programs, except where noted. In addition, interstate motor carriers with CMVs based on Arkansas, Illinois and Oklahoma may elect, as noted above, to use these States' PI programs to meet the Federal PI requirement.

The FHWA has determined that all States having equivalent PI programs provide documentation of successfully completed inspections through the issuance of reports, certificates, or decals. These verification documents must be readily available for identification by State roadside inspection personnel to ensure that motor carriers are properly credited with compliance with the inspection requirement. Motor carriers relying on alternative inspection procedures must similarly ensure that inspection documentation is available to the operator to either display or present to inspection personnel upon demand.

The FHWA has determined that all States other than those named above either have no PI program or their PI programs are not comparable to or as effective as the federal standards. Should these States wish to modify their programs to be as "effective" or comparable to the Federal requirements, then the FHWA is ready to work with them to identify the modification(s) required. Any State wishing to be revaluated because of the development of a PI program or a modification of an existing program should contact the appropriate FHWA regional office. The addresses of these regional offices are given in part 390 of the FMCSR.

The FHWA intends to keep this docket open. If a State decides to revise its PI program and, as a result, that State's program becomes comparable to the Federal PI program, this information can be published in the **Federal Register**. The State would then be included among those States determined to have comparable or equivalent programs.

If a State decides not to change its program, or if a State does not have a PI program, motor carriers operating in those States will need to comply with the annual inspection requirements, either through programs in other States or by relying on the alternative inspection options identified above.

List of Subjects in 49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: December 5, 1989.

T.D. Larson,

Administrator.

[FR Doc. 89-28783 Filed 12-6-89; 10:27 am]

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federal register

Friday
December 8, 1989

Part VIII

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 44 and 104

Rules of Practice for Petitions for Modification of Mandatory Safety Standards, Pattern of Violations, Proposed Rule; Extension of Comment Period

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 44 and 104

Rules of Practice for Petitions for Modification of Mandatory Safety Standards; Pattern of Violations; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rules; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rules for rules of practice for petitions for modification of mandatory safety standards in 30 CFR part 44 and pattern of violations in 30 CFR part 104.

DATE: Written comments on the proposed rules must be received on or before December 22, 1989.

ADDRESS: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 5, 1989, MSHA published in the **Federal Register** (54 FR 19492) a proposed rule to revise existing Part 44 by specifying time frames at all stages of the petition for modification process. On June 28, 1989, (54 FR 27188) MSHA extended the comment period to August 7, 1989 in response to requests from the mining community.

On May 30, 1989, MSHA published in the **Federal Register** (54 FR 23156) a proposed safety standard that would identify mines with a "pattern of violations" of mandatory safety standards that significantly and substantially contribute to safety or health hazards. On June 20, 1989, (54 FR 25881) MSHA extended the comment period to August 31, 1989 in response to requests from the mining community.

On October 19, 1989, MSHA published in the **Federal Register** (54 FR 43028) a Notice of Public Hearings which stated that the record for both proposals would remain open until December 8, 1989, for the submission of post-hearing comments. Due to requests from the mining community, MSHA is extending the comment period to December 22, 1989. All interested parties are encouraged to submit comments prior to that date.

Dated: December 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–28897 Filed 12–7–89; 8:45 am]

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S. 974 / Pub. L. 101–195

Nevada Wilderness Protection Act of 1989. (Dec. 5, 1989; 103 Stat. 1784; 6 pages) Price: $1.00

S.J. Res. 16 / Pub. L. 101–196

Designating November 1989 and November 1990 as "National Alzheimer's Disease Month". (Dec. 5, 1989; 103 Stat. 1790; 1 page) Price: $1.00

S.J. Res. 205 / Pub. L. 101–197

Designating December 3 through 9, 1989 as "National Cities Fight Back Against Drugs Week". (Dec. 5, 1989; 103 Stat. 1791; 1 page) Price: $1.00

H.J. Res. 448 / Pub. L. 101–198

Making supplemental appropriations for the fiscal year 1990, and for other purposes. (Dec. 6, 1989; 103 Stat. 1792; 1 page) Price: $1.00