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Rules and Regulations

Federal Register
Vol. 56, No. 150
Monday, August 5, 1991

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-08-AD; Amendment 39-7086; AD 91-15-21]

Airworthiness Directives; Boeing Model 727 Series Airplanes Equipped With Auxiliary Fuel Tanks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires inspection of the fuselage mounted auxiliary fuel tanks for delamination and/or cracking of the outer panels, and repair, if necessary. This amendment is prompted by reports of cracking of a side panel of the auxiliary fuel tanks. This condition, if not corrected, could result in fuel leaking from the fuel tanks into the cargo compartment and creating a potential fire hazard.

DATES: Effective September 9, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

S-051999 0001(00)(02-AUG-91-10:03:26)

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 727 series airplanes, which requires inspection of the fuselage mounted auxiliary fuel tanks for delamination and/or cracking of the outer panels and repair, if necessary, was published in the **Federal Register** on April 8, 1991 (56 FR 14222).

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

Several commenters requested that the compliance time for the initial ultrasonic inspection/leak check (as proposed in paragraph A.) be increased from the proposed 500 flight cycles to 1,000 flight cycles or at the next scheduled "C" check. The commenters stated that in order to accomplish the inspections, it may be necessary to remove the subject fuel tanks; this could best be done at a main maintenance base where trained staff and necessary equipment are available. Additionally, one commenter pointed out that 41 tanks already have been inspected and no damage has been found. The FAA concurs that the initial compliance time can be increased to 1,000 flight cycles without compromising safety. The FAA's intent was that the inspection be accomplished during regularly scheduled maintenance. Paragraph A. of the final rule has been revised accordingly.

One commenter proposed an alternative procedure for complying with the inspection requirements of proposed paragraph A., and requested that the rule be revised to include this procedure. The FAA does not concur that revision of the rule is necessary. Operators may request the use of alternative methods of compliance in accordance with the provisions of paragraph F. of the final rule.

One commenter requested that implementation of the rule be delayed until special non-destructive testing (NDT) equipment is developed that will enable this commenter to accomplish the ultrasonic inspection required by proposed paragraph A.1. The FAA does not concur with this request. Equipment necessary to accomplish the ultrasonic inspection can be manufactured well within the 1,000 flight cycle compliance time of paragraph A.1. Additionally, the commenter may elect to accomplish the leak check in accordance with paragraph A.2. in lieu of the ultrasonic inspection; development of special equipment is not necessary to perform the leak check.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. This change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 112 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 81 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $53,460.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91-15-21. Boeing: Amendment 39-7086. Docket 91-NM-08-AD.

Applicability: Model 727 series airplanes, equipped with Boeing manufactured auxiliary fuel tanks installed in the lower cargo compartments, certified in any category.

Compliance: Required as indicated, unless previously accomplished.

To reduce the potential for fire in the cargo compartment due to fuel leaking from the auxiliary fuel tanks installed in the fuselage cargo compartments, accomplish the following:

A. Within the next 1,000 flight cycles after the effective date of this AD, accomplish one of the following:

1. Conduct an ultrasonic inspection for disbonding of the lower sidewall (curved) panels of the auxiliary fuel tanks in accordance with Part I of the Accomplishment Instructions in Boeing Service Bulletin 727-28-0110, dated September 6, 1990; or

2. Perform a leak check of the auxiliary fuel tanks in accordance with Part III of the Accomplishment Instruction in Boeing Service Bulletin 727-28-0110, dated September 6, 1990. If any fuel leakage is detected, prior to further flight repair, deactivate or remove the auxiliary fuel tanks, in accordance with Part III of the Accomplishment Instructions in the service bulletin. Repeat the leak check prior to each flight.

B. Within the next 12,000 flight cycles after the effective date of this AD, accomplish the inspections of the auxiliary fuel tank and support structure in accordance with Part II of the Accomplishment Instructions in Boeing Service Bulletin 727-28-0110, dated September 6, 1990. Repeat this inspection at intervals not to exceed 12,000 flight cycles. Accomplishment of this inspection constitutes terminating action for the inspection/check requirements of paragraph A. of this AD.

C. Deactivation of the auxiliary fuel tank in accordance with part V of the Accomplishment Instructions in Boeing Service Bulletin 727-28-0110, dated September 6, 1990, constitutes terminating action for the inspection requirements of this AD. If the auxiliary fuel tanks are reactivated, the inspections required by paragraphs A. and B. of this AD must be accomplished prior to exceeding the flight cycle thresholds required by those paragraphs.

Note: Fuel tanks deactivated, but installed in an airplane, accumulate the same number of flight cycles as the airplane.

D. Auxiliary fuel tanks currently not installed in an airplane must be inspected in accordance with part II of the Accomplishment Instructions in Boeing Service Bulletin 727-28-0110, dated September 6, 1990, prior to installation in an airplane.

E. If a disbonded or cracked panel is detected during the inspections required by paragraphs A.1., B., C., or D. of this AD, accomplish one of the following prior to further flight.

1. Replace the panel in accordance with part IV of the Accomplishment Instructions in Boeing Service Bulletin 727-28-0110, dated September 6, 1990; or

2. Deactivate the auxiliary fuel tank in accordance with part V of the Accomplishment Instructions in Boeing Service Bulletin 727-28-0110, dated September 6, 1990; or

3. Remove the auxiliary fuel tank in accordance with the Boeing 727 Maintenance Manual Subject 53-20-31.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

H. The inspection, deactivation, and replacement requirements shall be done in accordance with Boeing Service Bulletin 727-28-0110, dated September 6, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7086, AD 91-15-21) becomes effective September 9, 1991.

Issued in Renton, Washington, on July 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18475 Filed 8-2-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-14-AD; Amendment 39-7089; AD 91-15-24]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires penetrant inspection and proof pressure testing of the auxiliary power unit (APU) pneumatic ducts, and repair or replacement, as necessary; and a one-time stress relief of the duct assemblies. This amendment is prompted by reports of cracked or ruptured APU pneumatic ducts that have caused damage to adjacent structure, pneumatic ducts, and hydraulic lines. This condition, if not corrected, could result in damage to the adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring.

DATES: Effective September 9, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2675. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires penetrant inspection and proof pressure testing of the auxiliary power unit (APU) pneumatic ducts, and repair or replacement, as necessary; and a one-time stress relief of the duct assemblies; was published in the **Federal Register** on March 8, 1991 (56 FR 9907).

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

Several commenters requested that the FAA withdraw the proposed rule, because the justification for it is not sufficient to satisfy the requirements of part 39 of the Federal Aviation Regulations (FAR). These commenters recognized that there have been a number of APU duct leaks, but since the APU normally is not operational in flight, the APU ducts normally are not pressurized during flight. Furthermore, the APU ducts are subject to lower pressures during operation and are used for only approximately 10% of the time that the wing leading edge and crossover ducts are used. These commenters stated that the consequences that could occur from an APU duct leak would not lead to an airworthiness concern. These commenters also stated that all of the APU duct ruptures have occurred on the ground, not in flight. One commenter stated that the APU manifold integrity is protected during flight by an isolation valve, and that there are no common pneumatic ducts between the APU ducts and the leading edge/crossover ducts. The FAA does not concur with the commenters' requests to withdraw the rule, or with the commenters' statements that the rule is not justified. The FAA has determined that APU duct failures justifiably meet the established FAR part 39 criteria for an unsafe condition since APU pneumatic ducts on in-service airplanes have ruptured and damaged adjacent structure, pneumatic ducts, and hydraulic lines. In one incident, a ruptured APU pneumatic duct jammed the elevator control. In another incident, a ruptured APU pneumatic duct led to an emergency evacuation in which several passengers were injured. In yet another incident, a ruptured APU pneumatic duct damaged two hydraulic lines, which consequently had to be replaced. While it is true that all of these incidents occurred while the airplanes were on the ground, the potential exists for similar incidents to occur in flight, since Model 747–100, –200, and –300 airplanes are certificated for APU operation up to 20,000 feet pressure altitude and Model 747–400 airplanes are certificated for APU operation up to 15,000 feet pressure altitude. The requirements of this AD are intended to preclude the possibility of APU ruptures—and the subsequent significant damage—from occurring while the airplane is either in flight or on the ground. In regard to the comments concerning the lower pressures to which the APU ducts are subject during operation, and the amount of time that the APU duct is used as compared to that of the wing leading edge and crossover ducts, the FAA has determined that the duct weld failures are cycle-dependent and not time-dependent. In addition, although the wing leading edge and crossover ducts may be used more, there have been more ruptures reported of the APU duct than of the wing leading edge duct or crossover duct.

One commenter requested that the applicability of the AD not apply to airplanes on which the APU air inlet scoop has been removed to preclude APU operation during flight. (This commenter stated that the air inlet scoop for the APU had been removed from its fleet of Model 747 series airplanes.) The FAA does not concur, since the in-service history of APU duct failures has demonstrated that they pose a significant safety hazard on the ground.

Several commenters requested that the applicability of the AD not apply to operators who have procedures in their manuals which prohibit APU operation in flight. The FAA does not concur. As discussed above, numerous incidents of APU duct ruptures have occurred while the airplane is on the ground and have caused significant damage. Therefore, it is necessary to ensure safe operation of the APU on the ground, as well as in flight, by issuing this AD.

Several commenters requested that the AD not apply to airplanes on which reinforcement rings have been added to the APU pneumatic ducts. These commenters stated that APU duct failures have not been experienced since reinforcement rings were added to prevent the ducts from collapsing. The FAA does not concur. The FAA has received confirmed reports of duct weld failures on pneumatic ducts with the reinforcement rings installed. The duct reinforcement rings will not prevent the duct weld failures.

Several commenters requested that the proposed rule be revised to require the initial inspection within 6,000 flight cycles, in lieu of the proposed 3,000 flight cycles. These commenters stated that the required actions for the leading edge and crossover pneumatic ducts, as well as the APU pneumatic ducts, will create scheduling problems that will increase the cost of compliance significantly above the FAA cost estimate. The FAA does not concur with the request for an extension of the initial compliance time. The FAA has determined that the compliance time, as proposed, represents the maximum time allowable for the affected airplanes to continue to operate prior to the required inspections without compromising safety. Further, based on the average aircraft utilization rate for this model, the proposed compliance time of 3,000 flight cycles is equal to approximately 4 years; the FAA considers this to be an ample amount of time to schedule the required inspection.

One commenter requested that the proposed rule be revised to require the initial inspection of the APU pneumatic ducts within 3,000 flight cycles or at the next "D" check (approximately 7,000 flight cycles), whichever occurs later; and to permit a repetitive inspection to be conducted at every "D" check thereafter if the ducts are not stress-relieved. The commenter stated that the basis for this recommendation is that the APU pneumatic ducts are unpressurized most of the time during flight and, therefore, would not pose a flight safety concern. The FAA does not concur. Since maintenance schedules vary from operator to operator, there would be no assurance that the inspection would be accomplished at intervals of 7,000 flight cycles. Under the provisions of paragraph D. of the final rule, however, operators may apply for approval of an alternative method of compliance or adjustment of the compliance time if sufficient justification is presented to the FAA. Furthermore, to continue to perform the inspection at intervals of 7,000 flight cycles is contrary to the FAA's determination that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term repetitive inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual special procedures, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvement. The stress relieving procedure requirement of this AD action is in consonance with that policy decision.

The manufacturer requested that the AD applicability be changed to Model 747 series airplanes, line positions 2 through 720, for APU ducts in body sections 44, 46, and 48; and line positions 721 through 734, for APU ducts in body sections 44 and 48. The FAA concurs. Since the accomplishment instructions contained in Boeing Service Bulletin 747–36–2081, dated November 29, 1990, do not clearly define which

APU pneumatic ducts do not require inspection on airplanes line position 721 through 734, the applicability section of the final rule has been revised to clarify which APU pneumatic ducts require inspection or replacement. This does not change airplane applicability.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of this AD.

There are approximately 714 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 214 airplanes of U.S. registry will be affected by this AD, that it will take approximately 724 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,521,480.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91-15-24. Boeing: Amendment 39-7089. Docket No. 91-NM-14-AD.

Applicability: Model 747 series airplanes, line positions 2 through 720 for Auxiliary Power Unit (APU) pneumatic ducts in body sections 44, 46, and 48; and line positions 721 through 734 for APU pneumatic ducts in body section 44 and 48; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent damage to adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring as a result of failure of Auxiliary Power Unit (APU) pneumatic ducts, accomplish the following:

A. Prior to the accumulation of 7,000 flight cycles, or within the next 3,000 flight cycles after the effective date of this AD, whichever occurs later, conduct a penetrant inspection, proof pressure test, and penetrant inspection again to detect cracks or ruptures in the APU pneumatic ducts in accordance with the Accomplishment Instructions, Items A. through G., K., O., and P. of Boeing Service Bulletin 747-36-2081, dated November 29, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with service bulletin. The stress relieving procedure specified in Accomplishment Instructions, Items H., I., and J. of the service bulletin may be accomplished in conjunction with the penetrant inspection and proof pressure test required by this paragraph, and constitutes terminating action for the requirements of paragraph B. of this AD for all APU pneumatic ducts.

B. Prior to the accumulation of 7,000 flight cycles after the accomplishment of the initial inspection required by paragraph A. of this AD, conduct an additional penetrant inspection, proof pressure test, and penetrant inspection of the APU pneumatic ducts, and stress relieve the APU pneumatic duct assemblies, in accordance with the Accomplishment Instructions, Items A. through K., O., and P. of Boeing Service Bulletin 747-36-2081, dated November 29, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with the service bulletin.

C. Replacement of all APU pneumatic ducts in accordance with Accomplishment Instructions A., B., L. through O., and P. of Boeing Service Bulletin 747-36-2081, dated November 29, 1990; or in accordance with Boeing Service Bulletin 747-36-2092, dated June 28, 1990; constitutes terminating action for the requirements of this AD.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

F. The penetrant inspections; proof pressure testing, and stress relieving shall be done in accordance with Boeing Service Bulletin 747-36-2081, dated November 29, 1990. APU pneumatic duct replacement shall be done in accordance with either Boeing Service Bulletin 747-36-2081, dated November 29, 1990, or Boeing Service Bulletin 747-36-2092, dated June 28, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7089, AD 91-15-24) becomes effective September 9, 1991.

Issued in Renton, Washington, on July 16, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18476 Filed 8-2-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-01; Amdt. 39-7080]

Airworthiness Directives; General Electric Co. (GE), CF6-45/-50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),

applicable to certain GE CF6–45/–50 series turbofan engines, which requires repetitive eddy current inspections to detect high pressure turbine (HPT) thermal shield cracking. The AD also requires the removal of cracked HPT thermal shields and certain HPT disks. This amendment is prompted by four HPT stage one disks found cracked during inspection. This condition, if not corrected, could result in an uncontained engine failure.

DATES: Effective September 4, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 1991.

ADDRESSES: The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert Guyotte, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7094.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include a new airworthiness directive, applicable to GE CF6–45/–50 series turbofan engines, which requires repetitive eddy current inspections of HPT thermal shields and the removal of cracked HPT thermal shields and certain HPT disks, was published in the Federal Register on February 25, 1991, (56 FR 7613).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the five comments received. Three of the commenters expressed no objection to the adoption of the proposed rule.

One commenter stated that the proposed rule should not be adopted. The commenter further stated that thermal shield cracking can be controlled with certain HPT build requirements.

The FAA does not concur with the commenter. The proposed eddy current inspection program was chosen because it provides an acceptable level of safety while simultaneously minimizing economic burden. Further, the proposed rule allows for the approval of alternate methods of compliance provided sufficient substantiating data is submitted to the FAA.

This same commenter recommended that the thermal shield effectivity be expressed by assembly part number instead of detail part number. The FAA does not concur that the assembly part number is required to identify the affected parts. However, a list of affected assembly part numbers will be included in the AD.

The other commenter requested that the eddy current inspection interval for CF6–45 series engines be increased from 400 cycles to 500 cycles based on its reduced takeoff thrust rating. The FAA does not concur with the commenter. The commenter did not provide any data to substantiate the requested inspection interval increase.

The economic impact analysis contained in the final evaluation has been reduced slightly to reflect additional information received since issuance of the proposal.

After review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 517 GE CF6–45/–50 series engines of the affected design installed on aircraft of U.S. registry which will be affected by this AD. It is estimated that it will take approximately 0.5 manhours per engine for each inspection, that each engine will require 10 inspections, and that the average labor cost will be $55 per manhour. Also, it is estimated that approximately 30 engines will require modifications prior to initial inspections, and that this cost is estimated to be $735 per engine, yielding an additional total cost for these engines of $22,050. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $164,225.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91–15–16—General Electric Company: Amendment 39–7080, Docket No. 91–ANE–01.

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines, installed on, but not limited to, Airbus A300, Boeing 747, and McDonnell Douglas DC–10–15 and DC–10–30 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent uncontained engine failure, accomplish the following:

(a) Eddy current inspect affected high pressure turbine (HPT) thermal shields, Part Numbers (P/N's) 9045M31P04, 9045M31P05, 9045M31P07, 9045M31P08, 9045M31P09, 9045M31P10, 9045M31P12, 9045M31P13, 9143M71P01, 9143M71P02, 9155M16P01, 9155M16P02, 9155M16P03, 9155M16P04, 9181M64P01, 9181M64P02, 9181M64P07, 9181M64P08, 9181M64P10, 9186M96P02, and 9186M96P03, in accordance with the Accomplishment Instructions contained in GE CF6–50/–45 Service Bulletin (SB) 72–879, Revision 6, dated October 30, 1990, as follows:

(1) Inspect prior to accumulating 800 cycles since last HPT overhaul or 400 cycles in service after the effective date of this AD, whichever occurs later.

(2) Thereafter, reinspect at intervals not to exceed 400 cycles since last inspection.

(3) Remove cracked HPT thermal shield from service prior to further flight and replace with a serviceable part.

(b) Affected HPT thermal shields stated in paragraph (a) of this AD, would also be assembled into one of the following HPT thermal shield assembly P/N's: 9045M53G04, 9045M53G05, 9045M53G07, 9045M53G08, 9045M53G09, 9045M53G10, 9045M53G12, 9045M53G13, 9045M53G14, 9186M78G01, 9186M78G02, 9186M78G03, 9186M78G04, 9186M78G05, 9186M78G06, 9186M78G07, 9186M78G08, 9208M76G02, 9208M76G03, and 9208M76G04.

(c) For the purpose of this AD, an HPT overhaul is defined as the induction of the engine into a shop where the subsequent maintenance entails HPT disassembly.

(d) The eddy current inspection requirements of paragraph (a) of this AD are not applicable to engines incorporating an affected P/N thermal shield that has operated exclusively with an interstage seal, P/N 9315M16G14, 9315M16G15, or 9315M16G17, provided the owner or operator submits to their Airworthiness Inspector the configuration documentation substantiating that the affected thermal shield has never been operated with a P/N 9045M23G07, 9045M23G08, 9045M23G09, 9045M23G10, 9045M23G11, or 9045M23G12 interstage seal.

(e) Prior to further flight, remove from service HPT stage one disks which have operated in engines containing an HPT thermal shield cracked through its forward flange. These removed HPT stage one disks may not be returned to service.

(f) Prior to further flight, remove from service HPT stage two disks which have operated in engines containing an HPT thermal shield cracked through its rear flange. HPT stage two disks may be returned to service if no cracks are detected when inspected in accordance with appendix I.

(g) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(h) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

(i) The eddy current inspections shall be done in accordance with the following GE CF6–50/–45 SB 72–879:

Page No.	Issue/ Revision	Date
3–14, 17–26, 29–31	Rev. 5	1/6/88
1, 2, 16, 28	Rev. 6	10/30/90
15, 27	Orig	1/24/86

Note: Total Pages: 31.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

Appendix I

1. Reference: CF6–50 Shop Manual Document No. GEK–50481.

2. Accomplishment Instructions:

A.(1) Clean, etch, and fluorescent penetrant inspect (FPI) the high pressure turbine rotor (HPTR) stage two disk according to Chapter 72–53–04, *High Pressure Turbine Rotor Stage 2 Disks—Inspection*, paragraph 2, *Fluorescent—Penetrant Inspect Disk*, of the reference shop manual.

(2) The immersion ultrasonic inspection (Subtask 72–53–04–270–051) may be used in lieu of an FPI for the stage 2 disk dovetail serrations only.

B.(1) Clean, etch, and eddy current inspect (ECI) the HPTR stage two disk dovetail slot bottoms according to Chapter 72–53–04, *High Pressure Turbine Rotor Stage 2 Disk—Inspection*, paragraph 5, *Special Inspection of Dovetail Slot Bottoms*, of the reference shop manual.

(2) If ECI capability is not available, the disk must be recleaned in accordance with paragraph 2.A (stating with Subtask 72–53–04–140–051). The slot bottoms must then be fluorescent penetrant inspected in accordance with paragraph 2.D (Subtask 72–53–04–230–001–057) paying special attention to slot bottom corners.

This amendment (39–7080, AD 91–15–18), becomes effective September 4, 1991.

Issued in Burlington, Massachusetts, on July 8, 1991.

Jack A Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91–18477 Filed 8–2–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–18–AD; Amendment 39–7087; AD 91–15–22]

Airworthiness Directives; McDonnell Douglas Model DC–10–40 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10–40 series airplanes, which requires replacement of one of the existing fuel line protective shields with an enlarged shield. This amendment is prompted by a report of an uncontained failure on a number 2 engine in which fan blade fragments penetrated the engine bellmouth and caused subsequent damage to the fuel line and fuel shutoff cable. This condition, if not corrected, could result in engine fragments puncturing the fuel line and severing the engine fuel shutoff cable; this could result in an engine fire, while the flight crew would not be able to shutdown the engine using the engine fuel shutoff lever.

DATES: Effective September 9, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: DC–10echnical Publications, Technical Administrative Support C1–L5B. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5262.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC–10–40 series airplanes, which requires replacement of one of the existing fuel line protective shields with an enlarged shield, was published in the Federal Register on March 22, 1991 (56 FR 12131).

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

One commenter requested that the proposed compliance time of one year be extended to 15 months. The commenter stated that the additional time is necessary since the ground equipment to perform the modification is only available during a regular maintenance base visit and the date when the required modification kit would be available has not been established. The FAA concurs that the comments were valid when submitted. However, the manufacturer has advised that ample modification kits are now

available; therefore, extending the compliance time is not necessary in regard to parts availability. Further, in developing an appropriate compliance time for this rulemaking action, the FAA considered the safety implications and parts availability, as well as normal maintenance schedules for timely accomplishment of the modification. An operator may apply for an adjustment to the compliance time under the provisions of paragraph B. of the final rule, if supporting justification is provided.

There are approximately 41 McDonnell Douglas Model DC–10–40 series airplanes of the affected design in the worldwide fleet. It is estimated that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,550.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91–15–22. McDonnell Douglas: Amendment 39–7087. Docket No. 91–NM–18–AD.

Applicability: McDonnell Douglas Model DC–10–40 series airplanes, as listed in McDonnell Douglas Service Bulletin 71–154, dated January 18, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent fuel line and engine fuel shutoff cable damage and possible fire caused by an uncontained engine failure, accomplish the following:

A. Within one year after the effective date of this AD, replace the fuel line shield on the left side of the number 2 engine bellmouth panel, and install an additional plate, as applicable, in accordance with the accomplishment instructions of McDonnell Douglas DC–10 Service Bulletin 71–154, dated January 18, 1991.

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

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

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

D. The replacement and installation requirements shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 71–154, dated January 18, 1991. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: DC–10 Technical Publications, Technical Administrative Support C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the **Federal Register**, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7087, AD 91–15–22) becomes effective September 9, 1991.

Issued in Renton, Washington, on July 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18478 Filed 8–2–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80–53]

Maximum Lawful Price and Inflation Adjustments Under the Natural Gas Policy Act

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under title I of the Natural Gas Policy Act (NGPA) for the months of August, September, October, 1991. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Garry L. Penix, (202) 208–0622.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued July 30, 1991.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of August, September, October, 1991, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to August, 1991, are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for August, September, October, 1991, in tables I and II.

(a) * * *

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA sections 104 and 106(a)]

Subpart of part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in—		
			Aug. 1991	Sept. 1991	Oct. 1991
B	102	New natural gas, certain OCS gas [1]	$6.308	$6.349	$6.390
C	103(b)(1)	New onshore production wells [2]	3.764	3.777	3.790
E	105(b)(3)	Intrastate existing contracts	5.935	5.969	6.003
F	106(b)1(B)	Alternative maximum lawful price for certain intrastate rollover gas [3]	2.153	2.160	2.167
G	107(c)(5)	Gas produced from tight formations [4]	7.528	7.554	7.580
H	108	Stripper gas	6.757	6.801	6.845
I	109	Not otherwise covered	3.114	3.124	3.134

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in subpart C of part 271. The incentive ceiling price does not apply to certain gas after May 12, 1990, as a result of Commission Order No. 519–A. (See § 271.703 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(A) (SUBPART D, PART 271)

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries in—		
	Aug. 1991	Sept. 1991	Oct. 1991
Post-1974 gas: [2] All producers	$3.114	$3.124	$3.134
1973–1974 Biennium gas:			
Small producer	2.626	2.635	2.644
Large producer	2.015	2.022	2.029
Interstate rollover gas: All producers	1.154	1.158	1.162
Replacement contract gas or recompletion gas:			
Small producer	1.481	1.486	1.491
Large producer	1.130	1.134	1.138
Flowing gas:			
Small producer	.745	.747	.750
Large producer	.630	.632	.634
Certain Permian Basin gas:			
Small producer	.881	.884	.887
Large producer	.781	.784	.787
Certain Rocky Mountain gas:			
Small producer	.881	.884	.887
Large producer	.745	.747	.750
Certain Appalachian Basin gas:			
North subarea contracts dated after 10–7–69	.711	.713	.715
Other contracts	.659	.661	.663
Minimum rate gas: [1] All producers	.388	.387	.388

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

[2] This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).

§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of August, September, October, 1991 in table III.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery	Factor by which price in preceding month is multiplied
1991:	
August	1.00335
September	1.00335
October	1.00335

[FR Doc. 91-18450 Filed 8-2-91; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-91-1559; FR-3108-F-01]

Mortgage Insurance; Changes in Interest Rates

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

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: June 17, 1991.

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

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 insurance programs has been raised from 9.00 percent to 9.50 percent.

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

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56266 (1982), amending 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in section 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*l*) of section 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small adjustment in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 24, 1990, (53 FR 41974) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance Program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low- and Moderate-Income Housing, Mortgage Insurance, Homeownership, Grant Programs: housing and community development.

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

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

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

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

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

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum with respect to mortgages insured on or after June 17, 1991.

* * * * *

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

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum with respect to mortgages insured after June 17, 1991.

* * * * *

Dated: June 23, 1991.

Ronald A. Rosenfeld,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 91-18517 Filed 8-2-91; 8:45 am]
BILLING CODE 4210-27-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-91-3077; FR-2938-N-04]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation for Three Market Areas (Detroit, MI; Marquette, MI; North Platte, NE)

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

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires that the Secretary establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document establishes Fiscal Year 1989 FMRs for the Section 8 New Construction Program and the Section 8 Substantial Rehabilitation Program for three market areas that were not made final when all other market areas were made final by publication of a Final Notice in the Federal Register on April 24, 1991.

These FMRs are based primarily upon the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area, as determined by HUD Field Office staff—hereafter referred to as "Process A". They also reflect the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs—hereafter referred to as "Process B". The FMRs established by this Notice are the lesser of the rents determined by Process A or Process B.

EFFECTIVE DATE: August 5, 1991, retroactive to September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief, Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 708–0624. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. The Section 8 Housing Assistance Payments Program currently provides assistance for section 202 elderly new construction and substantial rehabilitation proposals. Under this program, HUD makes rental assistance payments on behalf of eligible families to the mortgagor entity.

Total housing expense represents the total monthly cost of housing for an eligible family, which is the sum of the contract rent plus any utility allowance for the assisted unit occupied by the family. Where the unit is leased to an eligible family, the housing assistance payment represents the difference between the total housing expense and the total family contribution. Initial contract rents plus any allowance for utilities generally may not exceed area-wide FMRs established by the Department.

Section 8(c)(1) of the Act states that the Secretary shall establish FMRs periodically, but not less frequently than annually. Section 8(c)(1) further provides that the Department shall publish FMRs in the Federal Register, with reasonable time for public comment, and that the FMRs will become effective upon their publication in final form in the Federal Register.

The Department determined that rule making was not necessary, because the rule making procedure delayed timely publication of the FMRs. Accordingly, the Department published a final rule on September 25, 1985, (50 FR 38791) changing the FMR publication procedure to a Notice procedure, effective October 30, 1985. FMRs are published as a Proposed Notice with a 30-day comment period. Once the 30-day comment period has expired and the comments are considered, any revised FMRs may afterwards be published for effect in the Federal Register.

A proposed notice for FY 1989 FMRs was published in the Federal Register on February 19, 1991, and the public was afforded a 30-day comment period in which to submit comments on the FY 1989 FMRs. The Department received a total of 34 comments from Field Offices and the public.

Because of a large backlog of prior fiscal year section 202 cases, there was a pressing need to publish these FMRs for effect. Therefore, a Final Notice was published in the Federal Register on April 24, 1991, that established the FMRs for those market areas for which no public comments were received.

The comments that were received related to three market areas—Detroit, Michigan; Marquette, Michigan; and North Platte, Nebraska. The largest number of commenters stated that the proposed FY 1989 FMRs were too low for the three market areas. As a result of the Department's analysis of all of the comments that were submitted, the FMRs for the affected market were revised and are appended to this Final Notice.

The FY 1989 FMRs reflected data submitted by the Field Offices, as well as cost containment efforts implemented for these FY 1989 New Construction and Substantial Rehabilitation rents. While the data submitted by the Grand Rapids Field Office was proper, it reflected rent comparables built during the mid-1970's for Marquette, Michigan. Moreover, Marquette, Michigan is situated in the Upper Peninsula of Michigan and requires high costs to transport building materials to that area. Further, there has been no new construction of modestly designed rental housing for this market area in recent years.

The Marquette, Michigan FY 1989 FMR schedules had been limited, not only by the paucity of new rental comparables which are less than six years old, but also by cost containment policy considerations which resulted in rents that were less than those originally submitted by this Field Office. After comments were received from the Field Office and from the public, the Department investigated and reanalyzed this rent schedule by applying an interpolation procedure which permits a better utilization of the limited market data. As a result, the Department found that the rents published for comment did not adequately reflect current market conditions. Accordingly, the FY 1989 FMRs were increased to the level of the originally submitted rents for the Marquette, Michigan market area. These higher rents are supported by interpolation methods.

When the Detroit FY 1989 FMRs were published for comment, virtually all the rents were reduced from the level of the originally submitted rents, due to HUD cost containment policy. Comments received from the Detroit Field Office and from the public indicated that the FMRs as published were too low and did not reflect current market conditions. The Department further analyzed the comments received and found that the FY 1989 FMRs were insufficient to support project feasibility for much needed units in the Detroit market area. As a result, the FY 1989 FMR schedule for Detroit, Michigan was increased to the level of the rents that were originally submitted by the Field Office. These FMRs are supported by the market rents surveyed by the Detroit Field Office.

The Omaha Field Office commented that, due to the paucity of rental data caused by market inactivity in North Platte, Nebraska, the FY 1989 FMRs had

been developed based upon interpolation techniques. Further analysis revealed that the original FMR schedule for that area was low in relation to other nearby market areas, and that there was not an appropriate relationship between the North Platte market area and the three adjoining Nebraska market areas. As a result, HUD asked the Field Office to resubmit revised FMRs for that market area in order to provide more consistency in the FMRs for all Nebraska market areas and to permit a well-designed and badly needed proposal to be economically feasible in the North Platte market area.

This Notice

Today's document establishes the Fiscal Year (FY) 1989 FMRs for new construction and substantial rehabilitation that shall apply to section 202 elderly proposals selected on or after September 15, 1989, under part 885 for the Detroit (Michigan), Marquette (Michigan), and North Platte (Nebraska) market areas.

The FMRs are based primarily on the levels of rents paid for recently completed or newly constructed dwelling units of modest design within each market area, as determined by HUD Field Office staff, trended ahead to September 30, 1990, to allow time for the period of construction or rehabilitation of the projects involved. They are estimates of rentals that prospective tenants who are not receiving Federal rent subsidies would be willing and able to pay for recently completed or newly constructed dwelling units of modest design, with suitable amenities. They do not necessarily represent rents needed to support construction and operating costs.

This Notice includes FMRs for 0, 1, 2, 3 and 4-bedroom units in five structural categories (detached, semi-detached/row, walkup, 2-4-story elevator, and 5+-story elevator buildings). Construction or rehabilitation of elevator projects for families with children is prohibited unless there is no practical alternative. FMRs for family units in elevator structures are proposed for appropriate market areas; however, the determination that there is "no practical alternative" must be made on a project-by-project basis. HUD regulations also provide that high-rise elevator projects for the elderly may be approved only if HUD determines that high-rise construction is appropriate after taking into account land costs, safety and security factors.

Applicability

1. For section 202 projects for the elderly with Section 8 assistance selected on or after September 15, 1989, contract rents shall be based on the FY 1989 FMRs published herein. If the project meets HUD's cost containment guidelines and economic feasibility requirements, these FMRs may be increased by up to 10 percent with the approval of the Field Office Manager, or by up to 20 percent with the approval of the Regional Administrator upon publication in the near future of a redelegation of authority to that effect. However, until then, this authority remains with the Assistant Secretary for Housing.

2. For all FY 1988 and prior year section 202 selections for which firm commitments are issued after the effective date of the FY 1989 FMRs, the maximum approvable FMRs will be 110 percent of the FY 1989 FMRs, except that where a higher rent is needed for project feasibility, the maximum approvable FMRs shall be the amount above 110 percent of the FY 1989 FMRs necessary to service the debt at a 9 percent interest rate rather than an 8.375 percent interest rate. In no event, however, may the approved FMR exceed 120 percent of the FY 1989 FMR. Approvals above 110 percent of the FY 1989 FMRs will require the Assistant Secretary's prerogative. For all projects where the FY 1989 FMRs are lower than the FMRs applicable in the year that the project was selected, the contract rents shall be based upon the higher of:

(1) The final published FY 1989 FMRs, or

(2) The FMRs applicable for the year in which the project was selected.

Other Information

HUD regulations in 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in 24 CFR 50.20. Since the FMRs proposed in this Notice are within the exclusion set forth in 24 CFR 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Housing Assistance Program (Section 8).

Accordingly, the Department revises Schedule A of 24 CFR part 888 to add the three market areas as set forth below:

(These FMRs will not be codified in part 888 of title 24 of the Code of Federal Regulations.)

Authority: Section 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437(f); Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: July 30, 1991.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation

Special Category Computations

1. FMRs for dwelling units designed for the elderly or handicapped are those for appropriate size units, not to exceed two bedrooms for the elderly, multiplied by 1.05.

2. Congregate housing dwelling unit FMRs are the same as for non-congregate units.

3. Single-room occupancy dwelling unit FMRs (applicable only for substantial rehabilitation projects) are 75 percent of those for zero-bedroom units of the same structural type.

4. FMRs for living units in a group home are those for a zero bedroom or a one bedroom unit of the walkup structural type (or if the group home contains an elevator, of the 2-4 story elevator structural type). Each living unit in a group home is composed of a bedroom plus a proportionate part of common living space ordinarily included in a living unit. One-bedroom FMRs for group homes may be applied only when the project conforms to the following criteria.

a. The project meets HUD's cost containment guidelines, and

b. Use of the one bedroom FMR must be necessary in order to assure the economic feasibility and financial soundness of the project.

Rent Computations

All rents computed in accordance with this note shall be rounded down to the nearest whole dollar. Similarly, all FMRs increased by up to 10 percent with the approval of the HUD Field Officer Manager, or by up to 20 percent with the approval of the Assistant Secretary for Housing should have the result rounded down to the nearest whole dollar.

BILLING CODE 4210-27-M

SCHEDULE A- FAIR M
(INCLU

REGION 5

DETROIT DFFICE

MARKET: DETROIT

STRUCTURE TYPE	NUMBER DF BEDRDDMS -0-	-1-	-2-	-3-	-4+
DETACHED			706	883	991
SEMI-DETACHED/RDW	465	531	637	797	917
WALKUP	428	524	597	735	852
ELEVATDR 2-4 STY	458	539	612		
ELEVATOR 5+ STY	468	576	705		
MANUFACTURED HOME					

EFFECTIVE DATE 100188
TRENDED DATE 100190

PREPARED DN 070291

AIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
NCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

DMS
-4+
991
917
852

0188
0190

SCHEDULE A- F
(

REGION 5

GRAND RAPIDS OFFICE

MARKET: MARQUETTE

STRUCTURE TYPE	NUMBER OF BEDRO -0-	-1-	-2-	-3-
DETACHED			681	810
SEMI-DETACHED/ROW	517	591	715	740
WALKUP	374	424	516	648
ELEVATOR 2-4 STY	394	471	572	
ELEVATOR 5+ STY	576	660	798	
MANUFACTURED HOME				

EFFECTIVE DATE 10
TRENDED DATE 10

PREPARED ON 070291

A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

TTE EDROOMS -3-	-4+
810	960
740	851
648	677

100188
100190

SCHEDULE A- FAIR
(INCL

REGIDN 7

OMAHA DFFICE

MARKET: NORTH PLATTE

STRUCTURE TYPE	NUMBER DF BEDROOMS -0-	-1-	-2-	-3-	-4
DETACHED			565	664	776
SEMI-DETACHED/ROW	400	468	560	659	77
WALKUP	354	424	516	600	683
ELEVATOR 2-4 STY	422	483	591		
ELEVATDR 5+ STY	465	533	654		
MANUFACTURED HOME					

EFFECTIVE DATE 100188
TRENDED DATE 100190

PREPARED ON 070291

[FR Doc. 91–18474 Filed 8–2–91; 8:45 am]
BILLING CODE 4210-27-C

FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

TTE OOMS	-4+
	776
	771
	683
OO188	
OO190	

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Coal Surface Mining Reclamation Fund

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

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval of proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of revisions to sections 45.1–261.1, 45.1–270.3, 45. 1–270. 4, and 45.1–270.4:1 of the Code of Virginia, Part 480–03.19.801 of the Coal Surface Mining Reclamation Regulations, and the repeal of 45.1–270.3:1 of the Code of Virginia, all of which relate to Virginia's Coal Surface Mining Reclamation Fund (hereinafter, Pool Bond Fund). The amendments, as proposed, seek to strengthen the Pool Bond Fund.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

The Secretary of the Interior conditionally approved the Virginia program on December 15, 1961. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1961 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Submission of Amendments

By letter dated April 5, 1991 (Administrative Record No. VA–790), Virginia submitted proposed amendments to the Code of Virginia relating to the Pool Bond Fund, intended to strengthen the financial stability of the Fund. OSM announced receipt of the proposed amendment in the April 24, 1991, **Federal Register** (56 FR 18792), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

By letter dated May 1, 1991 (Administrative Record No. VA–795), Virginia submitted proposed amendments to the Coal Surface Mining Reclamation Regulations in order to achieve consistency with the statutory changes to the Code of Virginia included in the State's submission of April 5, 1991. OSM announced receipt of the proposed amendment in the May 22, 1991, **Federal Register** (56 FR 23533), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

To provide clarity and continuity to the review and decision making process, the Director is combining these proposed statutory and regulatory changes, both of which concern bonding, into one rulemaking.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendments. Revisions that are not discussed below concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Virginia is revising subsection A of section 45.1–261.1 of the Code of Virginia to allow operators to bid on contracts to conduct reclamation projects under the Pool Bond Fund. The operator must have at least three years of relevant mining experience in Virginia and must meet all other applicable requirements of Federal, State and local law. While the proposal has no direct Federal counterpart, the Director finds the proposal will serve to promote reclamation and is, therefore, not inconsistent with the requirements of SMCRA and the Federal regulations.

2. Virginia is revising its regulations at VR 480–03–19.801.11(a) to require that applicants for the Pool Bond Fund must demonstrate at least a consecutive three year history of compliance under the Act or any other comparable State or Federal Act. This revision makes the regulations consistent with the statutory requirement found in section 45.1–270.2.A of the Code of Virginia which was approved by the Director on February 2, 1990 (55 FR 3588). While the proposal has no direct Federal counterpart, the Director finds that the proposal will serve to promote the stability of the Pool Bond Fund by improving the quality of its membership and is, therefore, not inconsistent with 30 CFR 800.11(e).

3. Virginia is revising VR 480–03–19.801.12(a) to increase the entrance fee for participation in the Pool Bond Fund from $1,000 to $5,000, whenever the Pool Bond Fund balance is determined to be less than $1,750,000. The fee shall revert to $1,000 when the total Pool Bond Fund balance is greater than $2,000,000. In addition, the proposal provides for a $1,000 renewal fee at permit renewal. There is no direct Federal counterparts to the rules contained in VR 480–03–19.801.12(a). These revisions make the regulations consistent with the provisions of Section 45.1–270.3.A of the Code of Virginia which was approved by OSM on February 2, 1990 (55 FR 3588). The increase in the entrance fee and the permit renewal fee would not alter the basis of the findings approving the original alternative bonding system and should serve to strengthen the Pool Bond Fund. Since the proposal would increase revenue for the fund, the Director finds it not inconsistent with 30 CFR 800.11(e).

4. Virginia is revising subsection B of section 45.1–270.3 and VR 480–03–19.801.12(b) to provide that all operators in the Pool Bond Fund shall furnish to the Fund a bond determined as follows:

(a) For underground operations participating in the Pool Bond Fund prior to July 1, 1991, the bond remains at $1,000 per acre covered by each permit, while the minimum total amount of such bond is revised from $10,000 to $40,000. For permits on which all mining has been completed and completion reports have been approved prior to July 1, 1991, the minimum total bond remains at $10,000.

(b) For underground operations entering the Pool Bond Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the bond amount shall be $3,000 per acre with the total bond amount being no less than $40,000.

(c) For other coal mining operations participating in the Pool Bond Fund prior to July 1, 1991, the bond amount remains at $1,500 per acre covered by each permit, while the minimum total amount of such bond is revised from $25,000 to

$100,000. For permits on which all mining has been completed and completion reports have been approved prior to July 1, 1991, the minimum total bond remains at $25,000.

(d) For other coal mining operations entering the Pool Bond Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the bond amount shall be $3,000 per acre with the total bond amount being no less than $100,000.

There are no direct Federal counterparts to these statutory sections and rules.

On July 16, 1991, OSM requested clarification (Administrative Record No. VA–812) from Virginia regarding the wording of proposed VR 480–03–19.801.12(b)(3). The proposal refers to all other coal "surface" mining operations participating in the fund prior to July 1, 1991, whereas the corresponding statutory proposal at section 45.1–270.3.B(3) refers to other coal mining operations without the word "surface". In their response dated July 16, 1991 (Administrative Record No. VA–813), Virginia stated that the terms "other surface coal mining operations" and "other coal mining operations" are interpreted synonymously, and include any activity regulated under the Virginia program, except for underground mines. The Director finds that the clarification supplied by the State removes any confusion regarding the wording of the proposed rule change.

The increase in the minimum bond requirements would not alter the basis of the findings approving the original alternative bonding system and should serve to strengthen the Pool Bond Fund. Therefore, the Director finds the proposals to be not inconsistent with 30 CFR 800.11(e).

5. Virginia is revising VR 480–03–19.801.12(b) by deleting former subsections (3) (i), (ii), (iii), and (4) dealing with bond rates for combined underground mining operations and preparation plant/associated facility, combined surface and underground mining operations, combined surface mining operation and preparation plant/associated facility, and areas permitted exclusively for refuse disposal. In response to an inquiry from OSM (Administrative Record No. VA–812), Virginia stated (Administrative Record No. VA–813) that the Virginia Act establishes bond requirements for underground mines and "other coal mining operations", and combination operations and areas permitted exclusively for refuse disposal are considered by the State to be examples of "other coal mining operations" and are covered by the bonding requirements of VR 480–03–19.801.12(b)(3) and (4).

There is no direct Federal counterpart for the provisions being deleted by the State. Based upon the clarification provided by the State, the Director finds that the proposed deletion of former VR 480–03–19.801.12(b)(3) (i), (ii), (iii), and (4) does not render the State regulations inconsistent with 30 CFR 800.11(e).

6. Virginia is revising section 45.1–270.3 of the Code of Virginia by adding subsection F, and VR 480–03–19.801.12 by adding subsection (g). The revisions provide for the posting of a bond equal to the total estimated cost of reclamation for all portions of a permitted site which are in temporary cessation. The proposed amendments provide the following timeframes for posting the required bond for any mining operation participating in the Fund.

(a) Any operation in temporary cessation for more than six months as of July 1, 1991, shall post the bond within ninety days of that date.

(b) Any operation in temporary cessation for six months or less as of July 1, 1991, shall post the bond within ninety days after the date on which the operation has been in temporary cessation more than six months.

(c) Any operation entering temporary cessation on or after July 1, 1991, shall post the bond prior to the date on which the operation has been in temporary cessation for more than six months.

The bonds are to remain in effect throughout the period during which the site is in temporary cessation. The bond may be released when the site returns to active status provided the permittee has posted bond pursuant to section 45.1–270.3.B, and VR 480–03–19.801.12(b).

There are no direct Federal counterparts to these statutory sections and rules.

Under 30 CFR 800.11(e)(1), an alternative bonding system must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. As proposed, the amendment provides for the posting of a bond equal to the total estimated cost of reclamation of the portion of the site in temporary cessation. Therefore, this amendment will enhance the Pool Bond Fund's ability to meet the requirements of 30 CFR 800.11(e), by increasing the bond required for operations in a lengthy period of temporary cessation. Thus the Director finds the proposal to be not inconsistent with the requirements of 30 CFR 800.11(e)(1).

7. Virginia is proposing to delete section 45.1–270–3:1 of the Code of Virginia, which deals with procedures for granting extensions of temporary cessation requested by fund participants. The section provided that after an operation has been in temporary cessation for six months, an extension for more than nine months will not be granted unless certain conditions are met. The conditions involved the degree of completion of rough regrading, backfilling and seeding, the posting of bond in a specified amount; and compliance with other state requirements for temporary cessation. In addition, the rule allows for release of bond posted pursuant to this section upon resumption of active operations and request by the participant.

There is no direct Federal counterpart to the statutory sections being deleted.

Some of the provisions being deleted are incorporated in section 45.1–270.3.F of the Code of Virginia which is being added by the State as discussed in Finding 6 herein. The Director finds that the proposed deletion does not render the State statutory section inconsistent with 30 CFR 800.11(e).

8. Virginia is revising subsection B of section 45.1–270.4 and VR 480–03–19.801.14(a), to increase the reclamation tax levied upon the production of coal, in the following amounts:

(a) From two cents to four cents per clean ton of coal produced by a surface mining operation.

(b) From one cent to three cents per clean ton of coal produced by a deep mining-operation.

(c) From one-half cent to one and one-half cents per clean ton of coal processed or loaded by preparation or loading facilities.

Since these increased revenues should strengthen the Pool Bond Fund, the Director finds the revisions not inconsistent with 30 CFR 800.11(e).

Further, the State is revising VR 480–03–19.801.14(a) to provide that the tax shall be paid within thirty (30) days after the end of any calendar quarter during which the balance of the Pool Bond Fund is less than $1,750,000; and VR 480–03–19.801.14(b) to provide that payments shall be deferred when the balance of the Pool Bond Fund at the end of any quarter exceeds $2,000,000. These revisions make the regulations consistent with the provisions of section 45.1–270.4.B and C of the Code of Virginia which was approved by OSM on December 31, 1987 (52 FR 49403).

In addition, Virginia is revising subsection E of section 45.1–270.4 and VR 480–03–19.801.14(d)(1) to increase the maximum reclamation tax for any operator holding more than one type of permit, from two and one-half cents to

five and one-half cents per ton on coal originally surface mined by the operator, and from one and one-half cents to four and one-half cents per ton on coal originally deep mined by that operator. VR 480–03–19.801.14 (d)(2) is being revised to increase from one-half cent to one and one-half cents per clean ton the amount a permittee shall pay for all coal processed and/or loaded at the permit which originated from other permits during the calendar quarter. There are no direct Federal counterparts to these statutory sections and rules.

The increase in the reclamation tax would not alter the basis of the findings approving the original alternative bonding system and should serve to strengthen the Pool Bond Fund. Since the proposals would increase revenue for the fund, the Director finds them to be not inconsistent with 30 CFR 800.11(e).

9. Virginia is revising VR 480–03–19.801.15(a) to (1) delete the requirement that the copy of the "Coal Surface Mining Reclamation Fund Tax Reporting Form" filed by permittees with the Commissioner be notarized, and (2) to require that the form be filed no later than 30 days after the end of each calendar quarter, rather than the current 15 days. There is no Federal counterpart for this rule. However, since the elimination of the requirement for a notarized copy of the form does not make the State program less effective than the Federal regulations, and the change in the filing date makes the reporting requirement consistent with the State's payment provisions, the Director finds the proposal is not inconsistent with 30 CFR 800.11(e).

10. Virginia is revising section 45.1–270.4:1 of the Code of Virginia by changing subsection A to read that each permittee shall be required (rather than may be required) to pay any special assessments made pursuant to subsection B. This amendment should strengthen the fund by making the assessments mandatory. Therefore, while there is no direct Federal counterpart, the Director finds the proposal is not inconsistent with 30 CFR 800.11(e).

In addition, the State is revising subsection B to provide that on or after July 1, 1991, the Commissioner of the Division of Mined Land Reclamation shall assess an amount not to exceed $500,000, to consist of (1) $250 for each participating permit on which all mining activity has been completed and for which a completion report has been approved; and (2) the remaining assessments made in equal amounts per acre for each disturbed acre permitted under the Pool Bond Fund. The amount of disturbed acreage is to be determined by the most recent anniversary map submitted, or updated anniversary map submitted prior to July 1, 1991. The amendment provides that this special assessment shall not apply to acreage that has been reclaimed and for which an increment of the bond has been transferred to other acreage in the permit, and that the assessments shall be made only one time and all revenues shall be applied to the balance of the Fund. Payment of the assessment is the responsibility of the permittee.

There is no direct Federal counterpart to this proposal. Implementation of this special assessment would not alter the basis of the findings approving the original alternative bonding system because the purpose of the amendment is to strengthen the Pool Bond Fund. Since the proposal would increase revenue for the fund, the Director finds it not inconsistent with 30 CFR 800.11(e).

11. Virginia is revising subsection C of section 45.1–270.4:1 of the Code of Virginia to provide that any civil penalties collected for violations of this section shall be applied to the balance of the fund.

There is no direct Federal counterpart to this proposal. Inclusion of civil penalties in the fund would not alter the basis of the findings approving the original alternative bonding system because the purpose of the amendment is to strengthen the Pool Bond Fund.

Since the proposal would increase revenue for the fund, the Director finds it not inconsistent with 30 CFR 800.11(e).

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunities to request public hearings announced in the April 24, 1991, and May 22, 1991, **Federal Register** ended on May 24, 1991, and June 21, 1991, respectively. The scheduled public hearings were not held as no one requested an opportunity to provide testimony. The South Atlantic Coal Company, Inc. and the H.C. Bostic Coal Company, Inc. filed comments in response to the proposed rules, requesting clarification as to whether section 45.1–270.3.F was the exclusive requirement for bonding permitted sites in temporary cessation. The companies were concerned that the State would require a temporary cessation permit to be amended according to section 45.1–270.3.B to the new minimum bond amounts and then require an additional bond as outlined in section 45.1–270.3.F (i.e., create a double bond situation). By letter dated May 30, 1991 (Administrative Record No. VA–805), Virginia provided clarification to the effect that for permitted areas in temporary cessation more than six months, the reclamation cost estimate for the area will be credited with bond already posted for the area according to the per acre bond rate. Further, the State indicated that excess bond from other portions of the permit, or from the minimum bond, will also be credited. The State's clarification further provided that all bond posted will be applied toward the minimum bond, without regard to the source of the bond requirement. That is, each pool bond participant, including those in temporary cessation status, must increase its minimum bond amounts to those revised amounts found at section 45.1–270.3.B. In addition, each participant in temporary cessation status must follow the requirements of section 45.1–270.3.F. If the total estimated cost to reclaim is less than the minimum bond posted by the participant under the revised section 45.1–270.3.B, as discussed in Finding (4) herein, no additional bond amount would be required by section 45.1–270.3.F, as amended. If the total estimated cost to reclaim is greater than the revised minimum bond posted under section 45.1–270.3.B, then the participant must post enough bond to equal the total estimated cost of reclamation. Any bond posted over the amount required in section 45.1–270.3.B., will be released when the site returns to active status. As stated in the findings, there are no direct Federal counterparts to the section in question. Since the amendments to sections 45.1–270–3.B. and F should strengthen the pool bond fund, the amendments are not inconsistent with 30 CFR 800.11(e).

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Virginia program. The Environmental Protection Agency (EPA), Mine Safety and Health Administration (MSHA), and Soil Conservation Service (SCS) responded. MSHA and SCS had no substantive comments while EPA expressed their concurrence and concluded that the proposed amendment demonstrated the legal authority, administrative capability, and technical conformity with controlling National Pollutant Discharge Elimination System regulations.

V. Director's Decision

Based on the above findings, the Director is approving the program amendments as submitted on April 5, 1991, and May 1, 1991 and as clarified on May 30, 1991 and July 16, 1991. The Federal regulations at 30 CFR part 946 codifying decisions concerning the Virginia program are being amended to implement this decision.

This final rule is being made effective immediately to expedite the state program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 24, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, Chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 946.15, a new paragraph (ee) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(ee) The amendments submitted to OSM on April 5, 1991 and May 1, 1991 and clarified on May 30, 1991 and July 16, 1991 are approved August 5, 1991. The amendments consist of modifications to the following sections of the Code of Virginia and the Virginia regulations (VR 480–03–19) which all deal with Virginia's Coal Surface Mining Reclamation Fund:

(1) Code of Virginia Sections 45.1–261.1, 45.1–270.3, 45.1– 270.4, and 45.1–270.4:1.

(2) Virginia Regulations Sections (VR 480–03–19.) 801.11(a), 801.12(a), 801.12(b), 801.12(g), 801.14(a), 801.14(b), 801.14(c), 801.14(d), and 801.15(a).

(3) The repeal of section 45.1–270.3:1 of the Code of Virginia.

[FR Doc. 91–18473 Filed 8–2–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments to the list of specially designated nationals of Libya.

SUMMARY: The Libyan Sanctions Regulations are being amended to remove the numerical designations and merge the separate categories in appendix A, "Organizations Determined To Be Specially Designated Nationals of the Government of Libya," and to add the names of twelve companies to appendix A, and to add a new appendix B, "Individuals Determined To Be Specially Designated Nationals of the Government of Libya," to the end thereof. Appendix A contains the names of companies, banks, and other entities, whether located outside or inside of Libya, which the Director of the Office of Foreign Assets Control has determined to be owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. Appendix B contains the names of individuals whom the Director of the Office of Foreign Assets Control has determined to be acting or purporting to act directly or indirectly on behalf of the Government of Libya. This list may be expanded or amended at any time.

EFFECTIVE DATE: August 5, 1991.

ADDRESSES: Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Section, Office of Foreign Assets Control, Tel.: (202) 566–5021.

SUPPLEMENTARY INFORMATION: The Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), were issued by the Treasury Department to implement Executive Orders No. 12543 (51 FR 875, Jan. 9, 1986) and 12544 (51 FR 1235, Jan. 10, 1986), in which the President declared a national emergency with respect to Libya, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and ordering specific measures against the Government of Libya. The Regulations were amended by a final rule published in the Federal Register (56 FR 20540, May 6, 1991) which added appendix A, a list of organizations determined to be within the term "Government of Libya."

Section 550.304(a) of the Regulations, as amended, defines the term "Government of Libya" as follows:

(a) The "Government of Libya" includes: (1) The state and the Government of Libya, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Libya;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing;

(4) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) of this section.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Government of Libya solely by reason of being located in, organized under the

laws of, or having its principal place of business in, Libya.

Section 550.805 of the Regulations provides that the Director of the Office of Foreign Assets Control ("FAC"), may take any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12543.

Determinations that persons fall within the definition of the "Government of Libya" are effective upon the date of determination by the Director of FAC. Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

This rule amends appendix A to part 550 to remove the references to numerical designations and categories in appendix A, to provide public notice of twelve additional companies determined to be "specially designated nationals" of the Government of Libya, and to add appendix B, providing public notice of 21 individuals determined to "specially designated nationals of the Government of Libya." Appendix A consists of organizations and appendix B consists of individuals determined by the Director of FAC to be owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. The persons listed in appendices A and B thus fall within the definition of the "Government of Libya" contained in § 550.304(a) of the Regulations, and are subject to all prohibitions in the Regulations applicable to other components of the Government of Libya. All unlicensed transactions with such persons, or in property in which they have an interest, are prohibited.

The list of specially designated nationals is a partial one, since FAC may not be aware of all the agencies and officers of the Government of Libya or of all the persons located outside of Libya that might be owned or controlled by the Government of Libya or acting as agents or front organizations for Libya, and which thus qualify as specially designated nationals of the Government of Libya. Therefore, persons engaging in transactions may not rely on the fact that any particular person is not on the specially designated nationals list as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly on behalf of the Government of Libya. The Treasury Department regards it as incumbent upon all U.S. persons to take reasonable steps to ascertain for themselves whether persons they enter into transactions with are owned or controlled by the Government of Libya or are acting or purporting to act on its behalf, or on behalf of other countries subject to blocking or transportation-related restrictions (at present, Cambodia, Cuba, Iraq, North Korea, and Vietnam).

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, as amended by the Uniform Sentencing Act, 18 U.S.C. 3571 and 3581, provides for civil penalties not to exceed $10,000 per count for violations of the Regulations, fines of up to $250,000 and imprisonment for up to 12 years for willful violations of the Regulations by individuals, and fines of up to $500,000 for organizations.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 550

Banks, Banking, Foreign trade, Libya, Securities, Specially designated nationals.

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2349aa–8 & –9; 49 U.S.C. 1514; E.O. 12543, 51 FR 875 (Jan. 9, 1986); E.O. 12544, 51 FR 1235 (Jan. 10, 1986).

2. Appendix A to Part 550, "Organizations Determined to be Within the Term 'Government of Libya' (Specially Designated Nationals of Libya)," is amended by removing the numerical designations from the list of organizations and by removing the category designation "Part I: Located Outside Libya".

3. Appendix A to part 550 is amended by adding the following names in their proper alphabetical positions.

Corinthia Group of Companies, Head Office, 22, Europa Centre, Floriana, Malta.

Corinthia Palace Hotel Company Limited, De Paula Avenue, Attard, Malta.

Holborn Europa Raffinerie GmbH, (a.k.a. HER), Rothenbaumchaussee 5, 4th Floor, D-2000 Hamburg 13, Germany.

Holborn European Marketing Company Limited (a.k.a. HEMCL), Miranda Court No. 1, Ipirou Street, P.O. Box 897, Larnaca, Cyprus.

Hofplein 33, 3011 AJ Rotterdam, the Netherlands.

Holborn Investment Company Limited (a.k.a. HICL), Miranda Court No. 1, Ipirou Street, P.O. Box 897, Larnaca, Cyprus.

Jerma Palace Hotel, Maarsancala, Malta.

Lafi Trade Malta, 14517 Tower Road, Siema, Malta.

Oilinvest, (a.k.a. Foreign Petroleum Investment Corporation), (a.k.a. Libyan Oil Investment International Company), (a.k.a. OIIC), (a.k.a Oilinvest International N.V.), Netherlands Antilles.

Tripoli, Libya.

Oilinvest (Netherlands) B.V., (a.k.a. OILINVEST HOLLAND B.V.), Museumpln 11, 1071 DJ Amsterdam, The Netherlands.

OS Oilinvest Services A.G., Loewenstrasse 60, Zurich, Switzerland.

Quality Shoes Company, UB33, Industrial Estate, San Gwan, Malta.

Swan Laundry and Dry Cleaning Company, Ltd., 55, Racecourse Street, Marsa, Malta.

4. Appendix B is added to part 550 to read as follows:

Appendix B—Individuals Determined to be Specially Designated Nationals of the Government of Libya

Abbott, John G., 34 Grosvenor Street, London W1X 9FG, United Kingdom.

Abduljawad, Muhammed I., (a.k.a. ABDUL JAWAD, Mohammed), Tripoli, Libya.

Aghil, Yousef I., Libya.

Bushwesha, Abdullah, Libya.

Charalambides, Kypros, Cypus.

El Badri, Abdullah Salim, Tripoli, Libya.

El Ghrabli, Abdudayem, Libya.

EL Huweij, Mohamed A., Tripoli, Libya

Ferjani, A.S.A., Tripoli, Libya.

Ghadamsi, Bashir, Italy.

Layas, Mohammed H., Tripoli, Libya.

Yousef, Mohamed T., Libya.

Mana, Salem, Libya.

Naas, Mahmoud, Libya

Paradissiotis, Christoforos Pavlou, Larnaca, Cyprus.

34 Grosvenor Street, London W1X 9FG, United kingdom.

Riecke, Dr. Hans, Germany.

Saudi, Abdullah A., Manama, Bahrain.

Siala, Mohamed Taher Hammuda, Tripoli, Libya.

Stavrou, Stavros, Cyprus.

Ugueto, Luis, Venezuela.

Wojtek, Dr. Ralf, Germany.

Dated: June 28, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 15, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-18545 Filed 8-1-91; 9:47 am]

BILLING CODE 4810-25-m

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Ozark National Scenic Riverways; Restriction for Motorized Vessels

AGENCY: National Park Service, Interior.

ACTION: Final Rule; delay of effective date.

SUMMARY: The implementation date of the final rule for 36 CFR 7.83 will be October 1, 1993, the date established in Ozark National Scenic Riverways River Use Management Plan, which was finalized on November 4, 1988 and approved on May 11, 1989. This date was omitted from the final rule. The public was provided an opportunity to comment on the regulations during the planning process. Public hearings were held in 6 towns and cities and news releases were sent to seventy three (73) news media and 30 political subdivisions during a widely publicized, extended comment period prior to approval of the River Use Management Plan. The reason for delaying implementation until October 1, 1993 is to prevent creating a hardship on boat owners who use Ozark National Scenic Riverways. By providing a reasonable period of time to river users, this grace period of more than two (2) years after the publication of the final regulation is available to those with larger motors for amortizing their present motors and for purchasing motors that will comply with the regulation.

DATES: Effective August 5, 1991, the effective date of August 5, 1991 for the regulations described below and published in the July 5, 1991 **Federal Register** (56 FR 30694) is delayed until October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur L. Sullivan, Superintendent, Ozark National Scenic Riverways, P.O. Box 741, Van Buren, MO 63965.

Under the authority of 16 U.S.C. 3, the effective date of August 5, 1991 for the final rule for Ozark National Scenic Riverways, 36 CFR 7.83, as published in the July 5, 1991 **Federal Register** (56 FR 30694) is delayed until October 1, 1993.

Dated: July 23, 1991.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 91-18514 Filed 8-2-91; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3980-8]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In a Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**, EPA is proposing a rule to rescind subpart I of 40 CFR part 61 as it is applied to nuclear power reactors, pursuant to section 112(d)(9) of the 1990 amendments of the Clean Air Act. In this companion action, EPA is issuing a final rule which stays the effectiveness of subpart I as applied to nuclear power reactors pending completion of the rulemaking concerning rescission.

DATES: Effective on July 26, 1991, EPA is staying the effectiveness of subpart I of 40 CFR part 61 for nuclear power reactors. This stay will remain in effect until such time as EPA takes final action concerning its proposal to rescind subpart I for nuclear power reactors pursuant to section 112(d)(9) of the Clean Air Act.

ADDRESSES: Questions should be addressed to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Docket No. A-79-11, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Al Colli, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460 (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated standards controlling radionuclide emissions to the ambient air from several source categories, including emissions from licensees of the Nuclear Regulatory Commission ("NRC") and from Federal facilities not licensed by the NRC or owned or operated by the Department of Energy ("non-DOE Federal facilities") (subpart I, 40 CFR part 61). This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). At the same time as the rule was promulgated, EPA granted reconsideration of subpart I based on comments received late in the rulemaking from NRC and NIH on the subject of duplicative regulation by NRC and EPA and on potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and also granted a 90-day stay of subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B).

EPA subsequently extended the stay of the effective date of Subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act (APA), 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990).

In October 1990, Congress passed new legislation amending the Clean Air Act. Section 112(d)(9) of the amendments provides,

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

After evaluating the information received during the reconsideration of subpart I, EPA concluded that for all categories of NRC-licensed facilities other than nuclear power reactors the Agency presently lacks sufficient information to determine whether the regulatory program established by NRC provides "an ample margin of safety to protect the public health," as that term is used in section 112 of the Clean Air Act (CAA). On April 15, 1991, EPA issued a final order staying the effectiveness of Subpart I for all categories of NRC-licensed facilities except nuclear power reactors, until November 15, 1992, or until such earlier date that EPA is prepared to make an initial determination under Clean Air Act section 112(d)(9) and conclude its reconsideration under section 307(d)(7)(B). 56 FR 18735 (April 24, 1991). This stay will afford EPA the time needed to collect the information which is necessary to make a determination under section 112(d)(9).

With regard to non-DOE federal facilities, EPA concluded that the factors which led to the reconsideration of subpart I, possible duplication of effort between the EPA and the NRC and potential negative effects on nuclear medicine, are not applicable to this

subcategory of facilities. Since the determination concerning the adequacy of the NRC regulatory program contemplated by the new language in section 112(d)(9) could not apply to such facilities, EPA did not propose to further stay the effectiveness of subpart I for these facilities. Subpart I became effective with respect to non-DOE federal facilities on March 10, 1991.

EPA believes that it does not possess sufficient information concerning radionuclide emissions from nuclear power reactors and the program implemented by the NRC to control such emissions to make an initial determination under section 112(d)(9). After reviewing the available information, EPA tentatively concluded that the NRC regulatory program limiting these emissions protects public health with an ample margin of safety. On March 8, 1991, EPA issued an Advance Notice of Proposed Rulemaking announcing its intention to enter into a future rulemaking pursuant to section 112(d)(9) to rescind subpart I of 40 CFR part 61 ("subpart I") as it applies to nuclear power reactors. 56 FR 10524 (March 13, 1991). On March 8, 1991, EPA also proposed this rule to stay the effectiveness of subpart I as applied to nuclear power reactors during the rulemaking on rescission. 56 FR 10523 (March 13, 1991). The March 8, 1991, proposal incorporated an order temporarily staying the effectiveness of subpart I for nuclear power reactors pending final action by EPA either adopting or declining to adopt the proposed stay.

A hearing concerning the proposed rule to stay the effectiveness of subpart I for nuclear power reactors was held in Washington, DC on May 9, 1991. Pursuant to section 307(d)(5)(iv) of the Clean Air Act, EPA kept the record for this rulemaking open to receive additional written comments or information until June 8, 1991, thirty days after completion of the hearing.

B. Final Rule Staying Subpart I for Nuclear Power Reactors

EPA today issues a final rule staying the effectiveness of Subpart I of 40 CFR part 61 for all commercial nuclear power reactors licensed by the Nuclear Regulatory Commission. This stay of subpart I will remain in effect until EPA takes final action concerning its proposal to rescind subpart I for nuclear power reactors pursuant to section 112(d)(9) of the Clean Air Act. This proposal to rescind is published elsewhere in this issue of the Federal Register.

The decision by EPA to adopt this final rule to stay the effectiveness of subpart I for nuclear power reactors reflects the Agency's interpretation of the Congressional policy embodied in section 112(d)(9) of the Clean Air Act Amendments of 1990. In section 112(d)(9), Congress authorized EPA not to regulate radionuclide emissions from NRC licensees and to relieve NRC licensees of the burden of parallel regulation in those instances where NRC regulation is sufficient to provide an ample margin of safety. Since EPA has now proposed to rescind subpart I for nuclear power reactors, it would frustrate the evident purpose of section 112(d)(9) if EPA were to permit subpart I to take effect for this subcategory during the pendency of the rulemaking concerning rescission.

C. Discussion of Comments and Response to Comments

The Agency has evaluated all of the comments made by interested members of the public during the hearing, as well as those written comments submitted for incorporation in the subpart I docket. The majority of these comments concern the substantive merits of the Agency's proposal to rescind subpart I for nuclear power reactors, rather than the specific question of whether subpart I should be stayed during the rulemaking on rescission. As such, these comments may be considered to be primarily responsive to the ANPR which announced the Agency's intention to propose rescission. The Agency's initial response to these comments is embodied in the discussion set forth in the proposed rulemaking to rescind, as published elsewhere in today's Federal Register.

Although none of the comments which opposed the Agency's announced intention to propose rescission of subpart I for nuclear power reactors has persuaded EPA not to issue that proposal, such comments will be incorporated in the record of the rulemaking concerning rescission and will be considered as part of any final action concerning the rescission proposal. In addition, all parties who have previously submitted comments in opposition to the Agency's proposal to rescind will have an opportunity to clarify or augment their comments by submission of additional comments or by participation in the hearings to be held concerning the proposal. (Details concerning the procedure for submission of comments on the rescission proposal and the dates and locations of hearings are set forth in the proposed rule itself.)

The comments and responses summarized below are those which specifically concern the Agency's proposal to stay subpart I during the pendency of the rulemaking on rescission. Although a number of additional comments concerning the Agency's legal authority to stay subpart I were submitted in connection with the Agency's prior proposal to stay subpart I for NRC licensees other than nuclear power reactors, these comments were not resubmitted in connection with this proposal. The Agency's response to these prior comments is set forth in the final rule staying subpart I for NRC-licensed facilities other than nuclear power reactors which EPA issued on April 15, 1991. 56 FR 18735 (April 24, 1991).

Comment: Subpart I should be made immediately effective to all NRC-licensed facilities including nuclear power reactors because there has been no EPA rule or finding that the Nuclear Regulatory Commission is in fact providing an ample margin of safety to protect the public health.

Response: EPA considers this stay of the effectiveness of subpart I for nuclear power reactors while EPA is engaged in rulemaking to rescind subpart I for such facilities pursuant to section 112(d)(9) to be a logical component in the implementation of the congressional policy embodied in section 112(d)(9). The 1990 Amendments do not clearly establish all of the procedures to be followed by EPA in implementing section 112(d)(9) for previously promulgated NESHAPs. However, EPA is unwilling to attribute to Congress an intention to require EPA to proceed with implementation of subpart I on an interim basis, even though EPA believes that NRC regulation of nuclear power reactors affords an ample margin of safety and has commenced a rulemaking to rescind the standard for such facilities. Such an interpretation of section 112(d)(9) would force all facilities affected by a previously promulgated NESHAP to make all of the expenditures necessary to demonstrate that they comply with the NESHAP, before EPA could promulgate a rule providing relief from duplicative regulation. EPA is not prepared to presume that Congress intended that section 112(d)(9) would provide meaningful regulatory relief only in the case of future NESHAPs.

Comment: The stay will prevent the undesirable result of subjecting subpart I facilities to compliance and potential enforcement actions while EPA is taking the procedural steps necessary to rescind these standards.

Response: EPA agrees with this comment.

Comment: The stay is in the public interest due to EPA's prior finding that

current emission levels from nuclear power plants provide adequate protection of public health with an ample margin of safety and due to EPA's prior statement when it previously issued stays of subpart I that the stay would have little or no adverse effects on public health. In addition, Congress evidenced its desire to avoid unnecessary and duplicative regulation by passing section 112(d)(9) and therefore it is clear that a stay during the pendency of the rulemaking would be in the public interest.

Response: Based on the available data, EPA agrees that the issuance of the stay will have little or no adverse effect on public health. EPA also agrees that issuance of this final rule will further the Congressional objective of avoiding unnecessary and duplicative regulation, by relieving affected facilities of the burdens of demonstrating compliance with the standard during the rulemaking on rescission.

D. Miscellaneous

1. Paperwork Reduction Act

There are no information collection requirements in this rule.

2. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that issuing this stay of subpart I for nuclear power reactors will result in none of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be a "major rule." This regulation is not major because the nationwide compliance costs do not meet the $100 million threshold, the regulation does not significantly increase prices or production costs, and the regulation does not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this regulation because this action does not constitute a major rule.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the rule on small business entities. However, section 604(b) of the Act provides that an analysis will not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule staying 40 CFR part 61 subpart I for nuclear power reactors will have the effect of easing the burdens associated with immediate compliance with subpart I and I therefore certify that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous Substances, Mercury, Radionuclides, Radon, Reporting and Recordkeeping requirements, Uranium, Vinyl chloride.

Dated: July 26, 1991.

William K. Reilly,

Administrator.

For all of the reasons given in the preamble, part 61 of title 40 of the Code of Federal Regulations is amended to read as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.109 of subpart I of part 61 is amended by designating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 61.109 Stay of effective date.

* * * * *

(b) The effective date for subpart I is stayed for commercial nuclear power reactors which are licensed by the Nuclear Regulatory Commission until the date on which EPA takes final action concerning its proposal to rescind subpart I for nuclear power reactors pursuant to section 112(d)(9) of the Clean Air Act, as published on August 5, 1991. EPA will publish any such final action in the **Federal Register**.

[FR Doc. 91-18506 Filed 8-2-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[DA 91-896]

Editorial Amendment of Part 97 of the Commission's Rules Regarding the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action deletes an alternative power measurement standard from part 97 of the Commission's Rules. The rule change is necessary because the exception to the power standard that was applicable to amateur stations transmitting emission type A3E has expired. The effect of the rule change is to remove this expired standard from the amateur service rules.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Memorandum Opinion and Order,* adopted July 15, 1991, and released July 24, 1991. The complete text of this Commission action, including the rule amendments, 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, including the rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center (DCC) (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

2. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

3. The amended rules are set forth at the end of this document and are issued under the authority of 47 U.S.C. 154(i) and 303 (c) and (r).

List of Subjects in 47 CFR Part 97

Radio, Emission types, Power.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Amended Rules

Part 97 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.313(b) is revised to read as follows:

§ 97.313 Transmitter power standards.

* * * * *

(b) No station may transmit with a transmitter power exceeding 1.5 kW PEP.

* * * * *

[FR Doc. 91-18422 Filed 8-2-91; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498-1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Alava, Washington, at noon, July 24, 1991, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 23,300 coho salmon for the subarea will be reached by noon, July 24, 1991. The closure is necessary to conform to the preseason announcement of 1991 management measures. This action is intended to ensure conservation of coho salmon.

DATES: *Effective:* Closure of the EEZ from the U.S.-Canada border to Cape Alava, Washington, to recreational salmon fishing is effective at 1200 hours local time, July 24, 1991. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts, as provided by 50 CFR 661.20, 661.21, and 661.23.

Comments: Public comments are invited until August 15, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 recreational fishery for all salmon species in the subarea from the U.S.-Canada border to Cape Alava, Washington, would begin on July 1 and continue through the earliest of September 26 or the attainment of either a subarea quota of 23,300 coho salmon or the overall recreational quota of 40,000 chinook salmon north of Cape Falcon, Oregon. Based on the best available information on July 23, the recreational fishery catch in the subarea from the U.S.-Canada border to Cape Alava, Washington, is projected to reach the 23,300 coho salmon quota by noon, July 24, 1991. Therefore, the fishery in this subarea is closed to further recreational fishing effective 1200 hours local time, July 24, 1991.

In accordance with the season notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to this closure was given prior to 1200 hours local time, July 24, 1991, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of closure of the recreational salmon fishery in the EEZ from the U.S.-Canada border to Cape Alava, Washington, which is effective 1200 hours local time, July 24, 1991.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fisheries regarding a closure of the recreational fishery between the U.S.-Canada border and Cape Alava, Washington. The State of Washington will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 15, 1991.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

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

Dated: July 30, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-18469 Filed 7-31-91; 11:06 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 150
Monday, August 5, 1991

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 THE TREASURY

Office of Thrift Supervision

12 CFR Part 574

[No. 91-155]

RIN 1550-AA36

Agency Disapproval of Directors and Senior Executive Officers of Savings Associations and Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: If adopted, this proposal would implement section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183, 484-5, ("section 914"), by adding a new section to 12 CFR part 574. The new section would require certain savings associations and savings and loan holding companies to file a notice with the Office of Thrift Supervision (the "OTS") prior to adding or replacing a member of the board of directors, and prior to employing, or changing the responsibilities of an individual in a position or into another position, as senior executive officer. Section 914 grants the OTS the authority to disapprove any proposed board member or senior executive officer of a savings association or savings and loan holding company whose service is not considered to be in the best interests of the depositors of the savings association or the public.

DATES: Comments must be received on or before September 4, 1991.

ADDRESSES: Comments should be directed to: Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Kaplan, Staff Attorney (202) 906-7508, V. Gerard Comizio, Acting Deputy Chief Counsel (202) 906-6411, Corporate and Securities Division; Jodie S. Jacobs, Attorney, Enforcement (202) 906-7959; Kevin L. Petrasic, Assistant Chief Counsel, Regulations and Legislation Division (202) 906-6452; Julie L. Williams, Senior Deputy Chief Counsel (202) 906-6459; Mary Jo Johnson, Policy Analyst, Supervision (202) 906-5739, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1989, President Bush signed FIRREA into law. Section 914 of FIRREA, which added section 32 of the Federal Deposit Insurance Act ("FDIA"), codified at 12 U.S.C. 1831i, requires certain savings associations and savings and loan holding companies to furnish the OTS with at least 30 days notice before adding any individual to the board of directors or employing any individual as a senior executive officer. A savings association or savings and loan holding company is subject to the notice requirement if the savings association or savings and loan holding company: (1) Has been chartered less than two years in the case of a savings association; (2) has undergone a change in control within the preceding two years; or (3) is not in compliance with the minimum capital requirements applicable to such saving association or is otherwise in a "troubled condition," as determined "on the basis of the savings association's or the savings and loan holding company's most recent report of condition or report of examination or inspection."

Section 914 prohibits a savings association or savings and loan holding company from adding an individual to its board of directors, or employing an individual as a senior executive officer, if the OTS issues a notice of disapproval with regard to the addition or employment of such individual. In this regard, the OTS must disapprove a notice under this section if it finds that the competence, experience, character, or integrity of an individual indicate that it would not be in the best interests of the depositors of the savings association or the public for the individual to be employed by, or associated with, the savings association or savings and loan holding company.

The requirements of section 914 have been in effect since enactment of the FIRREA, August 9, 1989. The OTS is proposing to implement this regulation in order to clarify various issues that have arisen in the application of the new provisions.

Issues

The application of section 914 to savings associations and savings and loan holding companies presents a number of issues, discussed below. Comment is invited on these and any other issues related to the regulation.

1. Definition of "Senior Executive Officer"

The term "senior executive officer" is defined to include the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, general counsel or their functional equivalents, or any individual who exercises significant influence over, or participates in, major policy making decisions of a savings association or savings and loan holding company without regard to title, salary or compensation.

The term "senior executive officer" also includes any employees of another entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation on behalf of a savings association or savings and loan holding company.

2. Definition of "Troubled Condition"

a. Savings Associations

For purposes of the notice requirements of section 914, the term "troubled condition" with respect to savings associations is defined to mean a savings association: (1) That has received a composite MACRO rating of 4 or 5 in its most recent report of examination; (2) that is subject to a capital directive or a formal enforcement action or proceeding or a written agreement entered into with the OTS, relating to the safety or soundness or financial viability of the savings association; or (3) that is informed in writing by the OTS that it has been designated in "troubled condition" for purposes of the requirements of section 914 as a result of its current financial

statements or report of examination, inspection, or limited scope review of the association or its holding company.

In addition, a savings association that fails to meet all of its applicable regulatory capital requirements under 12 CFR part 567 is subject to the section 914 notice requirement.

b. Savings and Loan Holding Companies

For purposes of section 914, the term "troubled condition" with respect to a savings and loan holding company is defined to mean a savings and loan holding company:

(1) That is subject to either a formal enforcement action or proceeding or a written agreement entered into with the OTS, relating to the safety or soundness or financial viability of its subsidiary savings association;

(2) That is informed in writing by the OTS that it has been designated in "troubled condition" for purposes of the requirements of section 914 as a result of the current financial statements or report of examination, inspection, or limited scope review of the holding company or its subsidiary association; or

(3) That the OTS determines is having a detrimental or burdensome effect on its subsidiary savings association or that requires more than the normal level of supervision.

3. Prior Notice Requirement

Three categories of savings associations and savings and loan holding companies must file a notice of intent to add a director or employ a senior executive officer. The first category includes savings associations that have been chartered and fully operational for less than two years.

The second category includes savings associations or savings and loan holding companies that have directly or indirectly undergone a change in control within the preceding two years, subject to the Change in Bank Control Act, 12 U.S.C. 1817(j) (or if a change in control occurred within the preceding two years and prior to the passage of the FIRREA, the Change in Savings and Loan Control Act, formerly 12 U.S.C. 1730(q)), or the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, and the regulations promulgated under these provisions at 12 CFR part 574. Thus, the change in control standard for application of the section 914 requirements is triggered for a savings association if there is a direct change of control of the savings association or a change in control of the association's holding company. In the case of a savings and loan holding company, the change of control would, of course, occur at the holding company level. In both cases, the change in control includes acquisitions of control subject to prior notice or approval under either the Change in Bank Control Act or the Savings and Loan Holding Company Act. However, upon written request to the OTS, the OTS may determine that the transactions involving existing approved control parties and acquisitions of control that do not result in substantive changes of control will not be deemed to be a change of control triggering the requirements of section 914.

The OTS also seeks comments as to whether, in the context of a mutual savings association, the filing of Reports of change in control of mutual savings associations, 12 CFR 563.181, would trigger a change in control for purposes of the section 914 notice requirement, or whether the OTS should treat a change in the highest-ranking officials of a mutual association, *e.g.* the chief executive officer or chief operating officer, as constituting a change in control of the association for purposes of the two-year applicability thereafter of the notice requirements of section 914.

The third category includes savings associations not in compliance with all of the minimum capital requirements established pursuant to 12 CFR part 567 and savings associations or savings and loan holding companies that are otherwise deemed to be in a "troubled condition," as described above.

Failure to file prior notice of intent to add a director or employ a senior executive officer may require immediate resignation of the subject individual and may subject the individual, the savings association or savings and loan holding company to enforcement actions, including assessment of civil money penalties.

4. Promotions of Senior Executive Officers and Re-election of Directors

An additional issue under section 914 is whether the notice requirement covers senior executive officers of a savings association or savings and loan holding company that are promoted or laterally transferred to another position as a senior executive officer of the same association or holding company. The rule makes clear that the section 914 notice requirement applies where a senior executive officer is promoted or transferred to a new position as a senior executive officer or where there is a "change in responsibilities" of any individual resulting in a senior executive officer position, notwithstanding that such "change in responsibilities" is not accompanied by a change in title or salary.

With respect to the applicability of section 914 to the "proposed addition of any individual to the board of directors," the rule also clarifies that section 914 covers not only increases in board membership but also replacements, filling of vacancies on the board, and a "change in responsibilities" of any individual resulting in his or her assumption of a director position. The notice requirement would also apply to a senior executive officer who is proposed as a director of the savings association or savings and loan holding company and to a director who is offered employment as a senior executive officer. However, the provision is not intended to apply to a re-election of a director who is already serving on the board of directors of a savings association or savings and loan holding company.

5. Effective Date

Section 914 became effective upon the signature of the President on August 9, 1989. Accordingly, all savings associations and savings and loan holding companies that were subject to one of the three categories of applicability under section 914 upon enactment of the FIRREA, were at that time subject to the notice requirements.

Thus, every savings association that was chartered less than two years on the date of enactment of the FIRREA, and every savings association or savings and loan holding company that was subject to a change in control within the two years preceding the date of enactment of the FIRREA, was subject to the notice requirements of section 914 for the remainder of the two year period after the enactment of the FIRREA. For example, a savings association that underwent a change in control in November 1988 is covered by the requirements of section 914 until November 1990; therefore, a notice is required for any addition to the board of directors or any employment of a senior executive officer effected prior to November 1990 that occurred after the date of enactment of the FIRREA.

6. Effect on Other Statutes

Although the section 914 notice requirement applies to, among others, a savings association that has been chartered less than two years and a savings association or savings and loan holding company that has undergone a change in control within the preceding two years, certain other statutory provisions also permit the OTS to require a similar notice in the same situations. In this regard, for example,

section 914 does not displace or supersede OTS's authority implied in section 5(e) of the HOLA, 12 U.S.C. 1464(e), to require, as a condition of granting a charter, prior review of proposed changes in executive officers for three years after a savings association is chartered. Such a condition has been imposed on new thrift charters for many years and, unlike the prior review authority in section 914, is not subject to a limit of 30 days on the OTS's review.

Similarly, the OTS believes that section 914 does not replace or repeal section 7(j)(12) of the FDIA, 12 U.S.C. 1817(j)(12), which states that whenever a change in control occurs, the bank or savings association "shall report promptly * * * any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period * * *". This authority similarly does not require the OTS to complete its review and act on any such report within 30 days.

Nor does section 914 displace or repeal any provision of section 8(b) of the FDIA, 12 U.S.C. 1818(b), which authorizes the OTS to include a provision in a cease and desist order requiring a savings association to take "affirmative action to correct the conditions resulting from [any] violation or practice." Under this authority, the OTS can require a savings association to obtain prior approval from the OTS before a proposed individual becomes a director of, or is employed by a savings association. This authority is also not subject to a requirement that review of requests be completed within 30 days.

Other statutes may also provide authority to review changes in executive officers or directors of savings association or savings and loan holding companies and similarly, are not pre-empted by the section 914 process.

Procedural Requirements

1. Required Information

Section 914 provides that the information required under section 7(j)(6)(a) of the FDIA and such additional information as the OTS may require by regulation is required in notices filed under this section. In particular, section 914 of the FIRREA requires the OTS to review the competence, experience, character, and integrity of an individual proposed for a position as a director or senior executive officer of a savings association or savings and loan holding company.

Notices filed under this section shall be on OTS Form 1393, Biographical and Financial Report, which requests the identity, personal history, business background, and experience of the individual, including financial statements and other relevant financial data, pending legal or administrative proceedings, and an explanation of any criminal indictment or conviction involving the individual. The OTS may modify these requirements where appropriate, but in no event will the OTS require less information than is required by section 7(j)(6)(A) of the FDIA, and the OTS may request additional information necessary to permit a full evaluation of the competence, experience, character, or integrity of the individual with respect to whom the notice has been filed, or of the public interest factors the OTS must consider.

2. Special Notice Rule for Publicly-Held Diversified Savings and Loan Holding Companies

The existence of multi-tiered diversified savings and loan holding companies, where the subsidiary savings association of such savings and loan holding company represents a small percentage of the aggregate operations of such company, presents a unique issue for the OTS in implementing section 914. Accordingly, the OTS has determined that abbreviated notice requirements will be available for multi-tiered diversified savings and loan holding companies that have a class of equity securities registered under the Securities Exchange Act of 1934 and that, therefore, already prepare substantial information regarding their directors and senior officials. With respect to such companies, a Form 1393 for a subject individual will be required only for persons employed by, or serving on the board of directors of, the savings and loan holding company that directly controls a savings association. However, if such savings and loan holding company is a "shell," i.e., a minimally capitalized company without substantial assets and lacking independent operations, then that company and its immediate parent company, *i.e.*, the company that controls such shell company, shall also be required to provide a Form 1393 for its directors and senior executive officers. In addition, in the event such second company also is a shell, then the company above it shall be subject to such requirements, and so on, until at least one savings and loan holding company in the line of ownership that is not a shell is subject to the notification requirements of this provision.

Companies in a multi-tiered diversified savings and loan holding company structure that are not required to submit Form 1393 by virtue of this special rule may satisfy the OTS's notice requirements under section 914 by submitting: (1) Copies of materials that are used in the savings and loan holding company's securities disclosure documents filed pursuant to the Securities Exchange Act that provide information on the individual to which the notice pertains, and (2) the OTS's RB–20 certification regarding such individual's involvement in certain types of legal proceedings. Where such material is not available, then the regular notice requirements will be applicable.

Notwithstanding this special rule, the OTS may require any such additional information as is necessary to adequately evaluate a notice filed under this section.

3. Who May File

The OTS has determined that the notice shall be submitted by the savings association or savings and loan holding company. Each individual, on whose behalf a notice is filed, must certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete and made in good faith and a senior official of the savings association or savings and loan holding company must certify that the information pertaining to that individual has been reviewed by the filing savings association or savings and loan holding company and that the information submitted is consistent with information obtained through a background investigation conducted by the savings association or savings and loan holding company. Where the interests of the individual and the savings association or savings and loan holding company are at odds, such as a proxy contest situation, the notice may be submitted to the OTS directly by the individual. In such case, the individual must certify that he or she provided the savings association or savings and loan holding company all non-confidential information contained in the notice and likewise, certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete and made in good faith.

4. Processing Timeframes

After the initial filing of a notice pursuant to section 914, the OTS will conduct a completeness review of the filing. This initial review is solely for the purpose of determining whether sufficient information is included in the notice for the agency to assess the competence, experience, character, and

integrity of the subject individual. In this regard, if the submitting party has not been notified to the contrary by the OTS within 15 days after submission of the notice, then the notice will be deemed complete as of the date of the original filing of the notice with the agency. However, in circumstances where new information becomes available to the OTS after a notice has been deemed complete, the agency may deem a notice not complete and request additional information, if necessary. In the event that additional information is required, the OTS will contact the appropriate party to request such information. Such party should attempt to respond accurately and completely to the additional information request within 15 days. After a submission is deemed complete, the agency will either disapprove or issue a notice of intention not to disapprove the notice within 30 days of the completeness date. If the OTS does not take either of such actions, the notice will be deemed not disapproved 30 days from the date of completeness.

5. Notice Requirement

Notices are required to be filed for the two years after a savings association has been chartered, for the two years after a savings association or savings and loan holding company has directly or indirectly undergone a change in control, or if a savings association or savings and loan holding company is in a troubled condition. Under the literal language of the provision, a notice is not required to be filed for individuals who will join an association or holding company simultaneously with the chartering of such savings association or at the time a savings association or a savings and loan holding company undergoes a change in control. In this regard, the OTS notes that due to the fact that substantially identical standards for evaluating managerial resources exists under the Change in Bank Control Act and the Savings and Loan Holding Company Act, it would be duplicative to require a section 914 notice in these circumstances, particularly in light of the fact that the same form (OTS Form 1393) is being used for both purposes.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12291

OTS has determined that this proposal is not a "major rule" and therefore does not require a Regulatory Impact Analysis.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 574, subchapter D, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

1. The authority citation for part 574 continues to read as follows:

Authority: Sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a; sec. 2(7), 64 Stat. 876, as amended (12 U.S.C. 1817).

2. New § 574.10 is added to read as follows:

§ 574.10 Additions of directors and employment of senior executive officers of savings associations and savings and loan holding companies.

(a) *Definitions.* As used in this section and in the forms under this section, the following definitions apply, unless the context otherwise requires:

(1) *Director.* The term *director* means any individual who serves on the board of directors of a savings association or savings and loan holding company, except that such term does not include an advisory director who was not elected by the shareholders of the savings association or savings and loan holding company and is not authorized to vote on any matters before the board of directors, but provides only general policy advice to the board of directors. However, the term does include an advisory director who performs the same functions as a director or who exercises significant influence over, or participates in, major policy making decisions of the board of directors of a savings association or savings and loan holding company.

(2) *Senior Executive Officer.* The term *senior executive officer* means any individual who exercises significant influence over, or participates in, major policy making decisions of a savings association or savings and loan holding company without regard to title, salary, or compensation. The term includes but is not limited to the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, general counsel, or their functional equivalents. The term also includes employees of entities retained by a savings association or savings and loan holding company to perform such functions in lieu of directly hiring the designated individuals.

(3) *Troubled Condition.* The term *troubled condition* means:

(i) Any savings association:

(A) That has a composite rating of 4 or 5 under the MACRO Rating System; or

(B) That is subject to a capital directive or a formal enforcement action or proceeding with the Office, or a written agreement entered into with the Office, relating to the safety and soundness or financial viability of the savings association; or

(C) That is informed in writing by the Office that it has been designated in *troubled condition* for the purposes of this section based on the current financial statements or report of examination, inspection, or limited scope review of the savings association; or

(ii) Any savings and loan holding company:

(A) That is subject to a formal enforcement action or proceeding with the Office, or a written agreement entered into with the Office, relating to the safety and soundness or financial viability of its subsidiary savings association; or

(B) That is informed in writing by the Office that it has been designated as in *troubled condition* for the purposes of this section as a result of the current financial statements or report of examination, inspection, or limited scope review, or periodic filings or other filings of the holding company or its subsidiary savings; or

(C) That the Office determines is having a detrimental or burdensome effect on its subsidiary savings association or that requires more than the normal level of supervision.

(b) *Prior Notice.* A savings association or savings and loan holding company shall provide written notice to the Office at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors, or the employment or change in responsibilities of any individual to a position as a senior executive officer or director, if:

(1) In the case of a savings association, the savings association has been chartered less than two years; or

(2) Within the preceding two years of the proposed addition or employment, the savings association or savings and loan holding company has directly or indirectly undergone a change in control subject to the Change in Bank Control Act, 12 U.S.C. 1817(j) (or if a change in

control occurred prior to August 9, 1989, the Change in Savings and Loan Control Act, formerly 12 U.S.C. 1730(q)), or the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, and the regulations promulgated thereunder at 12 CFR part 574, or the Reports of change in control of mutual savings associations, 12 CFR 563.181, excluding, however, transactions involving existing approved control parties and acquisitions of control that do not result in substantive changes of control, as determined by the District Director upon written request; or

(3) In the case of a savings association, the savings association is not in compliance with all of its applicable regulatory capital requirements established pursuant to 12 CFR part 567 or the savings association or the savings and loan holding company is otherwise in a troubled condition, as defined herein.

(c) *Procedures*—(1) *Filing Requirements.* (i) Notices shall be filed in accordance with the filing procedures set forth in 12 CFR 500.32(c)(5). Except as noted in paragraph (c)(2) of this section, the Office's Form 1393 shall be used for all such notices filed. Copies of all forms referenced in this section may be obtained from the Office of Communications, Information Services Division at the address listed in § 500.32(a) of this chapter.

(ii) The notice shall be submitted by the savings association or savings and loan holding company; each individual on whose behalf a notice is filed must certify that, to the best of his or her knowledge and belief, all the information filed is true, correct, complete and made in good faith; and a senior official of the savings association or savings and loan holding company must certify that information pertaining to that individual has been reviewed by the filing savings association or savings and loan holding company and that the information submitted is consistent with information obtained through a background investigation conducted by the savings association or savings and loan holding company. Where the interests of the individual and the savings association or savings and loan holding company may be at odds, such as a proxy contest, the notice may be submitted to the Office directly by the individual. In such case, the individual must certify that he or she provided the savings association or savings and loan holding company all nonconfidential information contained in the notice and likewise, certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete and made in good faith.

(iii) After the initial receipt of a notice, the Office may require additional information.

(iv) The 30-day notice period will begin on the date the Office determines that all required information has been provided and notifies the savings association or savings and loan holding company that the notice is deemed complete.

(2) *Special Notice Rule for Publicly-Held Diversified Savings and Loan Holding Companies.* (i) With respect to multi-tiered diversified savings and loan holding companies with a class of equity securities registered under the Securities Exchange Act of 1934, the notification required by paragraph (c)(1) of this section will only be required for the savings and loan holding company that directly controls a savings association; provided, however, that if such company is without substantial assets other than the ownership of the subsidiary savings association, then the company that directly controls such savings and loan holding company shall also be subject to the notification requirement of paragraph (c)(1) of this section; further provided that, in the event the first indirect savings and loan holding company also is without substantial assets other than the ownership of the direct savings and loan holding company, then each company that directly and/or indirectly holds the indirect savings and loan holding company shall be subject to the notification requirement of paragraph (c)(1) of this section until a savings and loan holding company in the line of ownership that has substantial assets other than the indirect ownership of the savings association is subject to the notification requirement of paragraph (c)(1) of this section.

(ii) Other savings and loan holding companies in a multi-tier ownership structure described in paragraph (c)(2)(i) of this section may satisfy the notification requirement of paragraph (c)(1) of this section by submitting:

(A) An executed copy of the Office's RB–20 certification regarding the subject individual's involvement in certain types of legal proceedings, and

(B) Copies of all materials used in the savings and loan holding companies, securities disclosure documents, filed pursuant to the Securities Exchange Act of 1934, which provide information on the individual to which the notice pertains. Where such material is not available, then the regular notice requirements shall be applicable.

(iii) Notwithstanding the provisions of paragraphs (c)(2)(i) and (ii) of this section, the Office may require such additional information as is necessary to adequately evaluate a notice.

(3) *Notice of Disapproval.* The Office may disapprove an individual proposed as a member of the board of directors or senior executive officer of a savings association or savings and loan holding company upon determining that, on the basis of the individual's competence, experience, character, or integrity, it would not be in the best interests of the depositors of the savings association or in the best interests of the public to permit the individual to be employed by, or associated with, the savings association or the savings and loan holding company. If the Office disapproves an individual, the savings association or savings and loan holding company will be notified. The notice of disapproval will contain a statement of the basis for disapproval.

(4) *Commencement of Service.* (i) An individual proposed as a member of the board of directors or senior executive officer of a savings association or savings and loan holding company may begin service 30 days after a complete notice under paragraph (c)(1) of this section has been accepted by the Office unless the Office issues a notice of disapproval of the proposed addition or employment by end of the 30-day period.

(ii) An individual proposed as a member of the board of directors or as a senior executive officer of a savings association or savings and loan holding company may begin service before the expiration of the 30-day period if the Office notifies the savings association or savings and loan holding company in writing of an intention not to disapprove the addition or employment.

(5) *Waiver of Prior Notice.* The Office may waive the prior notice requirement but not the filing of a notice under this section if the Office finds that delay would not be in the best interest of the savings association or the savings and loan holding company or the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement of this provision. If a waiver is granted, the required notice shall be filed within the time period specified in the waiver. A waiver shall not affect the authority of the Office subsequently to issue a notice of disapproval within 30 days of the receipt of a complete notice under paragraph (c)(1) of this section.

(6) *Appeal.* Within 20 days of receipt of a notice of disapproval, the disapproved individual (if the notice was directly submitted by the individual as detailed in paragraph (c)(1)(ii) of this section), the savings association or savings and loan holding company may

appeal to the Office the disapproval on the grounds that the reasons given for disapproval are contrary to fact, that such reasons given are insufficient to justify disapproval, or both. The appeal shall be filed in accordance with the filing procedures set forth in 12 CFR 500.32(c)(2)(i). The appeal shall attach whatever documents and written arguments the appealing party wishes to be considered in support of the appeal. The notice of disapproval shall be sustained unless the appealing party clearly demonstrates that the disapproval is unjustified. Written notice of a final decision shall be sent to the appealing party. If an appeal is not filed within the time period required under this section, any objection to the notice of disapproval is waived. A timely appeal filed in accordance with the provision of this section shall be mandatory for securing judicial review of a notice of disapproval.

Date: March 11, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-18427 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-134-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which currently requires repetitive visual inspections to detect cracks in the rudder lower hinge attachment brackets, and to check the security of the fasteners in this area, and repair, if necessary. This action would provide an additional terminating action for the repetitive inspections required by the existing AD. This proposal is prompted by a further evaluation by the FAA of the modification which provides terminating action for the repetitive inspections. This condition, if not corrected, could impair the operation of the rudder and result in reduced directional control of the airplane.

DATES: Comments must be received no later than September 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-134-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number ana be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-134-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On April 8, 1991, the FAA issued AD 91-09-13, Amendment 39-6979 (56 FR 16697, April 24, 1991), to require repetitive visual inspections to detect cracks in the rudder lower hinge attachment brackets, and to check the security of the fasteners in this area, and repair, if necessary. That action was prompted by reports of cracked and loose or failed fasteners in the rudder lower hinge lower attachment rib angle brackets attached to the front spar of the rudder. This condition; if not corrected, could impair the operation of the rudder and result in reduced directional control of the airplane.

Since issuance of that AD, the FAA has evaluated further Modification 10170A, which is described in paragraph D. of the existing AD. The FAA has determined that, in addition to providing terminating action for the repetitive inspections required by paragraph A. (applicable to airplanes with rudders in pre-Modification 10165A configuration) and paragraph B. (applicable to airplanes with rudders fitted with Modification 10165A during production) of the existing AD, the installation of Modification 10170A also provides terminating action for the repetitive inspections required by paragraph C. (applicable to airplanes with rudders fitted with Modification 10165A in accordance with British Aerospace Service Bulletin ATP-55-4, or by previous repair or replacement action). This amendment proposes to include the installation of Modification 10170A as an additional means of terminating the repetitive inspections required by paragraph C. of the AD.

British Aerospace has issued Service Bulletin ATP-55-3, Revision 4, dated June 28, 1990, which describes procedures for repetitive visual inspections to detect cracks in the rudder lower hinge attachment brackets, and to check the security of the fasteners in this area, and repair, if necessary. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory.

British Aerospace has also issued Service Bulletin ATP-55-5, Revision 1, dated January 3, 1991, which describes procedures for the installation of Modification 10170A, including strengthening the rudder lower hinge ribs at Stations 29.582, 27.582, and 24.82. Accomplishment of this modification would eliminate the need for the repetitive inspections recommended by Service Bulletin ATP-55-3. The United Kingdom CAA has not classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal

Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 91-09-13 with a new airworthiness directive that would provide an additional terminating action for the repetitive inspections required for certain airplanes by the existing AD, in accordance with the service bulletins previously described.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required inspections, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6979 and by adding the following new airworthiness directive:

British Aerospace: Docket No. 91-NM-134-AD.

Applicability: All Model ATP series airplanes which have not installed Modification 10170A (described in British Aerospace Service Bulletin ATP-55-5), certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced directional control of the airplane due to impairment of the operation of the rudder, accomplish the following:

(a) For airplanes with rudders in pre-Modification 10165A configuration: Prior to the accumulation of 750 hours time-in-service, or within 125 hours time-in-service after May 28, 1991 (the effective date of AD 91-09-13, Amendment 39-6979), whichever occurs later, and thereafter at intervals not to exceed 125 hours time-in-service, perform a detailed visual inspection of the angle brackets attaching the hinge ribs at Stations 27.582 and 29.582 for cracks, and a detailed visual inspection of the fasteners attaching the reinforcing plates for security, in accordance with paragraph 2.A. of British Aerospace Service Bulletin ATP 55-3, Revision 4, dated June 28, 1990.

(1) If cracking or local distortion is found on the angles or doubling plate flanges on the front face of the rudder spar, prior to further flight, remove the bolts and doubling plates, and perform a detailed visual inspection in accordance with paragraph 2.B. of the service bulletin.

(2) All items found cracked and all rivets found distorted or insecure must be replaced with a serviceable part prior to further flight, in accordance with paragraph 2.C of the service bulletin.

(b) For airplanes with rudders fitted with Modification 10165A during production: Prior to the accumulation of 6,250 hours time-in-service, or within 30 days after May 28, 1991 (the effective date of AD 91-09-13, Amendment 39-6979), whichever occurs later, and thereafter at intervals not to exceed 500 hours time-in-service, perform a detailed visual inspection of the angle brackets attaching the hinge ribs at Stations 27.582 and 29.582 for cracks, and a detailed visual inspection of the fasteners attaching the reinforcing plates for security, in accordance with paragraph 2.A. of British Aerospace Service Bulletin ATP 55-3, Revision 4, dated June 28, 1990.

(1) If cracking or local distortion is found on the angles or doubling plate flanges on the front face of the rudder spar, prior to further flight, remove the bolts and doubling plates, and perform a detailed visual inspection in accordance with paragraph 2.B. of the service bulletin.

(2) All items found cracked and all rivets found distorted or insecure must be replaced with a serviceable part prior to further flight in accordance with paragraph 2.C. of the service bulletin.

(c) For airplanes with rudders fitted with Modification 10165A in accordance with British Aerospace Service Bulletin ATP-55-4, or by previous repair or replacement action: Prior to the accumulation of 500 hours time-in-service following installation, or within 30 days after May 28, 1991 (the effective date of AD 91-09-13, Amendment 39-6979), whichever occurs later, and thereafter at intervals not to exceed 500 hours time-in-service, perform a detailed visual inspection of the angle brackets attaching the hinge ribs at Stations 27.582 and 29.582 for cracks, and a detailed visual inspection of the fasteners attaching the reinforcing plates for security, in accordance with paragraph 2.A. of British Aerospace Service Bulletin ATP 55-3, Revision 4, dated June 28, 1990.

(1) If cracking or local distortion is found on the angles or doubling plate flanges on the front face of the rudder spar, prior to further flight, remove the bolts and doubling plates, and perform a detailed visual inspection in accordance with paragraph 2.B. of the service bulletin.

(2) All items found cracked and all rivets found distorted or insecure must be replaced with a serviceable part prior to further flight in accordance with paragraph 2.C. of the service bulletin.

(d) The installation of Modification 10170A, which includes strengthening the rudder lower hinge ribs at Stations 27.582, 29.582, and 24.82, in accordance with British Aerospace Service Bulletin ATP 55-5, Revision 1, dated January 3, 1991, constitutes terminating action for the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

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

Issued in Renton, Washington, on July 18, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18467 Filed 8-2-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-136-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes and C-9 (Military) Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, which currently requires repetitive inspections and functional checks of the tailcone release system for proper operation. This action would require replacement or modification of the internal and external tailcone release system cable and handle assemblies. This proposal is prompted by reports of the tailcone failing to drop away when release activation was attempted. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

DATES: Comments must be received no later than September 23, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 91-NM-136-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, attn: Business Unit Manager, Technical Publications, Technical Administration Support, C1-L5B(45-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, ANM-131L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California, 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-136-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On January 10, 1991, the FAA issued AD 91-02-13; Amendment 39-6867 (56 FR 1911, January 18, 1991), to require repetitive inspections and functional checks for proper operation of the tailcone release system on McDonnell Douglas Model DC-9 series airplanes. That action was prompted by reports of discrepancies within the tailcone release system which prevented, or could prevent, the tailcone from releasing from the airplane when actuated. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

Since issuance of that AD, there have been a number of tailcone release handles that have been found broken or cracked. The McDonnell Douglas Corporation and the FAA have investigated this problem and have determined that the currently-installed internal and external tailcone release system handles cannot adequately support a sideload. A modified handle recently has been developed, the design of which precludes the addressed cracking/breaking problems.

The FAA has also received reports of a number of other discrepancies with the tailcone release system, which are currently being evaluated for possible mandatory corrective action.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 53-245, Revision 1, dated June 12, 1991, which describes procedures for replacing or modifying the internal and external tailcone release system cable and handle assemblies.

The FAA has also reviewed and approved McDonnell Douglas Alert Service Bulletin A53-243, Revision 1, dated February 8, 1991, which has been revised to include procedures for external and internal inspections of the tailcone release system assembly, which were formerly contained in Alert Service Bulletin, A53-242, dated December 20, 1990 (the service bulletin cited in AD 91-02-13); and to revise the functional testing procedures.

(Note: The original issue of this alert service bulletin, which was cited in AD 91-02-13, contains instructions only for the functional test.)

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 91-02-13 with a new airworthiness directive that would continue to require inspections of the tailcone release handles for cracks, and functional testing of the tailcone release system; and would require eventual replacement or modification of the internal and external tailcone release system cable and handle assemblies in accordance with Service Bulletin 53-245, Revision 1, previously described.

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

There are approximately 910 Model DC-9-10, -20, -30, -40, and -50 series airplanes and C-9 (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 590 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of parts to accomplish the modification is approximately $1,370 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $970,550.

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

implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6867 and by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 91–NM–136–AD. Supersedes AD 91–02–13.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (Military) series airplanes, operating in a passenger or passenger/cargo configuration; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: The requirements of this AD become applicable at the time an airplane in an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

To confirm proper operation and maintenance and to prevent failure of the tailcone release system, accomplish the following:

(a) Within 60 days after February 11, 1991 (the effective date of AD 91–02–13, Amendment 39–6867), unless previously accomplished within the last 60 days, inspect the interior and exterior tailcone release handles for cracks, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53–242, dated December 20, 1990, or Alert Service Bulletin A53–243, Revision 1, dated February 8, 1991; and accomplish a tailcone release system functional test in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53–243, dated January 10, 1991, or Revision 1, dated February 8, 1991.

(1) Cracked or broken tailcone release handles must be replaced prior to further flight.

(2) Discrepancies in the operation of the tailcone release system found as a result of the functional test must be repaired prior to further flight.

(b) Repeat the inspection of the interior and exterior tailcone release handles and conduct the functional test required by paragraph (a) of this AD at intervals not to exceed 3,000 flight hours or 15 months, whichever occurs first.

(c) Report any cracked or broken tailcone release handles or any discrepancies found during the accomplishment of the inspection and functional tests required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425, within 30 days after discovery. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1990 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

(d) Within 90 days after the effective date of this AD replace or modify the internal and external tailcone release system cable and handle assemblies, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 53–245, Revision 1, dated June 12, 1991. Accomplishment of such replacement or modification constitutes terminating action for the repetitive inspections of the interior and exterior tailcone release handles for cracks, as required by paragraph (b) of this AD. However, the repetitive functional checks of the tailcone release system required by paragraph (b) of this AD must continue to be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal, Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, attn: Business Unit Manager, Technical Publications, Technical Administration Support, C1–L5B. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on July 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18468 Filed 8–2–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 910761–1161]

RIN 0691–AA17

International Services Surveys: BE–20 Benchmark Survey of Selected Services; Transactions With Unaffiliated Foreign Persons—1991

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Economic Analysis is proposing to amend 15 CFR part 801 by revising § 801.10 to set forth reporting requirements for the BE–20 Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991; existing § 801.10, which contains the rules for the last (1986) benchmark survey, is being deleted.

The BE–20 benchmark survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. It is taken once every 5 years and is intended to cover the universe of selected U.S. services transactions with unaffiliated foreign persons. In nonbenchmark years, the data from the survey are used to derive universe estimates of these transactions based on sample data collected in the BE–22 annual follow-on survey to the BE–20. The information gathered is needed primarily to support U.S. trade policy initiatives on international services and to compile the U.S. balance of payments and the national income and product accounts.

Two major changes to the BE–20 survey are set forth in these proposed rules:

(1) The exemption criteria for the survey are being changed to significantly improve the coverage of the survey and the accuracy of the geographic detail obtained for critical services, such as data base and other information services, computer and data processing services, etc., and

(2) Several services not previously included in the survey are being added. Specifically, data on receipts and payments for the sale, purchase, or use of rights to natural resources; claims related to purchases of primary insurance; and miscellaneous disbursements, consisting of news-gathering costs of broadcasters and the print media, production costs of broadcasters and motion picture producers, and costs of maintaining business promotion, sales, or representative offices or of participating in foreign trade shows will be collected for the first time.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before September 19, 1991.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to room 1008, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments will be available for public inspection in room 1008, Tower Building, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0659.

SUPPLEMENTARY INFORMATION: BEA is proposing to amend 15 CFR part 801 by revising § 801.10 to set forth reporting requirements for the BE–20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended by Pub. L. 98–573 and Pub. L. 101–533). Section 4(a) of the Act provides that "The President shall, to the extent he deems necessary and feasible—* * * (4) conduct * * * benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons * * *". In section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–20 survey is conducted once every 5 years. The new survey will cover 1991; the last survey was conducted for 1986. The survey is intended to cover the universe of selected U.S. services transactions with unaffiliated foreign persons. In nonbenchmark years, universe estimates of these transactions are derived from reported sample data by extrapolating forward the universe data collected in the BE–20 benchmark survey. The data are needed to support U.S. trade policy initiatives, including bilateral and multilateral trade negotiations, on international services, compile the U.S. balance of payments and national income and product accounts, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities for services trade.

Two major changes to the survey since it was last conducted for 1986 are reflected in these proposed rules:

(1) The Exemption Criteria for the Survey are Being Changed to Significantly Improve the Coverage of the Survey and the Accuracy of the Geographic Detail Obtained for Critical Services

For the 1986 BE–20 survey, the threshold for mandatory reporting was $250,000 per transaction. that is, if an individual transaction in any covered service exceeded $250,000 during the year, it had to be reported. (A transaction was defined as the sum of all purchases, or the sum of all sales, of a particular service between a given U.S. person and a given foreign person during the year.) Such transactions had to be reported by type, disaggregated by country. Smaller transactions in each service were requested to be reported voluntarily, in aggregate for all foreign countries combined, if the total of such transactions exceeded $500,000.

For the 1991 survey, BEA proposes to require respondents to report sales for a given service if total sales of that service exceed $500,000, and to report purchases if total purchases of that service exceed $500,000. Such services must be disaggregated by country. For those types of services for which sales or purchases total $500,000 or less, data are requested to be reported voluntarily, in aggregate for all foreign countries combined.

The $250,000 per-transaction exemption level used in the 1986 survey did not provide adequate information on many services for two reasons: It caused a large proportion of the services to be reported only voluntarily by type, without any country detail, and it also resulted in a significant proportion of services transactions not being reported at all.

Data by individual foreign country and by type of service cross classified by country are available only from the mandatory sections of the survey. Data by type cross classified by country are particularly crucial for the conduct of successful trade negotiations on international services. For example, a bilateral treaty to reduce a foreign country's barriers to U.S. exports of data base and other information services cannot be negotiated or evaluated on the basis of estimates of only the sales of such services worldwide by all U.S. persons combined; what is needed are complete and accurate estimates of transactions of U.S. companies in the particular service with that foreign country alone. Data by country are also needed for compiling and analyzing the U.S. balance of payments accounts.

BEA requested that smaller transactions be reported voluntarily in 1986, in aggregate for all countries combined, for two reasons. First, it wanted to obtain a rough estimate of the amount of data being missed by the mandatory reporting requirement, for use in evaluating the effectiveness of the $250,000 per-transaction exemption level used in 1986 and in considering alternative levels, as necessary, to ensure adequate coverage in subsequent benchmark surveys. It should be noted that the $250,000 per-transaction level in the 1986 survey—the first benchmark survey of services conducted by BEA—was a compromise reached after considerable discussion with respondents about the adequacy and burden of alternative levels. At that time, no data were available on which to judge the adequacy of that, or any other, level. Second, by combining the albeit fragmentary information from the voluntary sections of the form with the data from the mandatory sections, BEA wanted to obtain at least a rough, aggregate estimate of total sales and purchases of the various covered services, even though it recognized that such an aggregate estimate had only limited uses. Detailed data by country and by type of service cross classified by country were not requested to be reported voluntarily because it was felt that respondents would be unwilling to provide such detailed information on a voluntary basis.

The large size of the data reported voluntarily (not by country) in the 1986 BE–20 (and in the BE–22 annual follow-on survey for 1987 forward, which had the same exemption level) indicated that the $250,000 per-transaction exemption level for mandatory reporting was clearly inadequate to obtain the complete and accurate information by

country, and by type of service cross classified by country, required for analytical and policy purposes. The voluntary data accounted for over one-half of the totals for a number of important services. Also, for every service covered by the BE–20 except telecommunications, construction, and insurance, the voluntary data accounted for 23 percent or more of total sales or total purchases (including both the voluntary and mandatory data) in at least one recent year.

In addition to inadequate coverage of many services by country and by type cross classified by country, the $250,000 per-transaction exemption level caused a significant amount of services to not be reported at all. Evidence of this is provided in the BE–22 annual follow-on surveys. In those surveys, companies that claimed exemption from mandatory reporting because they had no individual transaction of more than $250,000, and that did not report data voluntarily, were asked to indicate the rough size ranges of their total sales and total purchases of all covered services combined. Some companies indicated that, even though their transactions were small individually, they were sizable in total. The 1986 BE–20 may also have missed transactions of companies that would have claimed exemption from reporting but were not contacted by BEA and small transactions of companies that reported only in the mandatory sections of the survey, and, thus, did not provide data on their small transactions in the voluntary section.

For receipts, coverage problems are particularly serious in data base and other information services; computer and data processing services; and legal services. For payments, large and persistent coverage problems are evident in legal services; educational and training services; and performing arts. For most other covered services, coverage problems are sizable in some years but not in others.

The expected improvement in mandatory coverage outside telecommunications, insurance, and construction is significant under the proposed exemption level. Based on data from the 1989 BE–22 survey, BEA estimates that sales reported in the mandatory section of the survey for the 15 covered services excluding telecommunications would have been $3,715 million under the proposed exemption level instead of $2,541 million, an increase of 46 percent. For 1989 purchases, BEA estimates that data reported for the same 15 services would have been $1,037 million instead of $756 million, an increase of 37 percent.

(2) Several Services not Previously Covered by the BE–20 Survey Are Being Added

BEA proposes to broaden the coverage of the BE–20 to include several additional services. The addition of these services will fill several of the remaining major gaps in Government statistics on international services transactions. A new schedule would cover receipts and payments for the purchase, sale, or use of rights to natural resources, such as oil production royalties. Another new schedule would cover a variety of miscellaneous disbursements, consisting of news-gathering costs of broadcasters and print media, production costs of broadcasters and motion picture producers, disbursements to maintain business promotion, sales, or representative offices, and disbursements for participating in foreign trade shows. BEA would also begin collecting data on claims related to purchases of primary insurance; only purchases of primary insurance (i.e., premiums paid) are currently covered.

One other change reflected in these proposed rules for the 1991 BE–20 survey was first made in the 1987 BE–22 annual follow-on survey to the 1986 BE–20. That change is to delete coverage of purchases and sales of prepackaged computer software from the computer and data processing services category for purposes of this survey. This change was recommended during OMB's clearance of the 1987 BE–22 survey by potential respondents on the basis that transactions in prepackaged software are transactions in goods instead of in services.

During the design of the 1991 BE–20 survey, BEA consulted extensively with both data users and respondents on preliminary proposals for the survey. On March 7, 1991, it mailed a letter to 50 data users and respondents, outlining its preliminary proposals. In that letter, BEA proposed changing the exemption criteria for the survey to require reporting of sales if total sales for all covered services combined (rather than of only a given type of service) exceeded $500,000 and reporting purchases if total purchases for all covered services combined exceeded $500,000. In a meeting with BEA staff on April 26, representatives of the Business Council on the Reduction of Paperwork (BCORP) expressed concern about the burden of such an exemption level. As a result, BEA changed its proposal to apply the $500,000 exemption level to total sales of each type of service separately, rather than to total sales of all covered services combined. This change eliminates reporting of those individual services for which purchases or sales were $500,000 or less but which, when combined with purchases or sales of all other covered services, would sum to more than $500,000.

BEA also considered continuing to base the exemption level upon the size of an individual transaction but to lower the threshold for mandatory reporting from $250,000. BEA decided not to do so for two reasons. First, BEA has no information on the amount of data that would be reported under alternative threshold amounts, and therefore does not know what level would provide adequate coverage of each service. (Anecdotal evidence suggests that, for some services, such as computer and data processing services, or data base and other information services, the exemption level probably would have to be set near zero to assure adequate coverage.) Second, BEA received a number of exemption claims from companies that checked the exemption claim box indicating they had more than $10 million in total sales or total purchases but no one transaction of $250,000 or more. Exempt companies that checked that box might have had $10.1 million in transactions or $100 million in transactions; BEA has no basis to judge, but the amounts involved are potentially sizable. Also many companies reported sizable amounts of data only voluntarily, not disaggregated by individual foreign country. The proposed exemption level would assure that the companies that are the largest purchasers or sellers of a particular service would be required to report data by individual foreign country.

In its consideration of whether or not to add services to the 1991 BE–20 survey, BEA recognized that one of the major remaining gaps in U.S. Government statistics on international services is the lack of information on financial services. However, BEA decided not to propose the addition of questions related to financial services now, but is studying possible ways to obtain information on such services, including adding questions to the 1992 BE–22 survey. BEA also decided not to propose adding questions at this time on a number of nonfinancial services, including medical services, merchant trader commissions, real estate commissions, finder's fees, and clearance of credit card vouchers.

In the meeting with representatives of BCORP, it was suggested that BEA stop covering several of the smallest services on the survey, because the cost to

respondents of assembling the data, or even of determining whether or not they had any transactions in those services, was not justified by the small amounts of data that were reported. However, the five smallest services (agricultural services; mailing, reproduction, and commercial art; management of health care facilities; accounting, auditing, and bookkeeping services; and employment agencies and temporary help supply services) together account for a significant amount of data (more as a group than some other services individually), and dropping them would adversely contribute to the statistical gap in the U.S. balance of payments accounts. Further, if dropped, BEA would have difficulty in resurrecting them for the BE–20 survey in 5 or 10 years, because it would not know whether or to what extent they had grown in the interim. As a compromise, BEA proposes to continue including the five smallest services in the 1991 and subsequent benchmark surveys, but excluding them from the BE–22 annual surveys for nonbenchmark years as long as the benchmark surveys continue to indicate that they are small.

BEA believes its current proposals reflect a reasonable balance between the needs of data users for more complete, accurate, detailed, and timely data, and the concerns of respondents about the burdens imposed.

Copies of the proposed survey forms may be obtained from: Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0659.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act.

The public reporting burden for this collection of information is estimated to vary from 4 to 500 hours per response, with an average of 13.2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 0608–0056, Washington, DC 20503.

Executive Order 12291

BEA has determined that these proposed rules are not "major" as defined in E.O. 12291 because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total sales or total purchases transactions in a given type of service with unaffiliated foreigners exceed $500,000 during the year. In addition, international business, whether in goods or services, tends to be conducted mainly by the larger companies in a given industry. Finally, small businesses tend to have specialized operations and activities, so those that do have reportable transactions will likely have to report only one type of service; therefore, the burden on them should be relatively small.

List of Subjects in 15 CFR Part 801

Economic statistics, Balance of payments, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: July 30, 1991.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Section 801.10 is revised to read as follows:

§ 801.10 Rules and regulations for the BE–20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991.

A BE–20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons, will be conducted covering companies' 1991 fiscal year. All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–20 survey are given below. More detailed instructions are given on the report form itself.

(a) The BE–20 survey consists of two parts and eight schedules. Part I (Name, Address, and Determination of Reporting Status) requests information needed to determine whether a report is required and which schedules apply. Part II (Identification and Selected Financial and Operating Data of U.S. Reporter) requests information about the reporting entity. Each of the eight schedules covers one or more different types of services and is to be completed only if the U.S. Reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who is to report and transactions to be reported.* (1) Mandatory reporting—A BE–20 report is required from each U.S. person who had transactions (either sales or purchases) in excess of $500,000 with unaffiliated foreign persons in any of the services listed in paragraph (c) of this section during the U.S. person's 1991 fiscal year.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters who must file pursuant to this mandatory reporting requirement must complete parts I and II of Form BE–20 and all applicable schedules. The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) on line 1, section A of the schedule. In addition, these amounts must be

distributed below line 1 to the country(ies) involved in the transaction(s).

(iii) Application of the $500,000 exemption level to each covered service is indicated on the schedule for that particular service. It should be noted that an item other than sales or purchases may be used as the measure of a given service for purposes of determining whether the threshold for mandatory reporting of the service is exceeded.

(2) Voluntary reporting—If, during the U.S. person's 1991 fiscal year, the U.S. person's total transactions (either sales or purchases) in any of the types of services listed in paragraph (c) of this section are $500,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service.

(i) Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search.

(ii) The amounts of transactions reportable on a particular schedule are to be entered in the appropriate column(s) on line 32, section B of the schedule; they are not to be disaggregated by country. Reporters filing voluntary information only should also complete part I (sections A, B, and C) and part II of Form BE–20, answering "no" for each type of service listed in part I, section B and indicating in part I, section C that voluntary data are being reported.

(3) Any person receiving the BE–20 survey form from BEA, even if the person is not subject to the mandatory reporting requirement in paragraph (b)(1) of this section, and is not filing information on a voluntary basis pursuant to paragraph (b)(2) of this section, must nevertheless complete and return to BEA part I of the form, answering "no" for each type of service listed in part I, section B, indicating in part I, section C that no voluntary data are being reported, and indicating in part I, section D the basis for not reporting data. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary followup contact.

(c) *Covered types of services.* Only the services listed below are covered by the BE–20 survey. Other services, such as transportation, reinsurance, lending and borrowing and related fees and charges, brokerage fees, etc., are NOT covered. Covered services are:

(1) *Advertising services.* Preparation of advertising and placement of such advertising in media, including charges for media space and time. An advertising agency selling services should use gross billings to unaffiliated foreigners as the measure of these services.

(2) *Computer and data processing services, excluding the value of prepackaged software.* Data entry, processing (both batch and remote), and tabulation; computer systems analysis, design, and engineering; custom software and programming services; rights to use, reproduce, or distribute computer software, whether custom or prepackaged; equipment leasing (except financial leasing) integrated hardware/software systems; and other computer services (e.g., timesharing, maintenance, and repair). Excludes the value of prepackaged software.

(3) *Data base and other information services.* Business and economic data base services, including business news, stock quotation, and financial information services; medical, legal, technical, demographic, bibliographic, and similar data base services; general news services, such as those provided by a news syndicate; and other information services, including reservation systems and credit reporting and authorization systems.

(4) *Telecommunications services.* (i) Message telephone services (communications carriers only)—Receipts from foreign persons (communications companies and postal, telephone, and telegraph agencies (PTT's)) for own share of revenues for transmitting messages originating abroad to U.S. destinations, and payouts to foreign persons (communications companies and PTT's) for their share of revenues for transmitting messages originating in the United States to foreign destinations.

(ii) Private leased channel services—Receipts from foreign persons for circuits and channels terminating in the United States and for circuits and channels between foreign points, and payouts to foreign persons for leased channels and circuits terminating in foreign countries.

(iii) Telex, telegram, and other jointly provided (basic) services—Includes telex and telegram services, packet switched services when not offered in connection with enhanced services, and other regulated services of the type reportable to the FCC on Report 4361.

(iv) Value-added (enhanced) services—Telecommunications services that add value or function above and beyond the telecommunications transport services that deliver the value-added services to end users. They can include electronic mail, voice mail, code and protocol processing, and management of data networks; facsimile services and videoconferencing; and other value-added (enhanced) services.

(v) Support services—Services related to the maintenance and repair of telecommunications equipment; ground station services; capacity leasing for transiting; and launching of communications satellites.

(5) *Agricultural services*—Soil preparation services, crop services, veterinary and other animal services, farm labor and management services, and landscape and horticultural services.

(6) *Research, development, and testing services.* Commercial and noncommercial research, product development services, and testing services. Excludes medical and dental laboratory services.

(7) *Management, consulting, and public relations services.* Management services, except management of health care facilities (see paragraph (c)(8) of this section); consulting services, except consulting engineering services related to actual or proposed construction or mining services projects (see paragraph (c)(20) of this section) and computer consulting (see paragraph (c)(2) of this section); and public relations services, except those that are an integral part of an advertising campaign (see paragraph (c)(1) of this section). Excludes management and operation of a foreign business by a U.S. person, or of a U.S. business by a foreign person, where operating staff as well as management is provided. (Generally, such operations would be deemed to constitute a foreign affiliate of the U.S. person, or a U.S. affiliate of the foreign person, to be reported in BEA's direct investment surveys rather than in this survey.)

(8) *Management of health care facilities.* Management of hospitals, nursing homes, and other health care facilities. If operating staff is provided, generally should be reported in BEA's direct investment surveys, rather than in this survey.

(9) *Accounting, auditing, and bookkeeping services.* Excludes data processing and tabulating services (see paragraph (c)(2) of this section).

(10) *Legal services.* Legal advice or other legal services, including insurance claims adjustment services.

(11) *Educational and training services.* Educational or training services provided or acquired on a contract or fee basis. Excludes tuition and fees charged to individual students by educational institutions, as well as training done by a manufacturer in connection with the sale of a good (see paragraph (c)(15)(ii) of this section).

(12) *Mailing, reproduction, and commercial art.* Direct mail advertising services; mailing services; blueprinting, photocopying, and other reproduction services, including those in connection with direct mail advertising; commercial photography, art, and graphic services; address list compilers; and stenographic services.

(13) *Employment agencies and temporary help supply services.* Employment services and provision of temporary help and personnel to perform services for others on a contract or fee basis. Where workers are carried on the payroll of the agency, includes receipts and payments covering the compensation of workers, as well as agency fees.

(14) *Industrial engineering services.* Engineering services related to the design of movable products, including product design services. Excludes services that relate to immovable products, such as those that relate to actual or proposed construction or mining services projects (see paragraph (c)(20) of this section).

(15) *Industrial-type maintenance and repair, installation, alteration, and training services.* (i) Maintenance and repair services primarily to machinery and equipment, and small maintenance and repair work on buildings, structures, dams, highways, etc. Would include such services as the periodic overhaul of turbines or locomotives, the extinguishing of oil or natural gas well fires, and refinery maintenance. Excludes computer maintenance and repair services (see paragraph (c)(2) of this section).

(ii) Installation, startup, and training services provided by a manufacturer *in connection with the sale of goods.* Include elsewhere as appropriate (e.g., in construction or education and training) if not provided in connection with the sale of goods. Excludes such services where the cost is included in the price of the goods and not separately billed or is declared as a part of the price of the goods on the shippers export or import declaration filed with the U.S. Customs Service; however, services provided at a price over and above that entered on the shippers export or import declaration should be included. These services would be reported elsewhere if not provided in connection with the sale of goods. For example, installation of machinery and equipment is normally considered a construction activity, and training personnel in the use of new machinery would ordinarily be reported as an educational or training service. However, this separate category has been provided for reporting such services when provided in connection with goods.

(16) *Performing arts, sports, and other live performances, presentations, and events.* Fees (net of allowances for expenses) for performances abroad by U.S. or foreign performers, and for performances in the United States by foreign performers. To be reported by U.S. management companies, booking agents, promoters, and presenters who book performances and events abroad by U.S. or foreign performers; U.S. performers who received funds directly from a foreign person rather than through a U.S. management company (or similar entity); and management companies, booking agents, promoters, and presenters who book performances in the United States by foreign performers. (As used here, "performers" means entertainers, sports teams, orchestras, dance companies, lecturers, and similar persons or performing groups.)

(17) *Rights to natural resources.* Receipts (or payments) for the sale (or acquisition), or for the use of rights to natural resources, excluding rights to surface land, located in the United States and abroad.

(18) *Miscellaneous disbursements.* Disbursements or outlays to fund newsgathering costs of broadcasters and the print media; production costs of motion picture companies and companies engaged in the production of broadcast program material other than news; and costs of maintaining tourism, business promotion, sales, and representative offices, and of participating in foreign trade shows.

(19) *Primary insurance.* (i) Primary insurance premiums paid—Applies only to insurance *purchased* from foreign insurance carriers. Equals premiums paid minus cancellations. Excludes reinsurance transactions.

(ii) Losses recovered on purchases of primary insurance—Applies only to claims recovered on purchases of primary insurance.

(20) *Construction, engineering, architectural, and mining services.* Covers only *purchases* of the following types of services: services of general contractors in the fields of building and heavy construction; construction work by special trade contractors, such as the erection of structural steel for bridges and buildings and on-site electrical work; architectural, engineering, and land-surveying services; and mining services, including oil and gas field services. Includes only those engineering services purchased in conjunction with construction and mining services projects; industrial engineering services, such as product design services, are included under paragraph (c)(14) of this section. Includes services purchased in connection with proposed projects (e.g., feasibility studies) as well as projects that are actually being carried out. Note that the U.S. Reporter's *sales* of construction, engineering, architectural, and mining services are not reportable in this survey, but on separate Form BE-47.

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[RIN 1205-AA89]

Wage and Hour Division

29 CFR Part 507

[RIN 1215-AA]

Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are proposing regulations governing the filing and enforcement of labor condition applications filed by employers seeking to use aliens in specialty occupations on H-1B visas. Under the Immigration and Nationality Act (INA), as amended by the Immigration Act of 1990 (Act), an employer seeking to employ an alien in a specialty occupation on an H-1B visa is required to file a labor condition application with, and receive the approval of, DOL before the Immigration and Naturalization Service (INS) may approve an H-1B visa petition. The labor condition application process will be administered by ETA; complaints and investigations regarding labor condition applications will be the responsibility of ESA.

DATES: Written comments on the proposed rule are invited from

interested parties. Comments must be received on or before September 4, 1991.

ADDRESSES: Submit comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Immigration Task Force, room N–4470.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, contact David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N–4470, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 535–0174 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in the proposed rule have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

The Employment and Training Administration estimates that up to 50,000 employers per year will submit labor condition applications. The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and preparing the application.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

On November 29, 1990, the Immigration Act of 1990 (Act), Public Law 101–649, 104 Stat. 4978, was enacted into law. The law amends the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA) and assigns responsibility to the Department of Labor for the implementation of several provisions of the Act relating to the entry of certain categories of employment-based immigrants, and to the temporary employment of certain categories of nonimmigrants. One of the major provisions of the Act the Department of Labor (DOL or Department) is charged with implementing governs the entry of H–1B aliens in specialty occupations to work temporarily in the United States (U.S.). 8 U.S.C. 1101(a)(15)(H)(i)(b); 8 U.S.C. 1182(n); and 8 U.S.C. 1184(c).

The Act has redefined and narrowed the occupational scope of the current H–1B visa category. Aliens of distinguished merit and ability who had been previously admitted under the H–1B visa category may now be eligible for entry under one of two new visa classifications (O and P) which have been established for aliens with extraordinary ability, persons accompanying aliens, and athletes and entertainers. 8 U.S.C. 1101(a)(15)(O) and 1101(a)(15)(P); see also 8 U.S.C. 1184(g)(1)(C). DOL has no operational responsibilities under the O and P visa provisions of the Act. Under the new provisions of the Act, the H–1B visa category is designated for aliens who are coming temporarily to the U.S. to perform services in a "specialty occupation," as defined in sec. 214(i)(1) of the INA. 8 U.S.C. 1184(i)(1). The Immigration and Naturalization Service (INS) makes determinations on whether a job opportunity is in a specialty occupation.

The new H–1B category of specialty occupations consists of those occupations which require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. In addition, the alien must possess full state licensure to practice in the occupation (if required), completion of the required degree, or experience in the specialty equivalent to the degree and recognition of expertise in the specialty. 8 U.S.C. 1184(i)(2). INS makes determinations on an alien's qualifications for a job opportunity or specialty occupation.

The INA now establishes a cap of 65,000 on the number of aliens who may be issued H–1B visas annually, and provides a process for protecting the wages and working conditions of similarly employed workers in the area of employment from being adversely affected by the employment of H–1B temporary workers. 8 U.S.C. 1184(g)(1)(A).

The process of protecting U.S. workers under the H–1B program begins with a requirement that employers file a labor condition application on Form ETA 9035 with the Department. 8 U.S.C. 1182(n). In this application the employer is required to attest that:

(1) It will pay the alien(s) and other individuals employed in the occupational classification at the place of employment prevailing wages or actual wages whichever are greater;

(2) It will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed;

(3) There is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;

(4) It has publicly notified the bargaining representative of its employees in the occupational classification at the place of employment of its intent to employ an H–1B alien worker(s), or, if there is no bargaining representative, that it has posted such notice at the place of employment; and

(5) The employer must provide the information required in the application about the number of aliens sought, occupational classification, job duties, wage rate and conditions under which they will be employed, date of need, and period of employment.

Finally, an important part of the process of protecting U.S. workers consists of a complaint and enforcement provision. DOL will accept complaints from any aggrieved party about an employer's failure to meet a specified condition or for misrepresentation of a material fact in the application. If DOL determines a reasonable basis for the complaint exists, DOL will investigate, provide the employer an opportunity for a hearing, and may assess penalties depending upon the outcome of the hearing. 8 U.S.C. 1182(n)(2).

III. The Process of Developing Proposed Regulations

In developing the proposed regulations, the Department considered a number of issues pertaining to the filing of labor condition applications by employers seeking to employ H–1B workers. These issues included:

(1) Which employers may file a labor condition application for H–1B worker(s);

(2) Whether a labor condition application must be filed before or after an H–1B visa is issued;

(3) Whether DOL should determine that an H–1B occupation is a specialty occupation, including the extent to which the Department will review a labor condition application; and

(4) Whether documentation should be submitted with the labor condition application and/or maintained at the place of employment.

The Department published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on March 20, 1991, which invited comments from all interested parties on these issues and others of concern to the public. 56 FR 11705. Comments and recommendations were received from a variety of persons and organizations with respect to the Department's approach to the development and implementation of these regulations. The Department has carefully considered the views of these commenters in developing the proposed regulations.

A. Labor Condition Application Process and Requirements

The Department believes that Congress, in enacting the Act, intended to provide greater protection than under prior law for U.S. and foreign workers without interfering with an employer's ability to obtain the H–1B workers it needs on a timely basis. Accordingly, the Department proposes that a labor condition application be accepted if it is complete and that DOL review be limited to whether the application is complete, and whether the Wage and Hour Division (Administrator) has previously disqualified the employer from employing H–1B workers, thereby minimizing the time it takes to obtain approval of H–1B workers. However, in implementing the protection for workers that the Act intends, the proposed procedures and documentation requirements are sufficiently specific to enable investigations of complaints against employers and enforcement of sanctions where necessary. Under the Act, protection of U.S. workers is provided through the complaint process. The proposed regulations set forth a process which:

(1) Requires labor condition applications that are specific with respect to employer statements and promises; (2) limits DOL's review of a labor condition application to a simple check to assure that it is completed and signed, and to determine whether the Wage and Hour Division (Administrator) has disqualified the employer from employing H–1B workers; (3) describes the information that employers must retain to document the validity of their statements; and (4) establishes a system for the receipt of complaints, and their investigation and disposition, including the imposition of penalties where warranted. The proposed rule assigns to the Employment and Training Administration (ETA) DOL's role in accepting and processing applications; and to the Wage and Hour Division of the Employment Standards Administration (ESA) DOL's role in investigating complaints and assessing penalties.

1. Who May File a Labor Condition Application?

In developing the proposed regulations, the Department considered a number of issues relating to the eligibility of an employer to file a labor condition application, including: Whether an H–1B employer must have a physical location in the U.S. or otherwise be able to prove it is doing business in the U.S. at the time a labor condition application is filed; and whether the alien must be paid in U.S. currency. The Department received comments on these and several related issues. Several commenters to the ANPRM indicated that current practice did not require a U.S. employer, or even the presence of an employer in the U.S., and that payment to the H–1B workers was often not made in U.S. currency. One commenter stated that H–1B workers were not always paid while in the U.S. Instead, their salaries were credited to accounts in their home countries, and, while in the U.S., the workers were provided living expenses only and those expenses were paid in U.S. dollars.

The Department believes that, in order to implement the complaint and enforcement provisions of the Act, H–1B employers must maintain a legal presence in the United States. In the proposed regulations, the Department interprets this to mean that an H–1B employer must have an Internal Revenue Service (IRS) employer identification number and make a filed labor condition application and supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment. In addition, the proposed regulations do not require the payment to the H–1B employee in U.S. currency.

Consideration was also given to whether a job contractor should be treated as an employer for H–1B purposes. The term job contractor refers to an employer whose employees perform work at job sites of other employers but who are paid by the job contractor and are its employees. In the proposed regulations, job contractors are treated like any other employer and are bound by the regulations applicable to all H–1B employers. The Department notes that the Act requires the payment of wages which are at least equal to the actual wage level for the occupational classification at the place of employment, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater. Use of a job contractor will not permit circumvention of this requirement; the proposed regulations require that an H–1B employee receive wages which are at least equal to the actual wage at the worksite or the local area prevailing wage for the occupation, whichever is greater.

2. Pre- vs. Post-Entry Approval

The Act requires the Department to determine and certify to the Attorney General that before the alien can be granted H–1B status, the employer has filed with, and had approved by DOL, a labor condition application. On the other hand, H.R. Conf. Rep. No. 101–955, p. 122, reprinted in 1990 U.S. Code Cong. & Admin. News 6787 (Conference Report) suggests that Congressional intent is that such status be granted on a "post-entry attestation" basis. A number of commenters to the ANPRM asserted their belief that the Act intended for labor condition applications to be approved by DOL on a post-entry basis. These commenters claim that U.S. businesses have a need to hire workers in H–1B specialty occupations quickly, and given the number and variety of occupations involved, they fear backlogs will develop if DOL reviews and approves each application on a pre-entry basis.

While the Department recognizes these concerns, the Department is required to follow the clear, unambiguous language of the Act. Therefore, the proposed regulations require that the employer must file a labor condition application and receive approval from DOL before an H–1B petition can be submitted to INS. Because of the legitimate concerns expressed, the Department has attempted to design a streamlined application procedure.

3. Part-time Employment

The Department is proposing that the long-standing practice of approving part-time employment for temporary professional workers be continued in the H–1B program. The great majority of commenters to the ANPRM opposed the imposition of any limitation on part-time employment. These commenters argued that there is no statutory basis for excluding part-time work under the H–1B program and suggested that the economy would be harmed if H–1B workers were no longer permitted to

enter for part-time jobs. Commenters also indicated that it is not unusual for an alien to be needed on a one-time project basis where a 40-hour work week is not typical. A few commenters favored eliminating or limiting part-time employment because the new ceiling on the annual number of H–1B visas could be quickly exhausted by numerous H–1B aliens working only a few hours per week. The Department agrees with the views of the majority of commenters and the proposed regulations do not prohibit part-time employment. Complaints alleging that working conditions of U.S. workers have been adversely affected by the employment of H–1B workers, including parttime H–1B workers, by, for example, eliminating or otherwise curtailing permanent jobs and/or fringe benefits for U.S. workers, would be investigated by the Department.

4. Multiple Employers

Under the current practice, H–1B aliens may work for more than one employer. The Department believes that there is no statutory basis for changing this practice. In addition, there appear to be situations where highly specialized skills and knowledge are needed by more than one employer simultaneously. Therefore, the proposed regulations continue to permit H–1B workers to work for more than one employer, provided that each employer has filed a labor condition application.

5. Occupational Scope

Under the proposed regulations, an employer may file a single labor condition application for more than one alien in more than one occupational classification, as long as the application clearly names each occupational classification by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job. A listing of the three-digit occupational groups for professional, technical, and managerial occupations is included at Appendix 2 to this subpart. For each occupational classification the employer must indicate the number of aliens to be employed, the rate of pay, the starting and ending dates of the H–1B workers' employment, and the location of each intended place of employment.

6. Labor Condition Application Validity Period

The period of authorized admission for an alien nonimmigrant on an H–1B visa normally may not exceed six years. The Department proposes that the acceptance of a labor condition application be valid for a period of up to six years, depending upon the period of intended employment stated in the labor condition application. The proposed regulations place no specific time limit on when a labor condition application, once approved by DOL, must be used. However, since the Act requires the employer to specify the period of intended employment, there will be a practical limitation on the extent to which an approved labor condition application can be held without being used.

B. Labor Condition Statements

1. Prevailing Wage Determinations

The Act requires that the wages paid to H–1B workers and to other workers in the occupational classification at the place of employment be the higher of the actual wage rate paid to such workers or the prevailing wage for the occupation in the area of employment. The ANPRM acknowledged the Congressional intent, as expressed in the Conference Report, that prevailing wage determinations shall be made in a like manner as regulations currently governing the permanent alien labor certification (immigrant worker) program. See 20 CFR 656.40; see also 8 U.S.C. 1182(a)(5)(A).

The current method of obtaining prevailing wage information in the permanent worker program varies from state to state. In a few states, employers may call the State Employment Security Agency (SESA) and obtain prevailing wage information over the telephone. In other states, especially larger states, a prevailing wage determination is not made until the employer has submitted a labor certification application to the SESA. Upon receipt of the application, the SESA will determine whether it has on file current prevailing wage information for the occupation. Where it does not, the SESA conducts a prevailing wage survey using the methods outlined at 20 CFR 656.40. The speed with which these surveys can be conducted depends on a number of factors, such as the volume of requests and the resources available to the SESA, and the extent to which surveyed employers voluntarily divulge information regarding wages paid to their workers in the occupation. Where employers are reluctant to provide the needed information, the SESA will require more time to make a prevailing wage determination, since other employers who will provide the information must be sought.

The Department received many comments on this issue, most of which addressed matters of availability, accessibility and utility of prevailing wage data. Commenters urged that SESAs make prevailing wage determinations quickly or immediately, even within a few days. A number of commenters recommended that the SESAs not be the only source of prevailing wage information, and that employers have the option of using other prevailing wage information, such as that contained in various published wage surveys. Some commenters expressed concern that SESA prevailing wage determinations would not be relevant to the occupation or geographic locality and would not be sufficiently specific to the occupation and employer. Other commenters suggested that prevailing wage surveys be conducted only after a complaint is filed. Still others commented on the need to provide a method of dealing with employer wage ranges.

The proposed regulations incorporate the language of 20 CFR 656.40, as required by the Conference Report, and, in response to the many comments received on this issue, also permit the applicant to use an independent "authoritative" wage source, as defined in subpart H of the proposed rule, in lieu of a SESA prevailing wage determination. These independent authoritative wage surveys are now used by state and federal staff in the permanent labor certification program and the Department believes their continued use in the H–1B program will simplify prevailing wage determinations for employers and the Department and will expedite the approval of labor condition applications. The proposed regulations, therefore, provide the employer with the option of either obtaining a prevailing wage determination from the SESA or using an independent authoritative source. In either case, the employer shall develop and retain documentation regarding how it determined the prevailing wage, and shall have the burden of proving the validity of the prevailing wage obtained from a non-SESA source in the event a complaint is filed. The proposed regulations also require that documentation to support an employer's prevailing wage rate be updated every 24 months from the date of filing the application, and that the workers receive the greater of the actual or the updated prevailing wage for the occupation for the entire period of intended employment. Employers may challenge a SESA prevailing wage determination through the Employment Service complaint system. See 20 CFR part 658, subpart E.

2. Prevailing Working Conditions

The Act requires employers to state that the employment of H–1B workers will not adversely affect the working conditions of U.S. workers similarly employed. The ANPRM stated the Department's interpretation that the Act intended that prevailing working condition determinations be made in the same manner as prevailing wage determinations, i.e., according to the current regulations for the permanent alien labor certification (immigrant worker) program. See 20 CFR part 656. Most of the few commenters to the ANPRM that addressed this issue appear satisfied with the current regulations for the permanent program. In the event of a complaint under the H–1B program, the employer must provide credible proof of prevailing working conditions for the occupations of concern. Such proof may include surveys conducted by employers, published independent studies or articles which discuss the conditions in the industry and locale, and other relevant information. The proposed regulations require that prevailing working conditions determinations be made on a post-complaint basis as is currently done in the permanent program. See 20 CFR 656.24(b)(3).

3. Supporting Documentation

The Department considered whether employers should be required to submit supporting documentation with the labor condition application or whether such documentation should be maintained by the employer at the place of employment. Several commenters to the ANPRM indicated that there is no statutory requirement to submit documentation to DOL or to maintain it at the place of employment. The Act does require that a copy of each application and accompanying documentation be available for public examination at the employer's principal place of business or place of employment.

The proposed regulations do not require that supporting documentation be submitted to DOL with the labor condition application. Instead, the employer is required to develop documentation to support each labor condition application element and maintain it at the place of employment or the employer's principal place of business in the U.S. The application and the supporting documentation regarding all elements of the application other than payment of wages (i.e., other than payroll records) must be maintained by the employer for the validity period of the labor condition application plus one year beyond the end of the validity period, except that, in the event a timely complaint is filed, the documentation must be retained until the complaint is resolved through the enforcement process set out in the regulations. Payroll records, documenting the payment of the required wages, must be retained for three years from the date(s) of the creation of the record(s), except that in the event a timely complaint is filed, all payroll records must be retained until the complaint is resolved through the enforcement process.

C. DOL Review of Labor Condition Applications

1. Level of Review

The Department considered a number of approaches to the level of DOL review of a labor condition application ranging from full review and approval of each labor condition element to a simple screening of the application for completeness. Many commenters to the ANPRM made recommendations concerning the level of review of a labor condition application. A number of commenters recommended that DOL not review a labor condition application unless a complaint was filed. Other commenters suggested that DOL simply file the labor condition application after insuring that the required information has been provided on the form.

The Department believes that Congress intended that DOL use a simplified, streamlined process for reviewing H–1B labor condition applications and proposes a simplified review. The Department proposes to rely upon a complaint-driven enforcement process which involves: Attestations made by the employer; public examination of the labor condition application; and the ability of aggrieved persons to file complaints, which may be investigated and which may result in penalties against the employer. The Department's proposed regulations reflect this approach.

2. Specialty Occupation

The INA defines a "specialty occupation" as one which requires the theoretical and practical application of a body of highly specialized knowledge, and which requires the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). 8 U.S.C. 1184(i)(1). In addition, the INA requires the prospective H–1B alien to possess the following qualifications: Full state licensure to practice in the occupation, if required; and either (i) completion of a bachelor's or higher degree in the specific specialty (or its equivalent), or (ii) experience in the specialty equivalent to the completion of such a degree and expertise in the specialty through progressively responsible positions relating to the specialty. 8 U.S.C. 1184(i)(2).

It has been the responsibility of INS to determine whether an alien and the occupation met the requirements for an H–1B visa. The proposed regulations reflect a continuation of this approach. INS will continue to have, under the H–1B program, the responsibility for determining whether the occupation and alien meet the requirements for an H–1B visa, after receiving the employer's petition with the DOL-approved labor condition application attached. A determination by INS that the occupation or alien does not qualify for an H–1B visa is appealed only through relevant INS and Department of Justice procedures.

This approach is in keeping with the intent of the Act—that DOL review be simple and streamlined, and that worker safeguards be provided by a complaint-driven enforcement system.

3. Labor Availability Determination

The ANPRM asked whether commenters believed that Congress intended that employers attest to the unavailability of U.S. workers for the positions offered aliens who would enter the U.S. on H–1B visas. A large number of comments and recommendations were received on this issue. Most commenters stated they believed that such a requirement was not in the law and exceeded Congressional intent. These commenters argued that the attestation-like process, public notification, and complaint provisions were the mechanisms intended by the Act to protect U.S. workers. Other commenters asserted that the Act intends that an employer attest that it had been unable to recruit a qualified U.S. worker for the position(s) to be filled by the H–1B alien(s).

The Department is not proposing that employers attest to the unavailability of qualified U.S. workers for H–1B positions.

D. Confidentiality of Employer Information

Many commenters raised the issue of the confidentiality of employer-provided information. These commenters strongly recommended that the Department make every effort to protect confidential employer information provided to the Department as part of the labor condition application. While the Department recognizes these concerns, the Act requires that the employer make

available for public examination a copy of the labor condition application and accompanying documentation within one working day after the date on which an application is filed with DOL. 8 U.S.C. 1182(n)(1)(D); see also 8 U.S.C. 1182(n)(1)(C). Although the Department does not propose to require any documentation to be submitted to it along with the labor condition application, the proposed regulations require that certain documentation must be available for public examination at the place of employment. In addition, employers should note that if a complaint is filed, an investigation conducted, and a hearing held, any employer information submitted as evidence at the hearing will become a matter of public record; such information may well be more extensive than that which the employer must make available for public examination. See 8 U.S.C. 1182(n)(2).

E. Discouraging Frivolous Complaints

Many commenters urged the Department to take steps to discourage frivolous complaints. The Department notes that the Act itself addresses this concern by permitting only "any aggrieved person or organization (including bargaining representatives)" to file a complaint. 8 U.S.C. 1182(n)(2)(A). In addition, under the Department's proposed regulations an investigation will only be initiated after DOL determines that there is reasonable cause to believe a violation has occurred.

F. Complaint, Investigation and Hearing

Section 212(n)(2) of the Act requires that the Department establish a system to conduct investigations to determine whether an employer failed to meet a condition specified in the labor condition application or misrepresented a material fact on its application. 8 U.S.C. 1182(n)(2). These regulations propose that the Wage and Hour Administrator may conduct investigations of potential violations of the law only pursuant to a complaint. The Department has determined, based on the legislative history, that this carries out Congressional intent that the enforcement of the statute should be exclusively complaint-driven. Any aggrieved person or organization (including bargaining unit representatives) may file a complaint, but the proposed regulations reflect the Act's requirement that the complaint be filed no later than 12 months after the alleged violation(s). The investigative process is to be completed and a determination issued within 30 days from the date that the complaint is accepted for filing, after screening for reasonable cause; the 30-day investigation period may be suspended in the event that the Administrator finds it necessary to seek a determination from ETA on a controlling matter such as the prevailing wage.

The Department proposes regulations that reflect the employer's obligation to establish its compliance with, and the truthfulness of, the statements and information attested to on the labor condition application. The regulations also require that the employer cooperate in the investigation and take no retaliatory action against persons who file complaints, assist in the investigation, or participate in administrative proceedings. 8 U.S.C. 1182(n)(2) (A) and (B).

G. Administrative Law Judge Hearing and Discretionary Review By the Secretary

Section 212(n)(2)(B) requires that the Secretary provide interested parties an opportunity for a hearing within 60 days of the date of the investigative determination, and issue findings within 60 days of the date of the hearing.

Because of this compressed time frame, the proposed regulations require that a request for hearing be filed directly with the Chief Administrative Law Judge no later than 15 days from the date of the Administrator's determination. Further, because of the problems of proof to be anticipated in an administrative hearing on factual issues of prevailing wages and working conditions which may be virtually impossible to address except through hearsay reports of surveys, or for which crucial witnesses and other evidence may be unavailable except through hearsay since, for example, the witnesses are located outside the U.S., the proposed regulations specify that the Department's rules of evidence shall not apply.

An opportunity for discretionary review by the Secretary is afforded by the proposed regulations, with short deadlines in accordance with the statutory intent for expedited dispositions. Any interested party may request such review, and the Secretary shall determine what matters, if any, will be reviewed.

H. Penalties

Failure to meet a condition of the application regarding wages, working conditions, and strikes or lockouts, or substantial failure to meet a condition of the application regarding notification of bargaining representatives or employees, or misrepresentation of a material fact in the application may result in the imposition of administrative remedies:

(1) Civil money penalties in an amount not to exceed $1,000 per violation;

(2) Employers being barred from filing applications or attestations with the Department to employ aliens on either a permanent or temporary basis for at least one year; and

(3) Employers being ordered to provide for payment of backwages. 8 U.S.C. 1182(n)(2) (C) and (D).

IV. Summary

The Department welcomes comments on any issues addressed in the proposed regulations, and on any issues not addressed that commenters believe need to be addressed.

Regulatory Impact and Administrative Procedure

E.O. 12291

The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Catalog of Federal Domestic Assistance Number: This program is not yet listed in the *Catalog of Federal Domestic Assistance.*

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Wages.

29 CFR Part 507

Administrative practice and procedures, Aliens, Employment, Enforcement, Immigration, Labor,

Penalties, Reporting and recordkeeping requirements, Specialty occupation, Wages.

Text of the Proposed Joint Rule

The text of the proposed joint rule as proposed by ETA and the Wage-Hour Division, ESA, in this document appears below:

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations

Sec.

Subpart I—Enforcement of H–1B Labor Condition Applications

Sec.

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations

§ ____.700 Purpose, procedure and applicability of subparts H and I.

(a) *Purpose.* The Immigration and Nationality Act, with respect to nonimmigrant workers entering the United States on H–1B visas:

(1) Establishes an annual ceiling of 65,000 (exclusive of spouses and children) on the number of aliens who may be issued H–1B visas;

(2) Defines the scope of eligible occupations for which nonimmigrants may be issued H–1B visas and specifies the qualifications that are required for entry as an H–1B worker;

(3) Requires an employer seeking to employ H–1B workers to file a labor condition application with and have it approved by the Department of Labor (DOL) before an alien may be provided H–1B status by the Immigration and Naturalization Service (INS); and

(4) Establishes a system for the receipt and investigation of complaints, as well as for the imposition of fines and penalties for misrepresentation or for failure to fulfill a condition of the labor condition application. 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), 1184(g)(1)(A), and 1184(i).

(b) *Procedure for obtaining an H–1B visa.* Before a nonimmigrant alien may work in a "specialty occupation" in the United States under an H–1B visa, the alien must receive that H–1B visa from the Department of State (DOS). There are three steps in the process which leads to the issuance of an H–1B visa. These steps shall be followed in sequence and are as follows:

(1) First, an employer shall submit to DOL, and obtain DOL approval of, a labor condition application. The requirements for obtaining an approved labor condition application are provided in this subpart. The labor condition application (Form ETA 9035) and instructions may be obtained from DOL Regional Offices listed in § ____.720 of this part.

(2) After obtaining DOL approval of a labor condition application, the employer shall submit a petition (INS Form I–129), together with the approved labor condition application, to INS, requesting that the alien be issued an H–1B visa. The requirements concerning the submission of a petition to, and its processing by, INS are set forth in INS regulations. The INS petition (Form I–129) may be obtained from an INS district or area office.

(3) After the petition (INS form I–129) is approved by INS, the petition will be sent to the U.S. Consulate when the alien is outside of the U.S. or is otherwise required to apply at the Consulate in person. U.S. Consular staff will assist INS in determining whether the alien meets the requirements for the visa. If the alien is in the United States, it may be possible for the alien to adjust to the H–1B visa status without leaving the U.S. If so, the review of the alien's qualifications normally done by Consular staff will be done by INS staff and the alien will be required to appear at an appropriate INS office. Aliens may obtain information about the requirements for an H–1B visa from U.S. Embassies or Consulates, or from the INS. U.S. Consulates are guided by the *Foreign Affairs Manual* of the U.S. Department of State.

(c) *Applicability.* Subparts H and I of this part apply to all employers seeking to employ aliens on H–1B visas in specialty occupations.

§ ____.705 Overview of responsibilities.

Three federal agencies are involved in the process which leads to the issuance of an H–1B visa, and the responsibilities which continue after the visa is issued. The employer also has continuing responsibilities under the process. This section briefly describes the responsibilities of each of these entities.

(a) *Department of Labor responsibilities.* DOL administers the labor condition application process and enforcement provisions.

(1) The Employment and Training Administration (ETA), DOL, is responsible for receiving and making determinations on labor condition applications in accordance with subpart H of this part.

(2) The Employment Standards Administration (ESA), DOL, is responsible, in accordance with subpart I of this part, for investigating and resolving any complaints filed with DOL concerning labor condition applications or the employment of H–1B workers.

(b) *Immigration and Naturalization Service (INS) responsibilities.* The Immigration and Naturalization Service (INS) shall receive the employer's petition (INS Form I–129) with the DOL-approved labor condition application attached. INS is responsible for determining whether the occupation named in the labor condition application is a specialty occupation and whether the qualifications of the alien meet the statutory requirements for issuance of an H–1B visa. INS will send the employer's petition, if approved, together with the labor condition application to the U.S. Consulate where the alien is to apply for the visa unless the alien is in the U.S. and eligible to adjust status without leaving this country. If the alien is within the U.S. and eligible to adjust status, INS will carry out the functions normally performed by the consulate. See 8 U.S.C. 1184(i).

(c) *Department of State (DOS) responsibilities.* The Department of State, through U.S. Embassies and Consulates, is the initial point of contact for the alien when the alien is outside of the U.S. and is applying for an H–1B visa. DOS will assist INS in determining whether the alien meets the requirements for the H–1B visa.

(d) *Employer's responsibilities.* Each employer seeking an H–1B employee(s)

in a specialty occupation has several responsibilities.

(1) The employer shall submit a completed labor condition application on Form ETA 9035 and one copy to the regional office of ETA serving the area where the alien will be employed. If the labor condition application is approved by ETA, a copy will be returned to the employer.

(2) The employer then shall submit a copy of the approved labor condition application to INS with a completed petition (INS Form I-129) requesting that the alien be issued an H-1B visa.

(3) The employer shall not allow the alien to begin work, even though a labor condition application has been approved by DOL, until an H-1B visa has been issued to the alien, which visa grants the alien authorization to work in the United States for that employer, unless the INS has otherwise specifically granted the alien permission to work in that job opportunity.

(4) The employer shall develop sufficient documentation to meet its burden of proof with respect to the validity of the statements made in its labor condition application and the accuracy of information provided in the event that such statement or information is challenged. The employer shall also maintain such documentation at its place of business in the U.S. and shall make such documentation available to DOL for inspection and copying upon request.

§ ____.710 Complaints.

Complaints concerning misrepresentation in the labor condition application or failure of the employer to meet a condition specified in the application shall be filed with the Administrator, Wage and Hour Division (Administrator), ESA, according to the procedures set forth in subpart I of this part. The Administrator shall then investigate if reasonable cause is found, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties.

§ ____.715 Definitions.

For the purposes of subparts H and I of this part:

Actual wage means the wage rate paid by the employer to all similarly situated employees in the occupation at the worksite at the time of employment.

Administrative Law Judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under subpart H or I of this part.

Area of intended employment means the area within normal commuting distance of the place (address) of employment where the H-1B alien is or will be employed. If the place of employment is within a Metropolitan Statistical Area (MSA), any place within the MSA is deemed to be within normal commuting distance of the place of employment. If there is no MSA then the area of intended employment is the area within normal commuting distance of the place of employment.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Authorized agent and *authorized representative* mean an official of the employer who has the legal authority to commit the employer to the statements in the labor condition application.

Certifying Officer and *Regional Certifying Officer* mean a Department of Labor official, or such official's designee, who makes determinations about whether or not to approve labor condition applications.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Department and *DOL* mean the United States Department of Labor.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means:

(1) A person, firm, corporation, contractor, or other association or organization in the United States which suffers or permits a person to work within the United States;

(2) Which has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of any such employee; and

(3) Which has an Internal Revenue Service tax identification number.

Employment and Training Administration (ETA) means the agency within the Department which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department which includes the Wage and Hour Division.

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the Act on whether to grant visa petitions of employers seeking the admission of nonimmigrant aliens under H-1B visas for the purpose of employment.

INA means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Independent authoritative source means a professional, business, trade, educational or governmental association, organization, or other similar entity, not owned or controlled by the employer, which has a recognized expertise in an occupational field.

Independent authoritative source survey means a survey of wages conducted by an independent authoritative source and published in a book, newspaper, periodical, looseleaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's attestation and each succeeding annual prevailing wage update. Such survey shall:

(1) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(2) Be based upon data collected within the 24-month period immediately preceding the date of publication of the survey; and

(3) Represent the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Occupation means the occupational or job classification in which the H-1B alien is to be employed.

Period of intended employment means the time period between the starting and ending dates inclusive of the H-1B alien's intended period of employment in the occupational classification at the place of employment as set forth in the labor condition application.

Place of employment means the worksite or physical location where the work is performed.

Required wage rate means the rate of pay which is the higher of:

(1) The actual establishment wage rate for the occupation in which the H-1B alien is to be employed; or

(2) The prevailing wage rate (adjusted every 24 months) for the occupation in which the H-1B alien is to be employed in the geographic area of intended employment. The prevailing wage rate must be no less than the minimum wage required by Federal, State, or local law.

Secretary means the Secretary of Labor or the Secretary's designee.

Specialty occupation means an occupation that requires theoretical and

practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the United States. The alien in a specialty occupation shall possess the following qualifications:

(1) Full state licensure to practice in the occupation, if licensure is required for the occupation;

(2) Completion of the required degree; or

(3) Experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. 8 U.S.C. 1184(i).

Determinations of specialty occupation and of alien qualifications are made by INS.

State means one of the 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

State employment security agency (SESA) means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with USES in the operation of the national system of public employment offices.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operation.

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

Wage rate means the remuneration (exclusive of fringe benefits) to be paid in terms of amount per hour, day, month or year.

§ ____.720 Addresses of Department of Labor Regional Offices.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): One Congress Street, 10th Floor, Boston, Massachusetts 02114–2021. Telephone: 617–565–4446.

Region II (New York, New Jersey, Puerto Rico, and the Virgin Islands): 201Varick Street, room 755, New York, New York 10014. Telephone: 212–660–2185.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia): Post Office Box 8796, Philadelphia, Pennsylvania 19101. Telephone: 215–596–6363.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): 1371 Peachtree Street NE., Atlanta Georgia 30309. Telephone: 404–347–3938.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): 230 South Dearborn Street, Room 605, Chicago, Illinois 60604. Telephone: 312–353–1550.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): 525 Griffin Street, Room 314, Dallas, Texas 75202. Telephone: 214–767–4989.

Region VII (Iowa, Kansas, Missouri, and Nebraska): 911 Walnut Street, Kansas City, Missouri 64106. Telephone: 816–426–3796.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): 1961 Stout Street, 16th Floor, Denver, Colorado 80294. Telephone: 303–844–4613.

Region IX (Arizona, California, Guam, Hawaii, and Nevada): 71 Stevenson Street, room 830, San Francisco, California 94119. Telephone: 415–744–6647.

Region X (Alaska, Idaho, Oregon, and Washington): 909 First Avenue, room 1145, Seattle, Washington 98174. Telephone: 206–553–5297.

§ ____.730 Labor Condition Application.

(a) *Who must submit labor condition applications?* An employer, or the employer's authorized representative or agent, which meets the definition of employer set forth in § ____.715 of this part and intends to employ an H–1B alien in a specialty occupation shall submit a labor condition application to DOL.

(b) *Where should a labor condition application be submitted?* A labor condition application shall be submitted, by U.S. mail, private carrier, or facsimile transmission, to the ETA regional office shown in § ____.720 of this part in whose geographic area of jurisdiction the H–1B employee will be employed. It is the employer's responsibility to ensure that a complete application is received by the appropriate regional office of ETA. Incomplete applications will not be approved. The regional office shall process all applications sequentially upon receipt regardless of the method used by the employer to submit the application. If the application is submitted by facsimile transmission, the application containing the original signature shall be maintained by the employer as set forth at § ____.760(a)(1) of this part.

(c) *What should be submitted? Form ETA 9035.* (1) *General.* One completed and dated original Form ETA 9035, or facsimile transmission thereof, containing the labor condition statements referenced in § ____.730(e) of this part, bearing the employer's original signature (or that of the employer's authorized agent or representative) (see paragraph (b) of this section and § ____.760(a)(1) of this part with respect to applications filed by facsimile transmission) and one copy of Form ETA 9035 shall be submitted to ETA. Copies of Form ETA 9035 are available at the addresses listed in § ____.720 of this part; photocopies of the form also are permitted. Each application shall identify the occupational classification(s) for which a labor condition application is being submitted and shall state for each occupational classification:

(i) The occupation(s), by *Dictionary of Occupational Titles* (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job.

(ii) The number of H–1B workers sought;

(iii) The gross wage rate(s) to be paid to each H–1B worker, expressed on a weekly, biweekly or monthly basis;

(iv) The starting and ending dates of the H–1B workers' employment;

(v) The place(s) of intended employment.

(2) *Multiple positions, occupations, and/or places of employment.* The employer may file a labor condition application for a single occupation or for multiple occupations. An employer may file a single labor condition application for more than one occupational classification, and/or for more than one place of employment only if:

(i) Each occupation is a specialty occupation;

(ii) All places of employment covered by the application are located within the jurisdiction of a single ETA regional office, or, if the alien(s) is/are to be employed sequentially in various places of employment, the application is to be submitted to the regional office having jurisdiction over the initial place of employment; and

(iii) The information required in this paragraph (c) is provided for each occupational classification for each place of employment.

(3) *Full-time and part-time jobs.* The position(s) covered by the labor condition application may be full-time or part-time or a mix of both.

(d) *Content of the labor condition application.* An employer's labor condition application shall contain the labor condition statements referenced in paragraphs (d) through (g) of this section, which provide that no alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has

filed with the Secretary an application stating that:

(1) The employer is offering and will offer during the period of authorized employment to aliens and to all other individuals employed in the occupational classification and in the area of intended employment the greater of the following:

(i) The actual wage level for the occupational classification at the place of employment; or

(ii) The prevailing wage level for the occupational classification in the area of intended employment;

(2) The employer will provide working conditions for such aliens that will not adversely affect the working conditions of workers similarly employed;

(3) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;

(4) The employer, at the time of filing the labor condition application:

(i) Has provided notice of the filing of the labor condition application to the bargaining representative of the employer's employees in the occupational classification in the area of intended employment for which the aliens are sought; or

(ii) If there is no such bargaining representative, has posted notice of the filing of the labor condition application in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in paragraph (h) of this section; and

(5) The employer has provided the information about the occupation required in paragraph (c) of this section.

(e) *The first labor condition statement: wages.* An employer seeking to employ H–1B aliens in a specialty occupation shall state on Form ETA 9035 that it will pay the H–1B aliens and other similarly situated worker(s) the required wage rate. For purposes of this paragraph, "similarly situated" shall mean "an employee of the employer working in the same position under like conditions, such as the same shift on the same days of the week."

(1) *Establishing the wage requirement.* The first labor condition application requirement shall be satisfied when the employer signs Form ETA 9035, attesting that, for the entire period of authorized employment, the required wage rate will be paid to the H–1B alien(s) and other similarly situated workers; that is, that the wage shall be:

(i) No less than the actual wage rate paid to workers similarly employed at the place of employment; or

(ii) The prevailing wage level for the occupational classification in the area of intended employment, whichever is greater, determined as of the time of filing the application and every 24 months thereafter. The prevailing wage shall be determined as follows:

(A) If the job opportunity is in an occupation which is subject to a wage determination in the area under the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see also 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see also 29 CFR part 4), the prevailing wage shall be at the rate required under such statutory determination;

(B) If the job opportunity is covered by a union contract which was negotiated at arms-length between a union and the employer, the wage rate set forth in the union contract shall be presumed for this purpose as not adversely affecting the wages of U.S. workers similarly employed, and shall be considered as the "prevailing wage" for purposes of an employer's prevailing wage statement on a labor condition application;

(C) If the job opportunity is in an occupation which is not covered by paragraph (e)(1)(ii) (A) or (B) of this section, the prevailing wage shall be the average rate of wages, that is, the rate of wages paid to workers similarly employed in the area of intended employment. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages. The prevailing wage rate under this paragraph (e)(1)(ii)(C) of this section shall be determined by:

(*1*) The SESA; or

(*2*) An independent authoritative source. See paragraph (e)(2)(ii)(C) (*2*) of this section.

(D) For purposes of this paragraph (e), "similarly employed" shall mean "having substantially comparable jobs in the occupational classification in the area of intended employment," except that if no such workers are employed by employers other than the employer applicant in the area of intended employment "similarly employed" shall mean:

(*1*) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(*2*) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(E) A prevailing wage determination for labor condition application purposes made pursuant to this paragraph (e) shall not permit an employer to pay a wage lower than that required under any other Federal, State or local law.

(F) Where a range of wages is paid by the employer for an occupational classification, the range is considered to meet the definition of prevailing wage so long as the bottom of the wage range is at least at the required wage rate.

(iii) Every 24 months throughout the period of employment of the H–1B alien, starting from the date the labor condition application was filed, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(ii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(2) *Documentation of the wage statement.* (i) The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the prevailing wage statement referenced in paragraph (e)(1) of this section and attested to on Form ETA 9035. The employer shall document that the wage rate(s) paid to H–1B alien(s) is/are no less than the required wage rate(s).

(ii) The employer shall retain documentation regarding the determination of the prevailing wage. This source documentation shall not be submitted to ETA with the labor condition application, but shall be retained at the employer's place of business for the length of time required in § ____.760(c) of this part. The documentation shall be made available for public examination as required in § T2XX.760 of this part and to DOL upon request. Such documentation shall consist of the documentation described in paragraphs (e)(2)(ii) (A), (B), or (C) of this section and the documentation described in paragraph (e)(2)(ii)(D) of this section.

(A) If the position is in an occupation which is subject to a wage determination in the area under the provisions of the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see 29 CFR part 4), the documentation shall include an excerpt from the statutory or regulatory determination showing the wage rate for the occupation in the area of intended employment.

(B) If the position is covered by a union contract which was negotiated at arms-length between a union and the employer, the documentation shall

include an excerpt from the union contract showing the wage rate(s) for the occupation(s).

(C) If position is not covered by the provisions of paragraph (e)(2)(ii) (A) or (B) of this section, the employer's documentation shall consist of:

(*1*) A prevailing wage finding from the SESA for the occupation within the area of employment; or

(*2*) A prevailing wage survey for the occupation in the area of intended employment published by an independent authoritative source. For purposes of this paragraph (e)(2)(ii)(C) (*2*), a prevailing wage survey for the occupation in the area of intended employment published by an independent source shall mean a survey of wages published in a book, newspaper, periodical, looseleaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's attestation and each succeeding annual prevailing wage update. Such survey shall:

(*i*)(*7*) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(*ii*) Be based upon data collected within the 24-month period immediately preceding the date of publication of the survey; and

(*iii*) Represent the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment.

(D) The documentation shall include information about the employer's pay rate to employees in the area of intended employment and occupational classification in which the H–1B employee is to work. The employer shall maintain payroll records on all employees in the occupational classification in the area of intended employment beginning with the date the labor condition application was submitted and continuing throughout the period of employment. The records shall be retained for the period of time specified in § ____.760 of this part. The payroll records for each employee shall include:

(*1*) Employee's full name;

(*2*) Employee's home address;

(*3*) Employee's occupation;

(*4*) Employee's rate of pay;

(*5*) Hours worked each day and each week by the employee;

(*6*) Total daily or weekly straightime earnings by employee;

(*7*) Total overtime compensation for the week by employee;

(*8*) Total additions to or deductions from pay each pay period by employee; and

(*9*) Total wages paid each pay period, date of pay and pay period covered by the payment by employee.

(iii) Every 24 months throughout the period of employment of the H–1B alien, starting from the date the labor condition application was filed, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(ii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(3) *Complaints.* In the event that a complaint is filed pursuant to subpart I of this part, alleging a material misrepresentation by the employer regarding the payment of the required wage, the Administrator shall first determine whether the employer has the documentation required in paragraphs (e)(2) (ii) and (iv) of this section, and whether the documentation supports the employer's wage attestation. Where the documentation is either nonexistent or is insufficient to determine the prevailing wage (e.g., does not meet the criteria specified in this section, in which case the Administrator may find a violation of paragraph (e)(2) (i), (ii), and/or (iii) of this section), or where, based on other information regarding wages paid for the occupation in the area of intended employment, the Administrator has reason to believe that the prevailing wage finding obtained from the independent authoritative source varies substantially from the wage prevailing for the occupation in the area of intended employment, the Administrator may contact ETA, which shall provide the Administrator with a prevailing wage determination, which the Administrator shall use as the basis for the determination as to violations and for the computation of back wages, if such wages are found to be owed. For purposes of this paragraph (e)(3), ETA may consult with the appropriate SESA to ascertain the prevailing wage applicable under the circumstances of the particular complaint.

(f) *The second labor condition statement: working conditions.* An employer seeking to employ H–1B aliens in a specialty occupation shall state on Form ETA 9035 that the employment of H–1B aliens will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

(1) For purposes of this paragraph (f), "similarly employed" shall mean "having substantially comparable jobs in the occupational classification in the area of intended employment," except that if no such workers are employed by employers other than the employer applicant in the area of intended employment "similarly employed" shall mean:

(i) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(ii) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(2) *Establishing the working conditions requirement.* The second labor condition statement is satisfied when the employer signs the labor condition application attesting that for the period of intended employment its employment of H–1B workers will not adversely affect the working conditions of workers similarly employed. Working conditions commonly refer to matters including hours, shifts, vacation periods, and fringe benefits. The employer's obligation regarding working conditions shall continue for the period of employment stated on the labor condition application.

(3) *Documentation of the working condition statement.* (i) In the event a complaint is filed pursuant to subpart I of this part, the employer shall document the validity of the prevailing working conditions statement referenced in paragraph (f)(1) of this section and attested to on Form ETA 9035. The employer must be able to show that the working conditions of the H–1B workers and its other employees in the occupational classification(s) named in the labor condition application are similar to working conditions existing in like business establishments to the employer's, in the area of intended employment.

(ii) In the event that an investigation is conducted pursuant to subpart I of this part, concerning whether the employer failed to satisfy the prevailing working conditions statement referenced in paragraph (f)(1) of this section and attested to on Form ETA 9035, the Administrator shall first determine whether the employer has produced the documentation required in § ____.730(f)(3)(i) of this section, and whether the documentation is sufficient to support the employer's prevailing working conditions statement. Where the documentation is either nonexistent (in which case the Administrator may find a violation of paragraph (f)(3)(i) of this section), or is insufficient to determine whether the employment of H–1B aliens has or has not adversely affected the working conditions of

workers similarly employed in the area of intended employment, the Administrator may contact ETA which shall provide the Administrator with advice as to whether the working conditions of similarly employed workers in the area of intended employment have or have not been adversely affected by the employment of H–1B aliens.

(g) *The third labor condition statement: no strike or lockout.* An employer seeking to employ H–1B workers shall state on Form ETA 9035 there is not at that time a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment. A strike or lockout which occurs after the labor condition application is filed by the employer with DOL is covered by INS regulations at 8 CFR 214.2(h)(16).

(1) *Establishing the no strike or lockout requirement.* The third labor condition statement is satisfied when the employer signs the labor condition application attesting that, as of the date the application is filed, it is not involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the area of intended employment. Labor disputes for the purpose of this paragraph (g) relate only to those disputes involving employees of the employer working at the place of employment in the occupational classification named in the labor condition application. See also INS regulations at 8 CFR 214.2(a)(16) for effects of strikes or lockouts in general on the H–1B alien's employment.

(2) *Documentation of the third labor condition statement.* (i) The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the statement referenced in paragraph (g)(1) of this section and attested to on Form ETA 9035 should a complaint be filed that presents reasonable cause that there was a strike or lockout in the course of a labor dispute for the occupational classification in which an H–1B alien is employed at the time the application was filed. For example, such documentation may consist of a statement from the bargaining representative of the employer's employees in the occupational classification.

(ii) The employer's documentation shall not be submitted to ETA with the labor condition application, but shall be retained at the employer's place of business for the period of time specified in § ____.760(c) of this part. The documentation shall be made available as required in § ____.760(a) of this part for public examination and to DOL upon request.

(h) *The fourth labor condition statement: notice.* An employer seeking to employ H–1B workers shall state on Form ETA 9035 that the employer has provided notice of the filing of the labor condition application to the bargaining representative of the employer's employees in the occupational classification in the area of intended employment for which the aliens are sought, or, if there is no such bargaining representative, has posted notice of filing in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in this paragraph (h).

(1) *Establishing the notice requirement.* The fourth labor condition statement is established when one of the following has occurred:

(i) Where there is a collective bargaining representative, no later than on or before the date the labor condition application is filed with ETA, the employer of H–1B workers shall provide notice to the bargaining representative that a labor condition application has been filed with ETA. The notice shall identify the number of H–1B worker(s) the employer is seeking to employ; the occupational classification(s) in which the H–1B worker(s) will be employed; the wages offered; the period of employment; and the location(s) at which the H–1B workers will be employed. Notice under this paragraph (h)(1)(i) shall include the following statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(ii) Where there is no collective bargaining representative, the employer shall provide a notice of the labor condition application to its employees by posting a notice in at least two conspicuous locations at the place of employment. The notice shall indicate that H–1B workers are sought; the number of such workers the employer is seeking; the occupational classification(s); the wages offered; the period of employment; the location(s) at which the H–1B workers will be employed in the occupation(s); and that the labor condition application is available for public inspection at the employer's principal place of business in the U.S. or at the worksite. The notice shall also include the statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor." The posting of exact copies of the labor condition application, together with the statement regarding the filing of complaints, shall be sufficient to meet the requirements of this paragraph (h)(1)(ii) of this section.

(A) The notice shall be of sufficient size and visibility, and shall be posted in two or more conspicuous places so that the employer's workers at the place(s) of employment can easily see and read the posted notice(s).

(B) Appropriate locations for posting the notices include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).

(C) The notices shall be posted before the labor condition application is filed and shall remain posted for a total of 10 days.

(2) *Documentation of the fourth labor condition statement.* The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the statement referenced in paragraph (h)(1) of this section and attested to on Form ETA 9035. Such documentation shall include a copy of the dated notice and the name and address of the collective bargaining representative to whom the notice was provided. Where there is no collective bargaining representative, the employer shall note and retain the dates when, and locations where, the notice was posted and shall retain a copy of the posted notice.

(3) *Records retention; records availability.* The employer's documentation shall not be submitted to ETA with the labor condition application, but shall be retained for the period of time specified in § ____.760(c) of this part. The documentation shall be made available for public examination as required in § ____.760(a) of this part, and shall be made available to DOL upon request.

§ ____.740 Labor condition application determinations.

(a) *Actions on labor condition applications submitted for filing.* Once a labor condition application has been received from an employer, a determination shall be made by the ETA regional Certifying Officer whether to approve the labor condition application or return it to the employer disapproved.

(1) *Approval of labor condition application.* Where all items on Form ETA 9035 have been completed and it contains the signature of the employer or its authorized agent or representative, the regional Certifying Officer shall approve the labor condition application. If the labor condition application is approved, the regional Certifying Officer shall return an approved copy of the labor condition application to the employer or the employer's authorized agent or representative. The employer shall file the approved labor condition application with the appropriate INS office in the manner prescribed by INS. The INS shall determine whether each occupational classification named in the approved labor condition application is a specialty occupation.

(2) *Disapproval of labor condition applications.* ETA shall not approve a labor condition application and shall return such application to the employer or the employer's authorized agent or representative, when either or both of the following two conditions exists:

(i) When the Form ETA 9035 is not properly completed. Examples of a Form ETA 9035 which is not properly completed include instances where the employer has failed to check all the necessary boxes; or where the employer has failed to identify the occupational classification(s) or state the number of workers sought, the wage rate, period of intended employment or date of need; or where the application does not contain the signature of the employer or the employer's authorized agent or representative.

(ii) When the Administrator, Wage and Hour Division, after notice and opportunity for a hearing pursuant to subpart I of this part, has notified ETA in writing that the employer has been disqualified from employing H–1B workers under section 212(n)(2) of the Act.

(3) *Correction and resubmission of labor condition application.* If the labor condition application is not approved pursuant to paragraph (a)(2)(i) of this section, ETA shall return it to the employer, or the employer's authorized agent or representative, explaining the reasons for such disapproval. The employer may immediately submit a corrected application to ETA. A "resubmitted" or "corrected" labor condition application shall be treated as a new application by the regional office—i.e., on a "first come, first served" basis. If the labor condition application is not approved pursuant to paragraph (a)(2)(ii) of this section, such action shall be the final decision of the Secretary.

(b) *Challenges to labor condition applications.* ETA shall not consider information contesting a labor condition application received by ETA prior to the approval or disapproval of the application. Such information shall not be made part of ETA's administrative record on the application, but shall be referred to ESA to be processed as a complaint pursuant to subpart I of this part, and, if such application is approved by ETA, the complaint will be handled by ESA under subpart I.

(c) *Truthfulness and adequacy of information.* DOL is not the guarantor of the accuracy, truthfulness or adequacy of an approved labor condition application. The burden of proof is on the employer to establish the truthfulness of the information contained on the labor condition application.

§ ____.750 Validity period of the labor condition application.

(a) *Validity of approved labor condition applications.* A labor condition application which has been approved pursuant to the provisions of § ____.740 of this part shall be valid for the period of employment indicated on Form ETA 9035; however, in no event shall the validity period of a labor condition application exceed six years. Where the labor condition application contains multiple periods of intended employment, the validity period shall extend to the latest date indicated or six years, whichever comes first.

(b) *Withdrawal of approved labor condition applications.* (1) An employer who has filed a labor condition application which has been approved pursuant to § ____.740 of this part may withdraw such labor condition application at any time before the expiration of the validity period of the application, provided that:

(i) H–1B workers are not employed at the place of employment pursuant to the labor condition application; and

(ii) The Administrator has not found reasonable cause under subpart I to commence an investigation of the particular application. Any such request for withdrawal shall be null and void; and the employer shall remain bound by the labor condition application until the enforcement proceeding is completed, at which time the application may be withdrawn.

(2) Requests for withdrawals shall be in writing and shall be directed to the regional ETA Certifying Officer.

(3) Upon receipt of an employer's written request to withdraw a labor condition application, ETA shall promptly notify the Attorney General that the application has been withdrawn, unless ESA has found reasonable cause to commence an investigation.

(4) Withdrawal of a labor condition application shall not affect an employer's liability with respect to any failure to meet the labor conditions which took place before the withdrawal, or for misrepresentations in an application. However, if an employer has not yet employed any H–1B aliens pursuant to the application, the Administrator shall not find reasonable cause to investigate, unless it is alleged, and there is reasonable cause to believe, that the employer has made misrepresentations in the labor condition application.

(c) *Invalidation or suspension of a labor condition application.* (1) Invalidation of a labor condition application may result from enforcement action(s) by the Administrator, Wage and Hour Division, under subpart I of this part—i.e., investigation(s) conducted by the Administrator regarding the employer's failure to meet a labor condition (or substantial failure in the case of the employer's failure to meet the notice and public access conditions of the application; see §§ ____.730(h) and 760 of this part) or the misrepresentation of a material fact in an application.

(2) If, after approving a labor condition application, ETA finds that it is unacceptable because it falls within one of the categories set forth at § ____.740(a)(2) (i) or (ii) of this part, ETA shall invalidate the application and notify the Attorney General and the employer, or the employer's authorized agent or representative. ETA shall notify the Attorney General and the employer in writing of the reason(s) that the application is invalidated. When a labor condition application is invalidated because it falls within § ____.740(a)(2)(ii), such action shall be the final decision of the Secretary.

(3) Suspension of a labor condition application may result from a discovery by ETA that it made an error in approving the application because such application is incomplete or has not been signed. In such event, ETA shall immediately notify INS and the employer. When an application is suspended, the employer may immediately submit to the certifying officer a corrected or completed application.

(d) *Employers subject to disqualification.* No labor condition application shall be approved for an employer which has been found to be disqualified from participation in the H–1B program as determined in a final

agency action following an investigation by the Wage and Hour Division pursuant to subpart I of this part.

§ ____.760 Public access.

(a) *Public examination.* The employer shall make a filed labor condition application and supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the labor condition application is filed with DOL. This documentation shall include the following:

(1) A copy of the completed labor condition application, Form ETA 9035. If the application is submitted by facsimile transmission, the application containing the original signature shall be maintained by the employer;

(2) Information about the pay rate of the employer to its employees in the occupational classification in which the H–1B alien(s) is employed; actual payroll records showing rates of pay to individual employees are not required to be made available for public examination; however, these records must be made available to DOL upon request (see § ____.730(e)(2)(ii)(D) and (e)(2)(iv) and subpart I of this part);

(3) Prevailing wage information as required by § ____.730(e) of this part;

(4) Evidence of no strike or lockout as required by § ____.730(g) of this part; and

(5) Evidence of notification as required by § ____.730(h) of this part.

(b) *National list of applications.* ETA shall compile and maintain on a current basis a list of the labor condition applications. Such list shall be by employer, showing the occupational classification, wage rate(s), number of aliens sought, period(s) of intended employment, and date(s) of need for each employer's application. The list shall be available for public examination at the Department of Labor, 200 Constitution Avenue, NW., room N4456, Washington, DC 20210.

(c) *Retention of records.* The employer shall retain copies of the labor condition application, prevailing wage information, documentation that no strike or lockout existed during the filing of the application, and documentation showing provision of notice to bargaining representatives or employees at the place of employment for a period of one year beyond the end of the period of employment specified on the labor condition application, except that if a timely complaint is filed, the documentation shall be retained until the complaint is resolved through the procedures set forth in subpart I. Required payroll records for the H–1B employees and other employees in the occupational classification shall be retained at the place of employment for a period of three years from the date(s) of the creation of the record(s), except that if a timely complaint is filed, all payroll records shall be retained until the complaint is resolved through the procedures set forth in subpart I.

Subpart I—Enforcement of H–1B Labor Condition Applications

§ ____.800 Enforcement authority of Administrator, Wage and Hour Division.

(a) *Authority of Administrator.* The Administrator shall perform all the Secretary's investigative and enforcement functions under section 212(n) of the INA (8 U.S.C. 1182(n)) and subparts H and I of this part.

(b) *Conduct of Investigations.* The Administrator, pursuant to a complaint, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) *Availability of Records.* An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 212(n) of the INA (8 U.S.C. 1182(n)) or and subpart H or I of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(n) or subpart H or I of this part. Any such interference shall be a violation of the labor condition application and these regulations, and the Administrator may take such further actions as the Administrator considers appropriate.

Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.

(d) *Employer Cooperation.* An employer subject to subpart H or I of this part shall at all times cooperate in administrative and enforcement proceedings. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(2) Testified or is about to testify in any proceeding under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(3) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to section 212(n) of the INA (8 U.S.C. 1182(n)) or to subpart H or I of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1182(n).

In the event of such intimidation or restraint as are described in this paragraph (d), the conduct shall be a violation of the labor condition application and subparts H and I of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) *Confidentiality.* The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart H or I of this part.

§ ____.805 Complaints and investigative procedures.

(a) The Administrator, through an investigation pursuant to a complaint, shall determine whether an H–1B employer has:

(1) Filed a labor condition application with ETA which misrepresents a material fact.

Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.

(2) Failed to meet a condition in the labor condition application—

(i) Failed to pay wages as required under § .730(e) of this part;

(ii) Failed to provide the working conditions required under § ____.730(f) of this part;

(3) Filed a labor condition application for H–1B worker(s) during a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment (see § ____.730(g) of this part); or

(4) Substantially failed to provide notice of the filing of the labor condition application as required in § ____.730(h) of this part;

(5) Substantially failed to make available for public examination the

attestation and its accompanying document(s) at the employer's principal place of business or worksite as required in § ____.760(a);

(6) Failed to retain documentation as required by § ____.760(c) of this part; or

(7) Failed otherwise to comply in any other manner with the provisions of subpart H or I of this part.

(b) Pursuant to §§ ____.740(a)(1) and ____.750 of this part; or the provisions of this part become effective upon the date of ETA's notification that the employer's labor condition application is approved, whether or not the employer hires any H–1B worker(s) in the occupation(s) for the period of employment covered in the labor condition application. Should the period of employment specified in the labor condition application expire or should the employer withdraw the application in accordance with § ____.750(b) of this part, the provisions of this part will no longer be in effect with respect to such application, except as provided in § ____.750(b)(4) of the part.

(c) Any aggrieved person or organization (including bargaining representatives) may file a complaint of a violation described in paragraph (a) of this section.

(1) No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint.

(2) The complaint shall set forth sufficient facts for the Administrator to determine whether an investigation is warranted, in that there is reasonable cause to believe that a violation as described in paragraph (a) of this section has been committed. This determination shall be made within 10 days of the date that the complaint is received by a Wage and Hour Division official. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary. No hearing pursuant to this subpart shall be available where the Administrator determines that an investigation on a complaint is not warranted.

(3) If the Administrator determines that an investigation on the complaint is warranted, the complaint shall be accepted for filing; an investigation shall be conducted and a determination issued within 30 calendar days of the date of filing.

(4) In the event that the Administrator seeks a prevailing wage determination from ETA pursuant to § ____.730(e)(3), or advice as to prevailing working conditions from ETA pursuant to § ____.730(f)(3)(ii), the 30-day investigation period shall be suspended, from the date of the Administrator's request to the date of the Administrator's receipt of the wage determination or advice as to prevailing working conditions.

(5) The complaint must be filed not later than 12 months after the date of the alleged violation(s).

(6) The complaint may be submitted to any local Wage and Hour Division office. The addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(d) When an investigation has been conducted, the Administrator shall, pursuant to § ____.815 of this part, issue a written determination as to whether or not any violation(s) as described in paragraph (a) of this section has been committed.

§ ____.810 Remedies.

(a) Upon determining that the employer has failed to pay wages as required by § ____.730(e) of this part, the Administrator shall assess and oversee the payment of back wages to any H–1B worker or other individual employed by the employer in the occupational classification. The back wages shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker(s);

(b) Upon determining that the employer has committed any violation(s) described in § ____.805(a) of this part, the Administrator may assess a civil money penalty not to exceed $1,000 per violation. In determining the amount of civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the Act and subpart H or I of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1182(n) and subparts H and I of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(c) In addition to back wages and civil money penalties, the Administrator may impose such other administrative remedy(ies) under this subpart as the Administrator deems appropriate.

(d) The civil money penalties, back wages, and/or any other remedy(ies) determined by the Administrator to be appropriate are immediately due for payment or performance upon the assessment by the Administrator, or upon the decision by an administrative law judge where a hearing is timely requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the back wages and/or civil money penalties by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office in the manner directed in the Administrator's notice of determination. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator.

§ ____.815 Written notice and service of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § ____.805 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(c) The Administrator's written determination required by § ____.805 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an employer, prescribe any remedies, including the amount of any back wages assessed, the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies assessed.

(2) Inform the interested parties that they may request a hearing pursuant to § ____.820 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge.

(5) Inform the parties that, pursuant to § .855 of this part, the Administrator shall notify ETA and the Attorney General of the occurrence of a violation by the employer.

§ ____.820 Request for hearing.

(a) Any interested party desiring to request an administrative hearing in accordance with section 556 of title 5, United States Code, on a determination issued pursuant to §§ ____.805 and ____.815 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an employer has committed violation(s). In such a proceeding, the party requesting the hearing shall be the prosecuting party and the employer shall be the respondent; the Administrator may intervene as a party or appear as amicus curiae at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that the employer has committed violation(s). In such a proceeding, the Administrator shall be the prosecuting party and the employer shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing shall be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is by mail, it should be by certified mail. If the request is by facsimile transmission, the original of the request, signed by the requestor or authorized representative, shall be filed within ten days.

(f) Copies of the request for a hearing shall be sent by the requestor to the Administrator and all known interested parties.

§ ____.825 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ ____.830 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., room N–2716, Washington, DC 20210, and one copy shall be served on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ ____.835 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § ____.820 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within 7 calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons. Even where such reasons are shown, no request for postponement of the hearing beyond the 60-day deadline shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § ____.830 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § ____.830 of this part.

§ ____.840 Decision and order of administrative law judge.

(a) Within 60 calendar days after of the date of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision.

(c) In the event that the Administrator's determination(s) of wage violation(s) and computation of back wages are based upon a wage determination obtained by the Administrator from ETA during the investigation (pursuant to § ____.730(e)(3)), the administrative law judge shall not determine the prevailing wage de novo, but shall, based on the evidence (including the ETA administrative record), either accept the wage determination or vacate the wage determination. If the wage determination is vacated, the administrative law judge shall remand the case to the Administrator, who may then refer the matter to ETA and, upon the issuance of a new wage determination by ETA, resubmit the case to the administrative law judge. Under no circumstances shall source data obtained in confidence by ETA, or the names of establishments contacted by ETA, be submitted into evidence or otherwise disclosed.

(d) The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(e) The decision shall be served on all parties in person or by certified or regular mail.

§ ____.845 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice shall specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (*e.g.*, briefs);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S–4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § ____.830(b) of this part.

(h) The Secretary's final decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § ____.850 of this part.

§ ____.850 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts H and I of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ ____.855 Notice to the Employment and Training Administration and the Attorney General.

(a) The Administrator shall notify the Attorney General and ETA of the final determination of a violation by an employer upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an employer, and no timely request for hearing is made pursuant to § ____.820 of this part; or

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an employer; or

(3) Where the administrative law judge finds that there was no violation by an employer, and the Secretary, upon review, issues a decision pursuant to § ____.845 of this part, holding that a violation was committed by an employer.

(b) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (a), shall not approve petitions filed with respect to that employer under sections 204 or 214(c) of the Act (8 U.S.C. 1154 and 1184 (c)) during a period of at least one year for aliens to be employed by the employer.

(c) ETA, upon receipt of the Administrator's notice pursuant to paragraph (a) of this section, shall suspend the employer's labor condition application(s) under subparts H and I of this part, and shall not accept for filing any application or attestation submitted by the employer under 20 CFR Part 656 or subparts A, B, C, D, E, H or I of this part, for a period of 12 months or for a longer period if such is specified by the Attorney General for visa petitions filed by that employer under sections 204 and 214(c) of the Act.

Proposed Adoption of the Joint Rule

The agency specific proposed adoption of the joint rule, which appears at the end of the common preamble, appears below:

Title 20—Employers' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Accordingly, chapter V of title 20, Code of Federal Regulations, is proposed to be amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c), 29 U.S.C. 49 *et seq.*, Pub. L. 101–238; sec. 3(c)(1), 103 Stat. 2099, 2103, and Pub. L. 101–649, sec. 221(a), 104 Stat. 4978, 5027; § 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188, 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(h)(4)(i); Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184, 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(h)(4)(i); Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188, and 29 U.S.C. 49 *et seq.;* Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184, 29 U.S.C. 49 *et seq.*, and Pub. L. 101–238, sec. 3(c)(1), 103 Stat. 2099, 2103; Subparts F and G issued under 8 U.S.C. 1184 and 1288(c), and 29 U.S.C. 49 *et seq.;* Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.;* Subparts J and K issued under 29 U.S.C. 49 *et seq.*, and Pub. L. 101–649, sec. 221(a), 104 Stat. 4978, 5027.

2. Section 655.0 is amended by adding a new paragraph (d) to read as follows:

§ 655.0 Scope and purpose of part.

* * * * *

(d) *Subparts H and I of this part.* Subparts H and I of this part set forth the process by which employers can file with, and the requirements for obtaining approval from, the Department of Labor of labor condition applications necessary for the purpose of petitioning INS for H–1B visas for aliens to be employed in specialty occupations, and the enforcement provisions relating thereto.

* * * * *

§ 655.000 [Amended]

3. Part 655 is amended by adding new subparts H and I as set forth at the end of the common preamble.

Subpart H—Labor Condition Applications Filed by Employers Seeking to Use Aliens on H–1B Visas in Specialty Occupations

Sec.

Subpart I—Enforcement of H–1B Labor Condition Applications

Signed at Washington, DC this 30th day of July, 1991.

Roberts T. Jones,

Assistant Secretary of Employment and Training.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, title 29, Code of Federal Regulations is proposed to be amended by adding a new part 507 to read as follows, and subparts H and I are added to new part 507 as set forth in this document.

PART 507—ENFORCEMENT OF H–1B LABOR CONDITION APPLICATIONS

Subparts A, B, C, D, E, F, and G [Reserved]

Subpart H—Labor Condition Applications Filed by Employers Seeking to Use Aliens on H–1B Visas in Specialty Occupations

Sec.

Subpart I—Enforcement of H–1B Labor Condition Applications

Signed at Washington, DC this 30th day of July, 1991.

Roberts T. Jones,

Assistant Secretary of Employment and Training.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

Appendix I (Not to Be codified in the CFR): Form ETA 9035

Printed below is a copy of *Form ETA 9035.*

BILLING CODE 4510-30-M

LABOR CONDITION APPLICATION
FOR H-1B NONIMMIGRANTS

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Full Legal Name of Employer	2. Employer's Address (No., Street, City, State, Zip Code)	OMB Approval No.: Expiration Date:
3. Federal Employer I.D. Number		
4. Telephone No.:	6. U.S. Address (if different than item 2)	
5. FAX No.:		

DRAFT

7. OCCUPATIONAL INFORMATION (Use Attachment if additional space is needed.)

(a) Three-Digit Occupational Groups Code	(b) Job Title	(c) No. of Aliens	(d) Rate of Pay	(e) Period of Employment From	To	(f) Location(s) Where Alien(s) will work (see instructions)

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting each labor condition statement. Check each box to indicate that you will comply with each statement).

☐ (a) H-1B nonimmigrants and other similarly employed workers will be paid the actual wage for the occupation at the place of employment or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrant workers will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupations at the place of employment.

☐ (d) As of this date, notice of this application has been provided to workers employed in the occupations in which H-1B workers will be employed: (check appropriate box)

☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupations in which H-1B workers will be employed; or

☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted in a conspicuous place where H-1B nonimmigrant workers will be employed.

9. DECLARATION OF EMPLOYER: Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official request, during any investigation under this application or the Immigration and Nationality Act.

DRAFT

Name and Title of Hiring Official | Signature of Hiring Official | Date

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is [illegible] approved and will be valid from _____ through _____.

DRAFT

Signature and Title of Authorized DOL Official | ETA Case No.

Subsequent DOL Action: Suspended _____(date) Invalidated _____(date) Withdrawn _____(date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an approved labor condition application.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-XXXX) Washington, D.C. 20503).

ETA 9035

Appendix 2 (Not to be codified in the CFR): DOT Three-Digit Occupational Groups codes

Printed below is a copy of DOT Three-Digit Occupational Groups Codes.

Three-Digit Occupational Groups

Professional, Technical and Managerial Occupations

Occupations in Architecture, Engineering and Surveying

001 Architectural Occupations
002 Aeronautical Engineering Occupations
003 Electrical/Electronic Engineering Occupations
005 Civil Engineering Occupations
006 Ceramic Engineering Occupations
007 Mechanical Engineering Occupations
008 Chemical Engineering Occupations
010 Mining and Petroleum Engineering Occupations
011 Metallurgy and Metallurgical Engineering Occupations
012 Industrial Engineering Occupations
013 Agricultural Engineering Occupations
014 Marine Engineering Occupations
015 Nuclear Engineering Occupations
019 Other Occupations in Architecture, Engineering and Surveying

Occupations in Mathematics and Physical Sciences

020 Occupations in Mathematics
021 Occupations in Astronomy
022 Occupations in Chemistry
023 Occupations in Physics
024 Occupations in Geology
025 Occupations in Meteorology
029 Other Occupations in Mathematics and Physical Sciences

Computer-Related Occupations

030 Occupations in Systems Analysis and Programming
031 Occupations in Data Communications and Networks
032 Occupations in Computer System User Support
033 Occupations in Computer Systems Technical Support
039 Other Computer-Related Occupations

Occupations in Life Sciences

040 Occupations in Agricultural Sciences
041 Occupations in Biological Sciences
045 Occupations in Psychology
049 Other Occupations in Life Sciences

Occupations in Social Sciences

050 Occupations in Economics
051 Occupations in Political Science
052 Occupations in Sociology
055 Occupations in Anthropology
059 Other Occupations in Social Sciences

Occupations in Medicine and Health

070 Physicians and Surgeons
071 Osteopaths
072 Dentists
073 Veterinarians
074 Pharmacists
076 Therapists
077 Dietitians
078 Occupations in Medical and Dental Technology
079 Other Occupations in Medicine and Health

Occupations in Education

090 Occupations in College and University Education
091 Occupations in Secondary School Education
092 Occupations in Preschool, Primary School, and Kindergarten Education
094 Occupations in Education of Persons With Disabilities
096 Home Economists and Farm Advisers
097 Occupations in Vocational Education
099 Other Occupations in Education

Occupations in Museum, Library, and Archival Sciences

100 Librarians
101 Archivists
102 Museum Curators and Related Occupations
109 Other Occupations in Museum, Library, and Archival Sciences

Occupations in Law and Jurisprudence

110 Lawyers
111 Judges
119 Other Occupations in Law and Jurisprudence

Occupations in Religion and Theology

120 Clergy
129 Other Occupations in Religion and Theology

Occupations in Writing

131 Writers
132 Editors: Publication, Broadcast, and Script
139 Other Occupations in Writing

Occupations in Art

142 Environmental, Product and Related Designers
149 Other Occupations in Art

Occupations in Entertainment and Recreation

152 Occupations in Music
159 Other Occupations in Entertainment and Recreation

Occupations in Administrative Specializations

160 Accountants, Auditors, and Related Occupations
161 Budget and Management Systems Analysis Occupations
164 Advertising Management Occupations
165 Public Relations Management Occupations
166 Personnel Management Occupations
169 Other Occupations in Administrative Specializations

Managers and Officials

180 Agriculture, Forestry, and Fishing Industry Managers and Officials
181 Mining Industry Managers and Officials
182 Construction Industry Managers and Officials
183 Manufacturing Industry Managers and Officials
184 Transportation, Communication, and Utilities Industry Managers and Officials
185 Wholesale and Retail Trade Managers and Officials
186 Finance, Insurance and Real Estate Managers and Officials
187 Service Industry Managers and Officials
188 Public Administration Managers and Officials
189 Miscellaneous Managers and Officials

Miscellaneous Professional, Technical, and Managerial Occupations

195 Occupations in Social and Welfare Work
199 Miscellaneous Professional, Technical, and Managerial Occupations

[FR Doc. 91-18343 Filed 8-2-91; 8:45 am]
BILLING CODE 4510-30-M and 4510-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 784 and 817

Permanent Regulatory Program; Underground Mining Permit Application Requirements—Subsidence Control Plan; Underground Mining Performance Standards—Subsidence Control

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

ACTION: Notice of public meetings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) published a notice of inquiry seeking the views of the public and other interested parties on a potential rulemaking on the necessity for, and possible scope of, revisions to its current regulations applicable to underground coal mining and control of subsidence affecting lands and structures. OSM is announcing that two public meetings will be held.

DATES: The public meetings are scheduled for August 14, 1991, at 7 p.m. in Morgantown, West Virginia; and August 15, 1991, at 7:30 p.m. in Pikeville, Kentucky.

ADDRESSES: The public meetings will be held at the Ramada Inn, Route 119 South and Interstate 68 (formerly U.S. 48), Morgantown, West Virginia; and at the First National Bank Building, 334 Main Street, Pikeville, Kentucky.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Office of Surface

Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 208–2564.

SUPPLEMENTARY INFORMATION: The meetings are open to the public and to all other interested parties. The meetings will continue until all persons wishing to speak have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who speak at a meeting give the transcriber a written copy of their remarks.

As was announced in the Federal Register, OSM is seeking comments on the necessity for, and possible scope of, revisions to its current regulations applicable to underground coal mining and control of subsidence affecting lands and structures (July 18, 1991, 56 FR 33170). OSM is particularly interested in public comments concerning the need to modify or provide additional guidance in such areas as the statutory distinctions and operational differences between underground and surface coal mines; the definition of "material damage" as the term is used in section 516(b)(1) of the Surface Mining Act; performance of pre-subsidence surveys; the extent of the obligation to repair of structures damaged by subsidence; replacement of water supplies damaged by underground mining; prevention of subsidence damage, even where planned subsidence is to occur; and sufficiency of bond requirements when subsidence-caused damage occurs. OSM is also particularly interested in comments on the adequacy of State laws and regulatons to address these issues. Commenters should be aware that based upon a recent DOI Solicitor's opinion, the prohibitions of section 522(e) of the Surface Mining Act and 30 CFR 761.11 do not apply to subsidence.

OSM has scheduled two public meetings on the issues identified in the notice of inquiry. The first meeting will be held on August 14, 1991, at 7:30 p.m., at the Ramada Inn, Route 119 South and Interstate 68 (formerly U.S. 48), Morgantown, West Virginia. The second meeting will be held on August 15, 1991, at 7:30 p.m. at the First National Bank Building, 334 Main Street, Pikeville, Kentucky.

Dated: August 1, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 91–18615 Filed 8–2–91; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3980–6]

Disapproval of State Implementation Plans, Montana; Wood-Waste Burner and Aluminum Manufacturing Plant, Regulation Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this action, EPA is proposing to disapprove revisions to Montana's State Implementation Plan that were submitted by the Governor of Montana on June 14, 1989. The revisions were made to the Administrative Rules of Montana (ARM) 16.8.1407 and 16.8.1503, and amend the emission limitation and provisions for the operation of wood-waste burners and the standard for visible emissions from aluminum manufacturing facilities potroom groups, respectively. The revisions include: (1) A relaxation of the particulate emission standard for wood-waste burners; (2) a requirement to maintain a minimum operating temperature for wood-waste burners; (3) a requirement that existing burners comply with the new regulation by June 30, 1990; and (4) clarification of the application of the standard for visible emissions from potrooms within aluminum manufacturing plants.

After review of the revisions, the State was notified on September 18, 1989 that the submittal was determined to be incomplete for procedural and technical reasons. The State responded with additional information on November 17, 1989. This latter submittal adequately addressed the procedural concerns. The technical concerns (enforcement of emission limitations and regulations to ensure that the national ambient air quality standards (NAAQS) would be achieved and maintained) still remain.

DATES: Comments must be received on or before September 4, 1991.

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT:

Vicki Stamper, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2405 (303) 293–1876, FTS 330–1876.

SUPPLEMENTARY INFORMATION: The State of Montana has promulgated revisions to its SIP which attempt to update the State's wood-waste burner and aluminum potroom regulations. The revisions include: (1) A statement encouraging the complete utilization of wood-waste residue; (2) a relaxation of the particulate emission standard for wood-waste burners from 0.01 grains per dry standard cubic foot (grs/dscf) at 12% carbon dioxide (CO_2) to 0.25 grs/dscf at 12% CO_2; (3) a new requirement to maintain a minimum operating temperature for the wood-waste burners (700 °F); (4) a requirement that existing burners comply with the new regulation by June 30, 1990; and (5) clarification on the application of the standard for visible emissions from potrooms within aluminum manufacturing plants. This SIP Revision was submitted by the Governor in a letter dated June 14, 1989.

On September 18, 1989, EPA determined that the SIP submittal was incomplete both on procedural and technical grounds, and additional information was requested. Specifically, the administrative issues involved the absence of a copy of the Montana Administrative Register in which the revisions appeared and assurance that all public comments regarding the revisions had been received and addressed. Technical issues involved the impact of the relaxation of the emission standard from 0.01 to 0.25 grs/dscf for wood-waste burners and the enforceability of the new emission standard. In addition, the revision did not adequately demonstrate that the relaxation of the emission standard would not adversely impact PM10 nonattainment areas.

The State responded to the September 18, 1989 completeness determination in correspondence dated November 17, 1989. In that response, information was supplied which satisfied the procedural issues. The State responded to the technical issue of the relaxation of the emission standard by indicating that the new standard should force new wood-waste burner sources under new Source Review to comply with the standard by adopting a silo-type of wood-waste burner. However, the SIP revisions as reviewed by EPA did not specifically require the conversion of existing wood-waste burners to silo-type burners. The second point of the response was that existing wood-waste burners were presently emitting at levels higher than the proposed 0.25 grs/dscf standard.

Since the proposed emission standard was lower than actual emission rates, the relaxation of the standard would actually lower overall emissions from these sources and, consequently, have less impact on PM10 nonattainment areas.

After reviewing the State's response, the EPA determined that sufficient information was available to make a determination of the status of the SIP revision. In correspondence dated June 7, 1990 to the State, EPA indicated that the SIP would be disapproved.

EPA is disapproving the State's revisions because they do not meet the enforcement of emission limitations and regulations requirement of sections 110(a)(2)(A) and 110(a)(2)(C) of the Clean Air Act, as amended. The State failed to demonstrate that it would be able to effectively determine a source's compliance with the particulate standard either through visible emissions observation or stack testing of the wood-waste burners. The revisions, therefore, do not provide for the enforcement of emission limitations and regulations to assure that the NAAQS would be protected or maintained. In addition, the impact of the relaxation of the emission standard on the State's PM10 nonattainment areas and efforts to reach or ensure attainment of the standard in these areas was not adequately addressed.

The opacity limitation for aluminum manufacturing potrooms, although not changed in the proposed revisions, was identified by EPA as being unenforceable because of the inability to distinguish the potroom emission plume from other plumes that are part of the manufacturing operation. The revision to help clarify the application of the visible emission standard did not resolve the issue.

Proposed Action

In this action EPA is proposing to disapprove revisions to Montana's State Implementation Plan made to the Administrative Rules of Montana (ARM) 16.8.1407 and 16.8.1503. Disapproval pertains to those revisions that amend the emission limitation and provisions for the operation of wood-waste burners and the clarification of the standard for visible emissions from aluminum manufacturing facilities potroom groups, respectively.

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

This action has been classified as a table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: May 29, 1991.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 91–18510 Filed 8–2–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 61

[FRL–3980–7]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to rescind subpart I of 40 CFR part 61 (subpart I) as it applies to nuclear power reactors, one of the subcategories of NRC-licensed facilities which are governed by subpart I. EPA is establishing a 60-day comment period to receive comments on this issue. In a related action published elsewhere in today's **Federal Register**, EPA is issuing a final rule which stays the effectiveness of subpart I for nuclear power reactors pending completion of the rulemaking on rescission. Subpart I is also stayed as it applies to subcategories of NRC-licensees other than nuclear power reactors while EPA collects additional information needed to make the determination contemplated by section 112(d)(9) of the Clean Air Act Amendments.

DATES: Public hearings will be held on September 23 and 24, 1991, in Washington, DC and on September 26 and 27, 1991, in Seattle, Washington if a request for such a hearing is received by September 6, 1991. Comments concerning the proposed rule must be received on or before October 27, 1991.

ADDRESSES: Comments should be submitted (in duplicate) to: Central Docket Section LE–131, Environmental Protection Agency, attn: Docket No. A–79–11, Washington, DC 20460. Comments may also be faxed to the EPA at (703) 308–8763.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Background Information Document supporting this proposed rule, and requests for additional information may be made by writing to: Al Colli, Environmental Standards Branch, Criteria and Standards Division (ANR–460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460 (703) 308–8787.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated standards controlling radionuclide emissions to the ambient air from several source categories, including emissions from licensees of the Nuclear Regulatory Commission (NRC) and from federal facilities not licensed by the NRC or operated by the Department of Energy (non-DOE Federal facilities) (subpart I, 40 CFR part 61). This rule was published in the **Federal Register** on December 15, 1989. (54 FR 51654). Simultaneously with promulgating the rule, EPA granted reconsideration of subpart I based on information received late in the rulemaking on the subject of duplicative regulation by NRC and EPA and on potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and also granted a 90-day stay of subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607 (d)(7)(B). That stay expired on March 15, 1990.

EPA subsequently extended the stay of the effective date of subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act

(APA), 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990.)

In October 1990, Congress passed new legislation amending the Clean Air Act. Section 112(d)(9) of the amendments provides,

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

After evaluating the information received during the reconsideration of subpart I, EPA concluded that the data presently available to EPA for all categories of NRC-licensed facilities except nuclear power reactors is not sufficient to enable the Agency to determine whether the regulatory program established by NRC provides "an ample margin of safety to protect the public health," as that term is used in section 112 of the Clean Air Act (CAA). On February 13, 1991, EPA proposed to stay the effectiveness of Subpart I for all NRC-licensed facilities except for nuclear power reactors until November 15, 1992. 56 FR 6339 (February 15, 1991). EPA issued a final rule to stay Subpart I for these facilities on April 24, 1991 (56 FR 18735). This stay will provide EPA with the time needed to collect (using the authority of section 114 of the Clean Air Act) the information which is required to make a determination under section 112(d)(9). With regard to non-DOE federal facilities, EPA concluded that the factors which led to the reconsideration of subpart I, possible duplication of effort between the EPA and the NRC and potential negative effects on nuclear medicine, are not applicable to this subcategory of facilities. Since the determination concerning the adequacy of the NRC regulatory program contemplated by the new language in section 112(d)(9) could not apply to such facilities, EPA did not include non-DOE federal facilities in the latest stay of subpart I.

With regard to nuclear power reactors, EPA believes that it now possesses sufficient information concerning radionuclide emissions from nuclear power reactors and the NRC program which addresses those emissions to reach a determination under section 112(d)(9). Therefore, EPA is today proposing to rescind subpart I as applied to nuclear power reactors, pursuant to the authority provided by section 112(d)(9). In a related action published elsewhere in this issue of the Federal Register, EPA is issuing a final rule which stays the effectiveness of subpart I as applied to nuclear power reactors until the rulemaking concerning rescission of subpart I for nuclear power reactors has been concluded. EPA did not include this subcategory of facilities in the stay issued on April 24, 1991 because the basis of that stay, EPA's need to collect further information before making a determination under section 112(d)(9), is not applicable to these facilities.

B. Discussion of Existing EPA Standard 40 CFR Part 61 Subpart I

Subpart I of 40 CFR part 61 limits radionuclide emissions to the ambient air from NRC-licensed facilities to that amount which would cause any member of the public to receive in any year an effective dose equivalent (ede) of 10 millirem, of which no more than 3 millirem ede may be from radioiodine. The limit of 10 millirem/year ede represents the Agency's application to radionuclide emissions of the policy for regulating section 112 pollutants which was first announced in the benzene NESHAP. 54 FR 38044 (September 14, 1989).

The NESHAP policy utilized a two-step approach. In the first step, EPA considered that the risk to the maximally exposed individual is presumptively acceptable if it is no higher than approximately 1 in ten thousand. This presumptive level provides a benchmark for judging the acceptability of a category of emissions. This first step also considers other health and risk factors such as projected incidence of cancer, the estimated number of persons exposed within each individual lifetime risk range, the weight of evidence presented in the risk assessment, and the estimated incidence of non-fatal cancer and other health effects. After considering all of this information, a final decision on acceptable risk is made. This becomes the starting point for the second step, determining an ample margin of safety.

In the second step, EPA strives to provide protection of an individual lifetime risk level no higher than approximately one in one million to the greatest number of persons possible. In this ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.

As part of the risk assessment associated with the promulgation of Subpart I, EPA examined the doses to the maximally exposed individuals from all categories of NRC-licensed facilities. EPA examined the uranium fuel cycle as a separate sector of NRC-licensees and determined that baseline emissions from that category were at a safe level. However, subpart I was promulgated to ensure that baseline emissions would not increase, and that the public would be afforded an ample margin of safety. Upon reconsideration of the standard, EPA conducted a review of the nuclear power reactor sector of the uranium fuel cycle and determined that the individual doses associated with nuclear power reactors are even lower than was previously estimated. This latest analysis revealed that the most exposed individual from emissions of nuclear power plants would be expected to receive a dose of less than 1.0 mrem/year ede from all radionuclides and a dose of less than 0.01 mrem/year ede from radioiodine. The estimated doses for these facilities are a factor of 10 less than the standard and are likely to remain low in the future.

C. The Advanced Notice of Proposed Rulemaking

After reviewing the information provided to EPA concerning radionuclide emissions from nuclear power reactors and the program implemented by the NRC to control such emissions, EPA tentatively concluded that NRC's regulatory program limiting these emissions protects public health with an ample margin of safety. Accordingly, on March 13, 1991, EPA issued an Advanced Notice of Proposed Rulemaking announced the Agency's intention to enter into a rulemaking to rescind subpart I as it applies to nuclear power reactors.

D. Rationale for the Proposed Rule To Rescind 40 CFR Part 61 Subpart I for Nuclear Power Reactors

In light of the new statutory authority given EPA under section 112(d)(9), EPA has analyzed the public health risks posed by nuclear power plants to determine whether NRC's regulatory program for air emissions provides an ample margin of safety to protect the public health. In making this determination, EPA has focused on two questions: (1) Does the objective evidence demonstrate that the NRC

regulatory program in practice results in sufficiently low doses to protect the public health with an ample margin of safety? and (2) Is the NRC program sufficiently comprehensive and thorough and administered in a manner which will detect and prevent future increases in radionuclide emissions? Today's proposal to rescind Subpart I for nuclear power reactors is based upon evaluation of NRC's current regulatory program; EPA could revisit this decision if new information suggesting higher emissions or other information concerning NRC's regulatory program becomes available.

1. Doses Resulting From Radianuclide Emissions From Nuclear Power Reactors.

EPA independently calculated doses for every NRC site with one or more operating reactors using the most current year for which a complete set of data was available (1988). If the plants had below normal emissions in 1988, an alternative year was used in the analysis. Site-specific data were obtained to the maximum extent practical and used as input to the AIRDOSE EPA computer program. In all cases, calculated doses did not exceed 1.0 mrem/year ede to the maximally exposed individual. This is equivalent to a lifetime individual risk of approximately 3 in 100,000. Thus, the NRC regulatory program, for the years examined, results in doses which are at least 10 times lower than EPA's NESHAP of 10 mrem/year ede. EPA also compared the 1988 data with historical data to determine if the 1988 data was representative a long term trends in population and individual doses. Although the populations around the reactor facilities and the facility capacity factors have increased over the last fifteen years, the average annual collective population doses have steadily declined.

2. NRC's Regulatory Program

a. Regulations Governing Radionuclide Emissions

There are three regulations which control routine radionuclide emissions from commercial nuclear power plants: 10 CFR part 50, Appendix I, "Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion 'As Low As is Reasonably Achievable' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents"; 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations"; and 10 CFR Part 20, "Standards for Protection Against Radiation "

1. *10 CFR 50, Appendix I, "Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion "As Low As Is Reasonably Achievable" for Radionuclide Material in Light-Water-Cooled Nuclear Power Reactor Effluents".* This appendix provides numerical guides for design objectives and limiting conditions for operation to assist licensees for light-water-cooled commercial nuclear power plants in meeting the requirements of §§ 50.34a and 50.36a that radioactive materials in effluents released to unrestricted areas be kept as low as is reasonably achievable (ALARA). The licensee satisfies the design objectives, in part, by demonstrating that the gaseous radionuclide releases to the atmosphere from each reactor on site will not result in an estimated average annual air dose in excess of 10 millirem for gamma exposure and 20 millirem for beta exposure. These limits apply to dose to individuals located in unrestricted areas and are limited to external exposure to noble gases. Lower radionuclide release rates may be required to satisfy the design objectives if it appears that the releases are likely to result in an estimated annual external dose from gaseous effluents in excess fo 5 mrem/year. Alternatively, higher release rates may be acceptable if the applicant can provide reasonable assurance that the external dose to any individual in an unrestricted area will not exceed 5 mrem/year to the whole body and 15 mrem/year to the skin. The applicant must also demonstrate that the calculated annual total quantity of all radioiodines and radioactive particulates released to the atmosphere from each reactor will not cause exposures to any individual in unrestricted areas in excess of 15 mrem to any organ. A dose of 15 mrem/year to the thyroid from radioiodine will result in an ede of less than 1 rmem/year. For all practical purposes, the total ede allowed under 10 CFR part 50 appendix I is held to 6 mrem/year because essentially all of the internal emitters are radioiodine.

The limiting conditions of operation (LCOs) set forth in Appendix I complement the design objectives by providing guidance on ensuring that, during operation, the facility maintains radionuclide releases and offsite exposures as low as is reasonably achievable consistent with the design objectives. At the same time, the LCOs provide for flexibility of operation, compatible with considerations of pubic health and safety, to assure that the facility can continue to operate even under unusual operating conditions.

2. *40 CFR part 190, "Environmental Radiation Protection Standards far Nuclear Power Operations."* This regulation requires uranium fuel cycle operations to be conducted in such a manner that there is reasonable assurance that the annual radiation dose equivalent to any member of the public from all uranium fuel cycle sources, does not exceed 25 mrem to the whole body, 75 rmem to the thyroid, and 25 mrem to any other organ. This standard applies to gaseous and liquid effluent pathways and direct radiation.

In 1981, 10 CFR 20.105 and 20.106 were amended to adopt these standards. Paragraphs 20.105(c) and 20.106(g) specifically require that licensees engaged in uranium fuel cycle operations subject to the provision of this part comply with these dose limits.

3. *10 CFR Part 20, "Standards for Protectian Against Radiation."* The regulations in 10 CFR part 20 establish standards for protection against radiation hazards arising out of activities conducted under licenses issued by the NRC and were issued pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974.

The portions of part 20 that apply to radionuclide emissions from licensed facilities are § 20.105, which sets permissible levels of radiation in unrestricted areas and 20.106 which establishes limits on radioactivity in effluents to unrestricted areas. Section 20.105 states that the Commission will grant a licensee to possess or use radioactive materials or any other source of radiation if the applicant demonstrates that any individual in an unrestricted area is not likely to receive a whole body dose in excess of 500 mrem/year.

Section 20.106 limits the release of radioactive material to unrestricted areas to levels that will not result in average annual radionuclide concentrations in air and water in excess of the limits set forth in table II of appendix B of Part 20. This secondary standard is designed to provide assurance that the primary health based standard of 500 mrem/year to the whole body or the equivalent to any organ is not exceeded.

In addition to these numerical standards, paragraph 20.1(c) requires each licensee to make every reasonable effort to maintain radiation exposures, and releases of radioactive material in effluents to unrestricted areas, as low as is reasonable achievable (ALARA). ALARA means "as low as is reasonable

achievable taking into account the state of technology, and the economics of improvement in relation to benefits to the public health and safety, and other societal and socioeconomic considerations in relation to the utilization of atomic energy in the public interest."

On December 13, 1990, major revisions to Part 20 were approved by the Commission. The revised rule implements 1987 Presidential guidance on occupational radiation protection and the recommendations of scientific organizations to establish risk based limits and a system of dose limitation in accordance with the guidance published by the International Committee on Radiation Protection. Pertinent revisions to the rule include:

- Section 20.301 which reduced the total allowable effective dose equivalent to individual members of the public to 100 mrem/year;
- Section 20.302 which requires appropriate surveys to ensure that the dose limits are not exceeded;
- Table 2 which provides Derived Air Concentrations that act to ensure that continued exposure at these levels will not result in doses to members of the general public in excess of 50 mrem/year; and
- Codification of ALARA as a regulatory requirement versus a regulatory admonition.

The revised part 20 still adopts the standards set forth in 40 CFR part 190 for the uranium fuel cycle.

b. NRC's Methods of Implementation of Its Standards

The principal radionuclides routinely released in the gaseous effluents from commercial light water reactors are noble gases and radioiodines. The whole body dose from noble gas emissions per reactor is limited by the 5 mrem/year limit of appendix I. The organ doses from radioiodines and particulates are limited to 15 mrem/year. For the thyroid gland from radioiodines, this converts to an effective dose equivalent of less than 1 mrem/year. The guidelines set forth in appendix I to 10 CFR part 50 and the standards set forth in 40 CFR part 190 together establish a regulatory framework that provides a high level of assurance that the routine emissions from commercial light water reactors will not result in exposures in excess of 10 mrem/year ede.

1. *Monitoring.* Compliance with 10 CFR part 50 appendix I and 40 CFR part 190 is demonstrated through the establishment of Limiting Conditions of Operation (LCOs) and Radiological Effluent Technical Specifications (RETS) for each nuclear power reactor in accordance with 10 CFR 50.36a. The LCOs and their associated RETS require that, if the quantity of radioactive materials actually released in effluents to unrestricted areas in any calendar quarter is such that the resulting radiation exposure, calculated on the same basis as the design objectives, exceeds on half the annual design objectives, the licensee is required to investigate the cause of the release, define and initiate corrective actions to prevent a recurrence, and report these actions to the NRC within 30 days from the end of the quarter in which the release occurred.

The LCOs and RETS also require the licensee to initiate effluent and environmental monitoring programs to provide (1) data on the quantities of radionuclides released, (2) the levels of radiation and radioactive materials in the environment, and (3) changes in land use and demography in the vicinity of the site that pertain to compliance with the LCOs. If the monitoring data reveal that the relationship between the quantities of radioactive materials released and the doses to individuals in unrestricted areas is significantly different than that assumed in the calculations used to assess compliance with the design objectives, the NRC may require a modification of the RETS.

In order to provide assistance to licensees in complying with the LCOs and preparing their RETS, the NRC has issued the following guidance: NUREG–0472 and –0473, "Standard Radiological Effluent Technical Specifications for PWRs (and BWRs)," U.S. NRC, January 1983; NUREG–0133, "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants," U.S. NRC, October 1978; NUREG–1301 and NUREG–1302, "Offsite Dose Calculation Manual Guidance: Standard Radiological Effluent Controls for Pressurized Water Reactors (and Boiling Water Reactors)," U.S. NRC, April 1991; and U.S. NRC Regulatory Guide 1.21, "Measuring, Evaluating, and Reporting Radioactivity in Solid Waste and Releases of Radioactive Material in Liquid and Gaseous Effluents from Light-Water-Cooled Nuclear Power Plants".

These documents provide highly detailed standard RETS and procedures for implementing the RETS. Detailed guidance is provided in the areas of effluent monitoring instrumentation; specific equations, assumptions and methodologies addressing short and long term radioactive releases; and the use of gaseous radwaste treatment systems.

NUREG–0133 also provides guidance to utilities for calculating doses for the purpose of assessing compliance with 40 CFR 190, as follows:

(1) Identify the uranium fuel cycle sources that contribute to individual dose.

(2) Identify the maximum exposed individual. This individual may be different than the maximum individual identified for the purpose of assessing compliance with appendix I.

(3) Determine the annual dose to this person from all existing pathways and sources of radioactivity and radiation using the methodologies described in Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR part 50 appendix I" or other methods that may be more appropriate.

(4) Include direct radiation dose from all potential sources of radioactivity onsite.

2. *Inspections.* To ensure that the licensee is meeting its regulatory and license-specific requirements for each facility receives approximately 2 inspections per year in the area of radiation protection by the regional NRC inspectors. Along with the plants' reporting requirements, the inspections determine the degree to which each plant is in compliance with its license and technical specifications, including its RETS. If problem areas are identified, follow-up inspections are scheduled in order to ensure that deficiencies are corrected. If a facility appears to have persistent problems in particular areas, the facility is subjected to inspections on a more frequent basis.

The periodic inspections of the RETS include a review of records and procedures, interviews with plant personnel, and an effluent and environmental measurements program. The measurements program consists of the independent collection and analysis of effluent and environmental samples by NRC personnel using an NRC mobile laboratory. The results of these analyses not only indicate the level of radioactive material in the effluent, but also indicate the degree of accuracy and precision of the facility's own effluent monitoring equipment.

Each commercial power plant has at least one full time NRC Senior Resident Inspector who provides continual health and safety oversight of plant operations. Sites with multiple reactors have at least one Resident Inspector per reactor. If problem areas arise pertaining to compliance with the RETS, the Resident Inspector may request special

inspections and audit related plant operations on a more frequent basis.

All inspections performed by either on-site Resident Inspectors or inspectors from the NRC Regional offices or NRC Headquarters are fully documented. These reports are made available to the public in the NRC Public Document Rooms located in the regions and in Washington, DC. The reports are filed in the separate docket established for each site. Periodically the NRC publishes a summary of the licensee event reports generated by reactor facilities which provides a brief explanation of the type of event, its cause(s), corrective actions taken by the licensee, and what, if any, fines were imposed. Reportable licensee events include exceeding effluent release rates, worker overexposures, procedure violations, and accidents, to name just a few. If detailed event information is desired, the Licensee Event Report located in the individual docket can provide it.

These ongoing elements of the NRC regulatory program demonstrate that the emissions are being adequately controlled. After a thorough evaluation of these requirements, EPA has tentatively determined that: (1) Present radionuclide emissions from nuclear power plants are well controlled under the NRC's regulatory program and result in low doses to the general public; and (2) the NRC's regulatory program will ensure that current levels do not substantially increase. Based on these determinations, EPA has tentatively concluded that the regulatory program of the NRC controls radionuclide emissions from nuclear power reactors sufficiently to protect public health with an ample margin of safety. Consequently, EPA proposes to delete commercial nuclear power plants from the category of facilities subject to 40 CFR part 61 subpart I.

F. Miscellaneous

1. Paperwork Reduction Act

There are no information collection requirements in this proposed rule.

2. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation, if promulgated, would be a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that rescinding subpart I for nuclear power reactors would result in none of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be a "major rule." This regulation would not be major because the nationwide compliance costs would not meet the $100 million threshold, the regulation would not significantly increase prices or production costs, and the regulation would not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this purposed regulation because this action does not constitute a major rule.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the proposed rule on small business entities. However, section 604(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule to rescind 40 CFR part 61 subpart I, if promulgated as a final rule, will have the effect of easing the burdens associated with the provisions of subpart I and for those reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and Recordkeeping requirements, Uranium, Vinyl chloride.

William K. Reilly,

Administrator.

Part 61 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.100 is revised to read as follows:

§ 61.100 Applicability.

The provisions of this subpart apply to facilities other than nuclear power reactors which are licensed by the Nuclear Regulatory Commission. This subpart also applies to facilities owned or operated by any Federal agency other than the Department of Energy, except that this subpart does not apply to disposal at facilities regulated under 40 CFR part 191, subpart B, or to any uranium mill tailings pile after it has been disposed of under 40 CFR part 192, or to low energy accelerators, or to any NRC-licensee that possesses and uses radionuclides only in the form of sealed sources.

§ 61.107 [Amended]

3. Section 61.107 is amended by removing paragraph (c)(1) and by redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2) respectively.

[FR Doc. 91-18507 Filed 8-2-91; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for Three Florida Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The comment period on the Service's proposed rule to designate threatened status for three plants of the Florida panhandle is reopened to acknowledge acceptance into the public record of comments received since the close of the original comment period, and to permit receipt of additional data and comments.

DATES: Comments from all interested parties must be received by August 26, 1991.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1990 (55 FR 51936) the Service published a proposal to list

three plants of the Florida panhandle as threatened species. They are *Euphorbia telephioides* (Telephus spurge), *Macbridea alba* (white birds-in-a-nest), and *Scutellaria floridana* (Florida skullcap). The plants occur near the Gulf coast in the vicinity of the Apalachicola River in Liberty, Franklin, Gulf, and Bay Counties.

During the original comment period, the Service (1) accepted a request to include data in its review that would be gathered during the 1991 flowering season of these plants, and (2) accepted two requests to hold informal meetings to allow presentation of oral comments on the proposal. However, due to scheduling difficulties, It was not feasible to hold such meetings during the original comment period. The comment period is therefore being reopened primarily to honor these prior commitments and to include in the record several written comments received after, the expiration of the original comment period.

Author

The primary author of this notice is Mr. David Martin (see **ADDRESSES** section).

Authority

The authority for this notice is the Endangered Species Act (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 30, 1991.

James W. Pulliam, Jr.

Regional Director, Southeast Region.

[FR Doc. 91–18472 Filed 8–2–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 150
Monday, August 5, 1991

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: Current Industrial Reports Program (Wave I Mandatory).

Form Number(s): Various.

Agency Approval Number: 0607–0392.

Type of Request: Revision of a currently approved collection.

Burden: 10,090 hours.

Number of Respondents: 10,658.

Avg Hours Per Response: 57 minutes.

Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provides key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Requests for OMB clearance of the various surveys within the CIR program are divided into 3 waves, each submitted for 3 year clearances (one wave per year). Each wave has two separate packages—one for mandatory reports and one for voluntary. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions.

Affected Public: Businesses or other for–profit organizations.

Frequency: Quarterly, and annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 30, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–18493 Filed 8–2–91; 8:45 am]

BILLING CODE 3510–07–F

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 Income and Program Participation – 1992 Panel Core, Waves 1 – 8, and Wave 1 Topical Modules.

Form Number(s): SIPP–12100, 12001, 12105(L), 4003(A).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 42,000 hours.

Number of Respondents: 84,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census conducts the Survey of Income and Program Participation (SIPP) to collect information concerning the distribution of income received directly as money or indirectly as in–kind benefits. The SIPP is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2 1/2 years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The Wave 1 questionnaire contains the SIPP's core. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The Wave 1 questionnaire contains two topical modules, Recipiency History and Employment History. The 1992 Panel is the first to introduce topical modules in the first interview period. Wave 1 interviews will be conducted from February through May of 1992.

Affected Public: Individuals or households.

Frequency: There will be two interview periods for the 1992 Panel in Fiscal Year 1992.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 30, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91-18494 Filed 8-2-91; 8:45 am]

BILLING CODE 3510–07–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Japan

July 30, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6583. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Japan reached agreement, effected by exchange of notes dated June 21, 1991, to establish a new bilateral textile agreement for cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during two consecutive one-year periods, beginning on January 1, 1990 and extending through December 31, 1991.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 30, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 21, 1991, between the Governments of the United States and Japan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 8, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Japan and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
Levels not in a Group	
313	7,500,631 square meters.
315	9,000,000 square meters.
326	9,242,076 square meters.
410/624	12,000,000 square meters of which not more than 9,000,000 square meters shall be in Category 624.
611	15,774,456 square meters.
618	14,420,000 square meters.
619	111,734,291 square meters.
620	25,250,000 square meters
Group I 237, 239, 330-359, 431-459, 630-659, as a group.	85,000,000 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Japan.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–18492 Filed 8–2–91; 8:45 am]

BILLING CODE 3510–DR–F

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Privacy Act; Systems of Records

AGENCY: Defense Nuclear Facilities Safety Board

ACTION: Notice of Systems of Records

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to provide public notice of systems of records it maintains containing personal information. In this notice the Board provides the required information on two such systems of records.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, suite 700, Washington, DC 20004, (202) 208–6387.

SUPPLEMENTARY INFORMATION: Section 552a(e) of the Privacy Act of 1974 directs each Federal agency to provide notice to the public of systems of records it maintains on individuals. This notification of two records systems is the first in a series of notices which will bring the Board (an agency established in 1989) into full compliance with the Privacy Act.

The Board has not yet published regulations (required by Section 552a(f) of the Act) governing how individuals gain access to records and request their correction. These regulations will be proposed within the next few months. In the interim, access and correction will be available by simply contacting the Board's Privacy Act Officer.

Future notices will describe other systems of records maintained by the Board. It is the Board's intent to be in full compliance with the Privacy Act by the end of 1991. Any questions concerning these notices, or other Privacy Act issues, should be directed to the Office of the General Counsel.

Systems of Records

DNFSB–1

SYSTEM NAME:

Personnel Security Files.

SECURITY CLASSIFICATION:

Classified and unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB and DNFSB contractors; consultants; other individuals requiring access to classified materials and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security folders and requests for security clearances, Forms SF 86, 86A, 87, 312, and DOE Forms 5631.18, 5631.29, 5631.20, and 5631.21. In addition, records containing the following information:

(1) Security clearance request information;

(2) Radiation exposure and whole body count, including any mandatory training associated with site work/visits;

(3) Records of security education and foreign travel lectures;

(4) Records of any security infractions;

(5) Names of individuals visiting DNFSB;

(6) Employee identification files (including photographs) maintained for access purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorrzation Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DNFSB—(1) to monitor radiation exposure of its employees and contractors, (2) to determine which individuals should have access to classified material and to be able to transfer clearances to other facilities for visitor control purposes.

DOE—(1) to monitor radiation exposure of visitors to the various DOE facilities in the United States, (2) to determine eligibility for security clearances.

Other Federal and State Health Institutions—To monitor radiation exposure of DNFSB personnel.

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name, social security number, and numeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, D.C. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004. Attention: Security Management Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–1 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, Questionnaire for Sensitive Positions (SF–86), agency files, official visitor logs, contractors, and DOE Personnel Security Branch. Radiation exposure records are obtained from previous employee records, DOE contractors' film badges, and dosirnetry badges.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–2

SYSTEM NAME:

Administrative and Travel Files.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW, Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB, including DNFSB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

(1) Time and attendance;

(2) Payroll actions and deduction information requests;

(3) Authorizations for overtime and night differential;

(4) Credit cards and telephone calling cards issued to individuals;

(5) Destination, itinerary, mode and purpose of travel;

(6) Date(s) of travel and all expenses;

(7) Passport number;

(8) Requests for advance of funds, and voucher with receipts;

(9) Travel authorizations;

(10) Name, address, social security number and birth date;

(11) Employee parking permits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Treasury Department—To collect withheld taxes, print payroll checks, and issue savings bonds.

Internal Revenue Service—To process Federal income tax.

State and Local Governments—To process state and local income tax.

Office of Personnel Management—Retirement records and benefits.

Social Security Administration—Social Security records and benefits.

Department of Labor—To process Workmen's Compensation claims.

Department of Defense—Military Retired Pay Offices—To adjust Military retirement.

Savings Institutions—To credit accounts for savings made through payroll deductions.

Health Insurance Carriers—To process insurance claims.

General Accounting Office—Audit—To verify accuracy and legality of disbursement.

Veteran's Administration—To evaluate veteran's benefits to which the individual may be entitled.

States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.

Travel Agencies—To process travel itineraries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABLLITY:

By name, social security number, travel dates, and alphanumeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, Attention: Chief Administrative Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–2 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, timekeepers, official personnel records, GSA for accounting and payroll, OPM for official personnel records, IRS and State officials for withholding and tax information, and travel agency contract.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: July 31 1991.

John T. Conway,

Chairman.

[FR Doc. 91–18497 Filed 8–2–91; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Research and Development Laboratories Consolidation and Conversion Advisory Commission Meeting

AGENCY: Department of Defense (DoD) Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories will hold its next meeting on August 28–29, 1991, in Adelphi, MD and Beltsville, MD, suburbs in the greater metropolitan area of Washington, DC. The first session of this meeting will be held in the facilities of the U.S. Army Adelphi Laboratory Center in Adelphi, MD and will be closed to the public. The second session of this meeting will be open to the public and will be held in the facilities of the Holiday Inn Calverton in Beltsville, MD on August 29, 1991. The public session will begin at 1 p.m. and end at 5 p.m. The address of the Holiday Inn Calverton is 4095 Powder Mill Road, Beltsville, MD.

The purpose of these meetings is to discuss technological factors involved in developing recommendations to the Secretary of Defense on consolidating, converting, or realigning various laboratories of the Department of Defense. The agenda for the meetings will consist of discussions of issues related to future military research and technology development. 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 Director of Defense Research and Engineering has determined, in writing, that the public interest requires that the first session of this meeting be closed to the public because this session will be concerned with matters listed in section 552(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Dr. Michael Heeb, Executive Secretary to the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, 5109 Leesburg Pike, suite 317, Falls Church, VA 22041, Phone (703) 756–8969.

Dated: July 30, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–18487 Filed 8–2–91; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday August 27 and 28, 1991.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Avanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classifed defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d)(1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: July 29, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 91–18430 Filed 8–2–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Weapon Development and Production Technology; Meeting

ACTION: Change in Status from Closed to Open of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Weapon Development and Production Technology scheduled for 11 to 23 August, 1991, originally announced as a closed meeting, as published in the Federal Register (vol. 56, no. 111, page 26658, Monday, June 10, 1991, FR Doc. 91–13671) will be open to the public except for a session from 1 p.m. to 5 p.m., Tuesday, 13 August, 1991, which

shall remain closed. In all other respects the original notice remains unchanged.

Dated: July 30, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13439 Filed 8-2-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent To Prepare an Environmental Impact Statement on EF/F-111 Realignment at Cannon AFB, NM

The United States Air Force intends to prepare an Environmental Impact Statement (EIS) on the actions associated with the realignment of the 27th Tactical Fighter Wing at Cannon AFB, NM. There are three actions associated with this realignment. In mid 1992, the wing will receive 25 EF-111A aircraft and convert from 59 F-111D to 62 F-111F aircraft. Additionally, 18 F-111G will retire and be replaced with 18 F-111E aircraft in mid 1993. Manpower authorizations are expected to increase by 303 full-time military and 19 civilians by mid 1993. This realignment was announced on April 12, 1991 as part of a comprehensive package prepared for the Defense Base Closure and Realignment Commission by the Air Force.

This EIS will focus on the realignment impacts taking place at Cannon AFB. It will analyze the local environmental effects. associated with the 27th TFW realignment. The Air Force hopes to have this EIS completed by mid 1992.

The Air Force will conduct public scoping meetings to determine the issues and concerns that should be addressed in the EIS.

Notice of the time and place of the planned scoping meetings will be made available to public officials and announced in the news media where the meetings will be held.

To assure the Air Force will have sufficient time to consider public input on issues to be included in the EIS, scoping comments should be forvarded to the addressee listed below by September 6, 1991. However, the Air Force will accept comments sent to the addressee below at any time during the environmental impact process.

For further information concerning realignment of the 27th TFW contact: Ms Brenda Cook, HQ TAC/DEVE, Langley AFB, VA 23665 or telephone (804) 764-7844.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-18486 Filed 8-2-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Freight Tenders; Procedural Changes in Receipt and Approval

AGENCY: Military Traffic Management Command (MTMC).

ACTION: Procedural changes in the receipt and approval of DOD Freight Tenders.

SUMMARY: Headquarters MTMC will transfer the Tender Function to Headquarters, MTMC Eastern Area, Bayonne, N.J. All carriers, Motor, Rail, Air, Water, and Pipeline must submit their tenders, with the exception of 600,000 series (negotiated tenders), to: Headquarters, Military Traffic Management Command, Eastern Area, ATTN: MTEA-INS-T, Room 142, Building 82, Bayonne, N.J. 07002-5302. Effective date: October 1, 1991.

SUPPLEMENTARY INFORMATION: The purpose of this transfer is to co-locate the tender receipt/approval function with the CONUS Freight Management (CFM) System. This will enhance the receipt and approval of tenders.

John O. Roach, II,

Department of the Army Liaison Officer with the Federal Register.

[FR Doc. 91-18451 Filed 8-2-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement for the Grundy Local Protection Plan, Grundy, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Huntington District, currently has underway a study of potential flood damage reduction alternatives for Grundy, Virginia, Levisa Fork Basin of the Big Sandy River Drainage, as authorized by section 202 of the Energy and Water Development Appropriation Act of 1981. (Pub. L. 96-367). The possibility of significant environmental and socio-economic impacts as the result of implementation of these potential flood damage alternatives, necessitates the preparation of a Draft Environmental Impact Statement (DEIS). Consequently, the Huntington District Engineer has directed the preparation of a Draft Environmental Impact Statement (DEIS) on the Grundy, Virginia, Local Protection Project.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action and DEIS should be addressed to: Mr. Theodore A. Brown, PD-S, Phone: (304) 529-5644, Mr. Wallace E. Dean, PD-B, Phone: (304) 529-5712, Planning division, Huntington District Corps of Engineers, 520 8th Street, Huntington, West Virginia, 25701-2070.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* Plan 3-A, the recommended plan, will be carried out through a joint venture of the U.S. Army Corps of Engineers, Virginia Department of Transportation, and the town of Grundy.

2. Study efforts when complete will be documented in a Specific Project Report (SPR), a supplement to a General Plan, as directed and authorized by section 202 of Public Law 96-367. The study addresses only those flooding problems along the Levisa Fork and Slate Creek within the Grundy, Virginia corporation limits. Study alternatives being considered include an assessment of the following: Comprehensive flood damage reduction and U.S. Route 460 upgrading in Grundy. The project will consist of (1) voluntary floodproofing and floodplain evacuation in those areas not for the highway right of way; (2) mandatory evacuation structures located in the highway right of way and in the floodplain; (3) construction of a barrier wall and three-foot parapet wall around Area B, which includes those structures fronting Main Street and bound by Slate Creek on the north and the mountainside on the south; (4) relocation of two schools; and (5) preparation of a floodsafe site bounded by an elevated State Route 83 and retaining walls, Area C. Additional Features of the project will be the establishment of greenbelt along the Levisa Fork between U.S. Route 460 and the river, and the opportunity for commercial redevelopment on a prepared floodsafe site, Area C.

These study efforts have been discussed at numerous public meeting and workshops with concerned area residents during the period June 1984 to present, the most recent meeting being a Town meeting called by Congressman Boucher on May 31, 1991 to provide and update the area representation and residents.

3. a. A draft SPR containing a summary of investigations with specific recommendations is currently scheduled for completion by February 1992 with a final report to be completed by late 1992 or early 1993. Public involvement will continue throughout this final phase of study in the form of workshops and information furnished to the local media.

Federal, state, and local agencies as well as other affected and concerned organizations will be requested to be represented at all scheduled meetings of this nature.

b. Several potentially significant impacts have been identified. Studies have been designed and are presently underway to assess and qualify the significance of each. Potentially significant impacts are: (1) Impacts on the present aquatic and terrestrial resources; (2) Changes in life style and traditional values; (3) socio-economic impacts and any other significant impacts; and (4) Cultural resources. In addition to the above impacts any significant impact development during the study will also be analyzed and presented in the DEIS.

c. A public scoping meeting will be conducted at Grundy, Virginia, during the latter part of August, 1990. No additional public scoping meetings are anticipated during DEIS development.

d. The DEIS will be developed under guidance, requirements, and format in 40 CFR 1502.10. Consultation will be conducted with the U.S. Fish and Wildlife Service and the Environmental Protection Agency during the DEIS process, pursuant to the requirements of the Fish and Wildlife Coordination Act 16 U.S.C. 661 *et seq.* (Pub. L. 85–624), the Endangered Species Act 16 U.S.C. 1531 *et seq.* (Pub. L. 93–205), the Heritage Conservation and Recreation Service and State Historical Preservation Act of 1966 (80 Stat 915) (Pub. L. 89–655), and the Preservation of Historic and Archaeologic Data (88 Stat 174) (Pub. L. 93–291) and EO 11593. In addition, other interest groups or organizations will be included.

4. It is anticipated that the DEIS will be made available for public review in Fiscal year 1992.

John O. Roach,

Department of the Army Liaison, Officer with the Federal Register.

[FR Doc. 91–18452 Filed 8–2–91; 8:45 am]

BILLING CODE 3710–GM–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 September 4, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, attention: Dan Chenok: 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 Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

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 Acting 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 Mary P. Liggett at the address specified above.

Dated: July 30, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Biennial Performance Report for Drug-Free Schools and Communities Act—State Educational Agencies.

Frequency: Biennially.

Affected Public: State or local governments.

Reporting Burden:

Responses: 57,

Burden Hours: 4,920.

Recordkeeping Burden:

Recordkeepers: 0,

Burden Hours: 0.

Abstract: Information about programs funded under the Drug-Free Schools and Communities Act must be submitted to the Department. The Department will use the information to enhance program management and use it as a tool in considering development of its reauthorization proposal for the Drug-Free Schools and Communities Act.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Application for Grants under the Migrant Education Even Start Program (MEES) Operated by State Educational Agencies.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 50,

Burden Hours: 900.

Recordkeeping Burden:

Recordkeepers: 0,

Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for funding under the Migrant Education Even Start Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants under the Law School Clinical Experience Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden:

Responses: 91,

Burden Hours: 1,820.

Recordkeeping Burden:

Recordkeepers: 0,

Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for grants under the Law School Clinical Experience Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants under the Patricia Roberts Harris Graduate and Professional Study Fellowship Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden:
Responses: 250,
Burden Hours: 5,000.

Recordkeeping Burden:
Recordkeepers: 0,
Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for funding under the Patricia Roberts Harris Graduate and Professional Study Fellowship Program. The Department uses the information to make grant awards.

Office of Intergovernmental and Interagency Affairs

Type of Review: Revision.
Title: AMERICA 2000 Toll-Free Telephone Service.
Frequency: One time.
Affected Public: Individuals or households.

Reporting Burden:
Responses: 80,000,
Burden Hours: 6,400.

Recordkeeping Burden:
Recordkeepers: 0,
Burden Hours: 0.

Abstract: This toll-free telephone service is used by the general public to obtain information packets on education issues. The Department will use this information to help individual citizens become active in the development of educational initiatives within their communities.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Annual Client Assistant Program.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.

Reporting Burden:
Responses: 57,
Burden Hours: 228.

Recordkeeping Burden:
Recordkeepers: 0,
Burden Hours: 0.

Abstract: Using this report the Department evaluates the performance of those agencies who have been designated to administer the Client Assistant Program (CAP) and provide assistance in informing and advising all clients and client applicants of the available benefits under the Rehabilitation Act of 1973, as amended. The Department uses the information to evaluate the program and make recommendations to the Congress.

[FR Doc. 91-18459 Filed 8-2-91; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to Energy Education Services, Inc.

AGENCY: Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) it is making a financial assistance renewal award under Grant Number DE-FG01-90CE16031 to Energy Education Services, Inc., for purposes of continuing support for the Leadership Training Conferences for the National Energy Education Development (NEED) project. This grant is necessary to continue the project created by a joint resolution of Congress and Presidential Proclamation. The NEED project will conduct four National Leadership Training Conferences having a total estimated cost of at least $142,000 with approximately $40,000 being provided by the Department of Energy (DOE).

This project, which will contribute significantly to the energy education of the public, is a renewal of an activity presently being funded by DOE under Grant Number DE-FG01-90CE16031. Competition would have a significant adverse effect on the activity due to the applicant's unique previous experience on the project and its development of a specialized network of coordinators in approximately 25 states. Any other organization would not be able to perform at the level required by the project.

In accordance with 10 CFR 600.7(b)(2)(i)(A), it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on completion of the activity. The anticipated term of the proposed grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-18519 Filed 8-2-91; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL91-46-000, et al.]

Madison Gas and Electric Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 29, 1991.

Take notice that the following filings have been made with the Commission:

1. Madison Gas and Electric Company

[Docket No. EL91-46-000]

Take notice that on July 23, 1991, Madison Gas and Electric Company (Applicant), 133 S. Blair Street, P.O. Box 1231, Madison, Wisconsin 53701-1231, filed a petition in Docket No. EL91-46-000 for a declaratory order concerning the rights of the parties under the Joint Power Supply Agreement dated July 26, 1973, between Wisconsin Power and Light Company, Wisconsin Public Service Corporation, and Applicant, as amended (hereinafter "JPSA"), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Applicant states that it specifically seeks an order declaring that the JPSA permits each of the three parties thereto to transmit power and energy over each segment of the 345 kV line jointly constructed by the parties pursuant to the JPSA—including portions of the line owned by one of the other parties—without charge, up to a level corresponding to the transmitting party's share of output in the jointly owned and operated generating units identified in the JPSA. Applicant states that absent such a declaratory order, it may be required to pay for the use of a transmission network in which it has already invested heavily as part of an effort to achieve joint regional economies for the benefit of all customers of the three utilities.

Comment date: August 28, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER91-551-000]

Take notice that on July 23, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing, as a rate schedule, a supplement agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. ("Consolidated Edison") dated May 29, 1991.

Niagara presently has on file an agreement with Consolidated Edison dated April 1, 1979 last amended

September 28, 1988. The original agreement is to provide transmission service for the delivery of diversity power and energy from the Power Authority of the State of New York (PASNY) to Consolidated Edison. The diversity power and energy is in turn exchanged by PASNY with Hydro Quebec. This agreement is designated as Niagara Mohawk Rate Schedule FERC No. 113. This new agreement is being transmitted as a supplement to the existing agreement and supersedes and amends Supplement No. 11.

The May 29, 1991 agreement, which is a supplement to the original agreement, revises the transmission rates. Niagara requests a waiver of the Commission's prior notice requirements in order to allow the May 29, 1991 agreement to become effective April 1, 1988. Niagara Mohawk states that Consolidated Edison has agreed to the proposed effective date.

Copies of the filing were served upon Consolidated Edison and the Public Service Commission of New York.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER91-552-000]

Take notice that on July 23, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing an agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. ("Con Ed"), providing for certain transmission services to Con Ed. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 90. This new agreement is being transmitted as a supplement to the existing agreement.

Under Rate Schedule No. 90, Niagara delivers Fitzpatrick power and energy between the New York Power Authority and Con Ed Paragraph 2.3 of Rate Schedule No. 90, as amended on August 28, 1980, states that Niagara Mohawk will recalculate the annual fixed-charge rate effective September 1 of each year for the ensuing 12-month period using previous year-end data and cost of capital data as determined by the New York State Public Service Commission in Niagara Mohawk's most recent retail electric rate proceeding. Niagara requests an effective date of September 1, 1988.

Copies of the filing were served upon Consolidated Edison and the Public Service Commission of New York.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER91-550-000]

Take notice that on July 23, 1991, Central Power and Light Company ("CPL") and West Texas Utilities Company ("WTU") tendered for filing: (1) The Oklaunion Power Transmission Services Agreement (Agreement) dated as of December 24, 1986, between CPL, WTU and the City of Brownsville, Texas, operating by and through the Public Utilities Board of the City of Brownsville, Texas (Brownsville); and (2) revised Master ERCOT Transmission Facility Rate Schedules for CPL and WTU, respectively.

CPL and WTU state that the Agreement provides for the transmission by CPL and WTU of electric power and energy to which Brownsville is entitled by virtue of its undivided ownership interest in Oklaunion Unit No. 1, a coal-fired generating station located in the control area of WTU, operated by WTU and owned by WTU, CPL, Brownsville, Public Service Company of Oklahoma and the Oklahoma Municipal Power Authority.

WTU and CPL further state that by this filing, they are revising their respective Master Rate Schedules to include the Agreement on the list of agreements and tariffs to which the Master Rate Schedule applies.

CPL and WTU request that the Agreement be permitted to become effective as of December 24, 1986, and therefore has requested waiver of the Commission's notice requirements.

Copies of the filing were served upon Brownsville and the Public Utility Commission of Texas.

Comment date: August 16, 1991, in accordance with Standard Paragraph E end of this notice.

5. York County Solid Waste and Refuse Authority

[Docket No. QF86-920-002]

On July 23, 1991, York County Solid Waste and Refuse Authority tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the ownership organizational structure of the facility.

Comment date: 21 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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

Lois D. Cashell,

Secretary.

[FR Doc. 91-18449 Filed 8-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-31-005]

Arkla Energy Resources; Filing of Revised Tariff Sheet in Compliance With Commission Order

July 30, 1991.

Take notice that on July 25, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following revised tariff sheet to become effective April 1, 1991:

2nd Revised Volume No. 1
2nd Substitute 2nd Revised Original Sheet No. 11

AER states that the above sheet is being filed in accordance with the Commission's order dated July 3, 1991 which directed AER to refile its April 1, 1991 tariff sheets within 30 days to reflect the recovery of its gas costs in excess of the threshold of the past performance test.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before August 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18490 Filed 8-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-22-004]

CNG Transmission Corp.; Report of Refunds

July 30, 1991.

Take notice that CNG Transmission Corporation (CNG), on July 19, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds as a credit to its April 1991 bills. CNG states that the report is being made pursuant to the Commission's June 19, 1991, order in the referenced proceeding.

CNG states that the refunds are related to take-or-pay amounts flowed through by Texas Gas Transmission Corporation in its Docket No. RP90-132.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18488 Filed 8-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. GT91-31-000 and G-280-002]

Northern Natural Gas Co.; FERC Order No. 493 Filing

July 30, 1991.

Take notice that on July 23, 1991, Northern Natural Gas Company (Northern) tendered for filing certain tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, as shown on appendix A to its filing. Northern requests an effective date of July 23, 1991.

Northern states that the tariff sheets are filed to reflect the change in corporate name to Northern Natural Gas Company, in compliance with the Commission's July 17, 1990, order in Docket No. G-280-001, *et al.*, which granted Northern Natural Gas Company, Division of Enron Corp. authorization to transfer all its assets and operations to Northern Natural Gas Company, effective December 31, 1990.

Northern further states that as a result of this filing, Northern's FERC Gas Tariff, Third Revised Volume No. 1 has been filed in its entirety on electronic medium in compliance with FERC Order No. 493. Northern asserts that only minor changes have been made to the tariff sheets, such as corrections in spelling and punctuation, name and address changes, etc.

Copies of this filing have been mailed to each of Northern's customers and interested commissions.

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 and 385.211). All such motions or protests must be filed on or before August 9, 1991. 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. 91-18489 Filed 8-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IN86-6-007]

Tennessee Gas Pipeline Co.; Report of Refunds

July 30, 1991.

Take notice that on June 28, 1991, Tennessee Gas Pipeline Company (Tennessee) in compliance with the Federal Energy Regulatory Commission orders issued February 29, 1988 and April 27, 1988, tendered for filing with the Commission its Report of Refunds reflecting flow-through to its jurisdictional sales customers of the refund received from Ozark Gas Transmission System through a $0.005/Mcf credit to invoices during the period of May 1990 through April 1991, pursuant to a Stipulation and Consent agreement approved by the Commission in the above docket on August 3, 1987.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18491 Filed 8-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2433-000, CP91-2483-000]

Tennessee Gas Pipeline Co.; Requests Under Blanket Authorization

July 29, 1991.

Take notice that on July 23, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Tennessee and is summarized in the attached appendix.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for

[1] These prior notice requests are not consolidated.

filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2433-000 (7-23-91) [2]	Diamond Shamrock Offshore Limited Partnership (Producer).	92,000 92,000 33,580,000	OLA, OTX	Various	10-31-88,[2] IT, Interruptible.	ST91-9388-000, 6-1-89.
CP91-2483-000 (7-23-91) [4]	Exxon Corporation (Producer).	80,000 80,000 29,200,000	OLA, LA, TX	LA	3-17-88,[2] IT, Interruptible.	ST91-9461-000, 1-23-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] As amended.
[3] The request under blanket authorization was tendered for filing July 10, 1991. However, the required fee (18 CFR 381.207) was not paid until July 23, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.
[4] The request under blanket authorization was tendered for filing July 16, 1991. However, the required fee (18 CFR 381.207) was not paid until July 23, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[FR Doc. 91-18448 Filed 8-2-91; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-40-NG]

Southwest Gas Corp.; Application for Blanket Authorization to Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 4, 1991, of an application filed by Southwest Gas Corporation (Southwest) for blanket authorization to import up to a total of 365 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery. Southwest intends to use existing pipeline facilities for the transportation of the imported gas. Southwest states that it will notify DOE within two weeks after deliveries begin and 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 and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 4, 1991.

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:

Thomas Duke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Office of Assistant general Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Southwest, a corporation organized under the laws of California, with its principal place of business in Las Vegas, Nevada, is a local distribution company that serves residential, commercial, and industrial customers in Nevada and Northern California. Southwest receives its gas supplies in southern Nevada and Arizona from El Paso Natural Gas Company, while it receives its Northern Nevada and California gas supplies from Northwest Pipeline Corporation (Northwest). Northwest delivers gas to Southwest *via* Paiute Pipeline Company (Paiute), a wholly owned subsidiary of Southwest. Paiute would function solely as a transporter on behalf of Southwest under the proposed import arrangement.

Southwest seeks two-year blanket authority to import competitively priced Canadian natural gas, under contracts of two years or less, for resale to its end-use customers under firm, short-term or best-efforts types of arrangements. Southwest states that U.S. importing pipelines would generally be either Northwest or Pacific Gas Transmission and that supplies would come from a variety of Alberta producers which have reserves in excess of their contractual commitments.

The decision on this import application will be made consistent with 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 that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion. Southwest currently holds a two-year authorization to import up to 6 Bcf of Canadian natural gas from date of first delivery under DOE/ERA Opinion and order No. 69 (Order 69, 1 ERA 70,581) issued December 18, 1984. This import authority has not been activated. By letter on June 21, 1991, Southwest acknowledged its authority to import under Order 69 and requested that the DOE vacate that order in lieu of its June 4, 1991, blanket application for higher volumes. If the DOE grants Southwest's June 4, 1991, blanket application, DOE intends to vacate Order 69.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments

considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedure, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including he 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 will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Southwest'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, July 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–18520 Filed 8–2–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–18–NG]

Tex/Con Gas Marketing Co.; Order Granting Blanket Authorization To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting blanket authorization to export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tex/Con Gas Marketing Company blanket authorization to export up to 73 Bcf of U.S. natural gas to Canada and Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–18521 Filed 8–2–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–46–NG]

Washington Natural Gas Co.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

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 July 10, 1991, of an application filed by Washington Natural Gas Company (Washington Natural) for blanket authorization to import from Canada up to 50 Bcf of natural gas over a two-year term beginning on the date of first delivery after November 30, 1991, the date Washington Natural's existing blanket import authority expires (1 FE ¶70,219). The gas would be purchased from various Canadian suppliers on a short-term and spot market basis for system supply. Washington Natural intends to use existing pipeline facilities for transportation of the volumes to be imported. No new construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 4, 1991.

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:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Washington Natural is a Washington State corporation and has its principal place of business in Seattle, Washington. Washington Natural proposes to import Canadian natural gas on an interruptible basis for resale in its distribution operation. The specific terms of each import and sale, including the price and volumes, would be negotiated on an individual basis.

In support of its application, Washington Natural asserts that the requested extension of its existing blanket authorization under the same terms and conditions as granted in its current blanket authorization will be in the public interest.

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 this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance. The National Environment Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial 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 will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Washington Natural'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, July 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–18522 Filed 8–2–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3979–4]

Postponement of Open Meeting on August 8, 1991; Technology Innovation and Economics Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT)

Under Public Law 92463 (The Federal Advisory Committee Act), EPA gives notice of the postponement of the first meeting of the Industrial Pollution Prevention Focus Group of the Technology Innovation and Economics (TIE) Committee. The TIE Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The meeting scheduled to convene August 8, from 8:30 a.m. to 5:00 p.m. at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001 has been postponed. An alternative meeting date will be announced as soon as it is selected.

Additional information may be obtained from David R. Berg or Morris Altschuler at the above address, by calling 202–382–3153, or by written request sent by fax 202–245–3882.

Dated: July 24, 1991.

Robert Hardaker,

NACEPT Designated Federal Official.

[FR Doc. 91–18511 Filed 8–2–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following applications for renewal of license of Station KUCB–FM, Des Moines, Iowa; and for new FM stations at Des Moines, Iowa.

Applicant	City/State	File No.	MM Docket No.	FCC No.
A. Center For Study and Application of Black Economic Development (Renewal of KUCB–FM).	Des Moines, Iowa	BRH–900131UA	91–204	91–197
B. Iowa Acorn Broadcasting Corporation	Des Moines, Iowa	BPED–900102MB		
C. Minority Communications, Inc.	Des Moines, Iowa	BPED–900116MA		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine whether the Center for Study and Application of Black Economic Development has been inept in its operation of Station KUCB–FM since 1979;

(b) To determine whether the Center for Study and Application of Black Economic Development violated § 73.561 of the Commission's Rules;

(c) To determine whether the Center for Study and Application of Black Economic Development misrepresented material facts to, and/or concealed material facts from, the Commission in

connection with its answer to Question 6 of its instant renewal application;

(d) To determine the current ownership and composition of the Center for Study and Application of Black Economic Development and the ownership and composition during the license term, including the role and participation of Charles Knox, and the effect thereof on the Center's basic qualifications to be a Commission licensee;

(e) To determine whether control of the Center for Study and Application of Black Economic Development was transferred without Commission approval, or exercised by persons not authorized to do so, in violation of section 310(d) of the Communications Act of 1934, as amended;

(f) To determine whether the Center for Study and Application of Black Economic Development made any misrepresentations to the Commission or lacked candor with the Commission as to the true officers and directors of the permittee and licensee, and whether the Center violated § 73.3615 of the Commission's Rules;

(g) To determine, in light of the evidence adduced pursuant to issues (a) through (f), *supra*, whether the Center for Study and Application of Black Economic Development is basically qualified to be a Commission licensee;

(h) To determine which of the proposals would, on a comparative basis, better serve the public interest; and

(i) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (telephone (202) 857–3800).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–18424 Filed 8–2–91; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 91–142; DA 91–843]

Hearing Designation Order

AGENCY: Federal Communications Commission.

ACTION: Order designating applications for hearing.

SUMMARY: Cellular application is designated for hearing for possible rule violations.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carmen Borkowski, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of an Order Designating Application for Hearing in CC Docket No. 91–142, adopted July 2, 1991 and released July 12, 1991.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St. NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st, NW. Washington, DC 20037.

Summary of Order Designating Application for Hearing

The Deputy Chief, Common Carrier Bureau, under delegated authority, has designated for hearing a cellular radio system application. The applicant apparently participated in an agreement styled as "Mutual Contingent Risk Sharing Agreement" (Rish Sharing Agreement). The hearing has been consolidated with the previous hearing designated in Algreg Cellular Enginerring, DA 91–589, CC Docket No. 91–142 (Com. Car. Bur. May 29, 1991).

Pursuant to section 309(e) of the Communications Act of 1934, as amended, the following application has been designated for hearing upon the same issues as in *Algreg*, DA 91–589, 8 at para. 42.

Applicant	RSA	File No.
21st Century Cellular.	Iowa 2-Union No. 413.	10344-CL-P-413-A-89

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Chief (Operation), Common Carrier Bureau.

[FR Doc. 91–18423 Filed 8–2–91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Reporting Standard Concerning the Return of a Loan With a Partial Charge-Off to Accrual Status

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Withdrawal of proposal.

SUMMARY: On March 18, 1991, under the auspices of the Task Forces on Supervision and Reports of the Federal Financial Institutions Examination Council (FFIEC), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (FRB), and the Office of Thrift Supervision (OTS) (referred to as the "agencies"), published in the **Federal Register** a request for public comment (56 FR 11441) on a proposal relating to nonaccrual loans. The proposal would establish criteria under which a federally supervised bank or savings association ("depository institution"), for purposes of the Reports of Condition and Income (Call Reports) or Thrift Financial Reports (TFR), would be permitted to return nonaccrual loans with partial charge-offs of principal to accrual status without first recovering the partial charge-off or becoming fully current in accordance with the contractual loan terms.

The agencies have reviewed the eighty-three letters received during the comment period which closed May 2, 1991. A summary of these comments is presented in section III, below. The majority of comments received that disapproved of the proposal indicated concerns that the proposal was not in accordance with generally accepted accounting principles (GAAP) and a number of the comments expressed concerns that such differences with GAAP in the area of nonaccrual loans might be viewed negatively by analysts and other users of depository institution financial reports. While noting these concerns, the agencies also observed that in some respects where the proposal differed from GAAP, the proposal was more conservative than GAAP. At the same time, as a longstanding practice, the agencies have attempted to minimize differences between regulatory reporting requirements and GAAP.

The agencies have also noted that the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB) have projects underway which will

attempt to resolve issues relating to income recognition on nonaccrual loans and the estimation of credit losses on certain loans and restructured debt.

In consideration of those efforts, a number of commentators urged the agencies to refrain from unilaterally issuing further guidance, such as the proposal, in these areas, and to work instead with these rulemaking bodies to ensure consistency between regulatory reporting requirements and GAAP.

Furthermore, a number of the potential positive impacts attributed to this proposal have already been accomplished by the guidance presented by the agencies in their March 1, 1991 joint policy statements (e.g., cash basis recognition of interest income on nonaccrual loans, criteria for restoration of formally restructured loans to accrual status, suggested enhanced disclosure of relevant quality and performance characteristics of nonaccrual loans, and disclosure of market rate restructured debt). The agencies also recognize that the March 1, 1991 joint policy statements accomplished this within the framework of GAAP.

In light of these considerations, the agencies have decided that the proposal should be withdrawn. In keeping with the joint agency policy statements of March 1, 1991, the agencies will continue their efforts to clarify supervisory and reporting policies for depository institutions. In this regard, the agencies intend to work with the private sector rulemaking bodies to attempt to develop a consistent and objective accounting treatment with respect to the recognition and measurement of interest income on nonaccrual loans and other loans to borrowers experiencing financial difficulties and other issues considered in the request for comment.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: At the OCC: Zane D. Blackburn, Chief Accountant, or William J. Lewis, Accounting Fellow (202) 874–5180. At the FDIC: Robert F. Storch, Chief, or Doris L. Marsh, Examination Specialist, Accounting Section, Division of Supervision (202) 898–8914. At the FRB: Rhoger H. Pugh, Manager (202) 728–5883, or Gerald A. Edwards, Jr., Project Manager (202) 452–2741, Policy Development Section, Division of Banking Supervision and Regulation. At the OTS: David H. Martens, Chief Accountant (202) 906–5646 or Robert J. Fishman, Program Manager (202) 906–5672.

SUPPLEMENTARY INFORMATION:

I. Overview

National banks and federally insured state-chartered member banks and nonmember banks are required to file quarterly Call Reports with the OCC, FRB, and FDIC, respectively. Savings associations are required to file Thrift Financial Reports with the OTS.

The bank Call Report instructions provide certain requirements for a nonaccrual loan to be returned to accrual status. These instructions state that a nonaccrual asset may be returned to an accrual status when (1) none of its principal and interest is due and unpaid, and the bank expects repayment of the remaining contractual principal and interest, or (2) when it otherwise becomes well secured and in the process of collection (emphasis added). For savings associations, the TFR instructions state that, in order for interest to be accrued on a loan, its collection must be probable.

In applying these requirements, amounts due and expected have been based on the loan's contractual amounts. Some depository institutions had questioned whether the remaining book balance (after any partial loan charge-offs) should be the basis for applying these requirements in certain circumstances. These institutions asked whether it might be appropriate to return the loan to accrual status in circumstances where a suitable charge-off was taken and the full collection of the remaining book value of the loan at a market rate of interest was expected.

These questions arose because some institutions believed that nonaccrual status based on collectibility under the contractual terms was not necessarily the most relevant indicator of expected earnings on recorded loan balances in financial statements prepared in accordance with generally accepted accounting principles (GAAP). Therefore, these institutions suggested that reporting requirements could be developed to permit the return of partially charged-off loans to accrual status in certain circumstances. The agencies were willing to develop and issue the proposal (a summary of which is presented in section II, below) because, in many respects, the proposed treatment had the potential to improve the quality of information on loans to troubled borrowers that is presented in financial reports. At the same time, the proposed approach would also have provided potential benefits to depository institutions that were attempting to work with borrowers experiencing financial difficulties.

While in some respects the proposal may not have used the same approaches as FASB standards, these aspects of the proposal were not viewed by the agencies as necessarily unsound. Indeed, in some respects, the proposal was more conservative than GAAP. For example, while the proposal would not have used the same approach as required by Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies" (FAS 5), in estimating the amount of loan losses, the proposal would result in the recognition of larger loan losses than under GAAP—thus giving a more conservative carrying amount for the loan to which the reporting treatment had been applied. In addition, by requiring the discounting of probable future cash flows on a loan subject to the proposed treatment in order to estimate loan losses and accrue interest at a market rate, the proposal is again more conservative that GAAP. In particular, it is more conservative than Statement of Financial Accounting Standards No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings" (FAS 15), which does not utilize present value calculations to estimate losses on restructured debt. Furthermore, the disclosures set forth in the proposal present a reconciliation of loans subject to the proposed reporting treatment, and related income and loss items, that provide more extensive information in financial report disclosures than is required under GAAP. The agencies believed that these extensive disclosures might mitigate any inherent differences in reporting treatment which might otherwise arise from the optional application feature of the proposal.

While providing for more conservative loan loss recognition criteria and enhanced disclosures of loans to troubled borrowers, the proposal would also provide certain benefits to depository institutions. Depository institutions had indicated that analysts and other financial statement users had made the reported levels of nonaccrual loans an inappropriate indicator of future losses and of the appropriate level for the allowance for loan and lease losses (ALLL). Advocates of the proposal, therefore, had argued that, while the proposal would result in the recognition of loan losses (i.e., for the portions of the loans which were charged-off), the proposal would also benefit financial institutions by reducing the reported levels of nonaccrual loans and, perhaps, the level of the ALLL that analysts would expect institutions to maintain. The extensive charge-offs required by the proposal for qualifying loans would

cleanse those loans of estimated losses and, in effect, obviate the need for attribution of the ALLL to those loans.

Furthermore, it was argued that the proposal would permit an institution to avoid formal restructuring of the troubled debt, thus reducing the risk that through the renegotiation process borrowers might be able to relieve themselves of the obligation to repay the full contractual amount of the loan. Finally, by making the proposed treatment optional, it was argued, the management of financial institutions could utilize this technique as an additional approach for solving difficult problem loan situations.

Although some commenters recognized that certain aspects of the proposal were more conservative than GAAP, a number of commenters indicated reluctance to have any differences between regulatory reporting standards and GAAP. In particular, some commenters indicated concern that such differences in the area of nonaccrual loans might be viewed as liberal regulatory standards by analysts and other users of financial statements, thus reducing the credibility of the financial reports of depository institutions.

Furthermore, the agencies recognize that the FASB and AICPA have projects underway which will attempt to resolve some of the issues addressed by the proposal. These projects are expected to address the use of present value calculations in determining loan loss reserves and losses from certain troubled debt restructurings, and to determine appropriate methods for recognizing interest income on loans, including nonaccrual loans. The agencies have had discussions with the FASB and AICPA regarding these projects and the prospects for these projects to result in standards that will address these issues.

The agencies also agree that the adoption of this proposed reporting treatment for regulatory purposes would provide limited benefits to depository institutions if it were not viewed as acceptable in public financial statements prepared in accordance with GAAP. Furthermore, the objectives of the agencies and those of the depository institutions advocating the proposal would not be achieved if the proposal were modified to bring it into conformity with GAAP, particularly in view of the fact that GAAP standards may be revised by projects of the AICPA and FASB that were mentioned above.

Moreover, the agencies' March 1, 1991 joint policy statements present certain regulatory reporting policies regarding nonaccrual assets and restructured debt that are consistent with GAAP and that, when taken together, provide many of the potential positive effects that would have been provided by the proposed reporting standard. For example, the interagency policy indicates that cash basis recognition of interest income on nonaccrual loans is permitted when the loan's remaining book balance is fully collectible. Thus, when this criterion is met, partial charge-offs do not have to be recovered before cash basis interest income recognition can begin. The joint statements also included a suggested format for enhanced disclosure of attributes of nonaccrual loans, including cash basis interest and recoveries recorded, charge-offs taken and the segregation of those loans which are substantially performing relative to contractual terms.

Another issue that the joint policies clarified was that nonaccrual assets that have been formally restructured under FAS 15 may be restored to accrual status when certain conditions are met without first having to demonstrate payment performance for a period after the date of the restructuring. Finally, the joint policies indicated that market rate restructured debt need not be disclosed as a FAS 15 restructuring in years after the year of restructuring.

In light of these considerations, and particularly the benefits already provided to depository institutions by the March 1 joint agency policies, the agencies have decided that the FFIEC proposal should be withdrawn. The agencies will continue to work with the FASB and the AICPA as these organizations attempt to develop standards that will address income recognition and credit losses on loans to borrowers experiencing financial difficulties.

II. Summary of Proposal

The proposed reporting treatment was contemplated principally for collateral dependent loans that have been placed on nonaccrual status. However, other loans for which the primary source of repayment was a dedicated and readily determinable stream of cash flows might have qualified for this reporting treatment subject to supervisory review during the examination process.

Under the proposal, a nonaccrual loan that had demonstrated substantial, but less than required, contractual repayment performance would have been eligible for return to accrual status when all of the following criteria were met:

(1) The borrower continued to retain control of any associated collateral and the loan was not an insubstance foreclosure.

(2) The loan had been reduced through a charge-off to a balance that would have the characteristics of a good loan paying interest at a market rate (i.e., that rate which the depository institution would require for a new loan of the same type with comparable terms and credit risk). Indicators of a good loan would have included prudent loan-to-value ratios and adequate cash flow support similar to that which would be required by the depository institution for a new loan under its normal underwriting standards. Consequently, the book value of the loan following the charge-off would be less than the present value of the total expected cash flows, in order to provide cash flow support consistent with prudent underwriting standards.

(3) The amount and timing of collections would have to have been reasonably estimable. Further, the amount and timing of anticipated cash flows would have to have been sufficient to cover the expected lower level of debt service (i.e., the reduced principal and interest payments) on the remaining recorded loan balance and demonstrate that the borrower would be able to fully repay the reduced loan balance plus interest over a reasonable period of time.

(4) The borrower would have to have performed for a sustained period at the level necessary to service the reduced principal and interest payments on the remaining loan balance.

Under the proposal, only once during the life of a loan relationship could a nonaccrual loan have been reduced through a charge-off to a balance that could have been returned to accrual status. Interest income would have been accrued at the market interest rate used in the second criterion, above. Cash interest receipts in excess of that required to amortize the recorded loan balance at this market rate would have been recorded as recoveries of charge-offs and thereafter as interest income.

If a loan that had been returned to accrual status under the proposed reporting treatment failed to perform in accordance with the criteria for adoption of this reporting treatment, but no further charge-off was necessary, the loan would have been returned to nonaccrual status. Also, when a loan met the existing Call Report or TFR nonaccrual criteria applied to the remaining book balance and related debt service, the loan would have been placed on nonaccrual status.

Additionally, Call Report and TFR disclosure would have been required of the loan as partially charged-off and accruing interest at a market rate until

such time as it became contractually current, was paid in full, or was required to return to nonaccrual status.

III. Summary of Comments Received

The FFIEC received 83 letters responding to the proposed accounting. The respondents could generally be categorized as follows:

Financial institutions	56
Financial institutions industry groups	8
Public accounting firms	5
Real estate industry groups	4
Members of Congress	3
Accounting rulemaking bodies (FASB & AICPA)	2
Depository institutions supervisory agencies	2
Others	2
General Accounting Office	1

Thirty-six respondents implicitly or explicitly agreed with the proposal, some with suggested modifications. Twenty-two of those supporting the proposal did not address whether the proposal was in conformity with GAAP. One acknowledged that there were issues relative to the proposal's conformity with GAAP but approved the proposal on the condition they were resolved. Of the thirteen who did take a position on whether the proposal was acceptable under GAAP, three stated that GAAP should be changed to incorporate this proposal. Three others stated that the proposal was in conformity with GAAP without providing technical arguments to support their conclusions. The remaining seven provided various interpretations of GAAP and/or suggested significant modifications of the proposal to make it acceptable under GAAP.

Forty-two respondents disagreed with the proposal, eight of whom stated that they agreed with the premise of the proposal but could not accept the proposal without substantial modification due to significant concerns about its acceptability under GAAP. Twenty-nine of these forty-two respondents indicated the proposal was not in accordance with GAAP. Another three said the proposal did not represent conservative accounting. Three respondents indicated the proposal would have limited benefit and applicability given the stringent criteria for eligibility. Three disagreed on the premise that the proposed treatment would misrepresent an institution's condition and performance. Two believed it would diminish the credibility of financial reporting of depository institutions. Two dissented primarily on the basis of the regulatory reporting burden which they asserted the proposal created.

The overall conclusions of five commenters were unclear. Two of these commenters each addressed two technical aspects of the proposal's requirements. Another raised for the agencies, consideration the effects that adoption would have on entities who provide data services to banks. Another addressed only the tax treatment of nonaccrual loans. Finally, the other voiced support for the proposal while also highlighting its limited applicability and inherent differences from GAAP.

Commenters who believed the proposal to be at variance with GAAP typically cited one or two principal reasons. First, the proposal's prescribed method for determining the charge-off necessary to adopt the proposed reporting treatment was deemed inconsistent with established principles for recognizing and measuring loan losses. FAS 5 establishes the generally accepted standards for loss recognition. While viewed by the agencies as more conservative than FAS 5, the proposal's methodology would be applied to an institution's better nonaccrual loans, while those that did not have readily determinable cash flows would be recorded using the existing, less conservative standards. Second, commenters took exception to the fact that application of the proposed standard was optional. Commenters noted that GAAP generally does not allow for the application of different standards to similar transactions and assets.

The agencies found these arguments concerning the proposal's lack of conformity with GAAP to be persuasive. The agencies further concluded that the changes to the proposal that would be needed to bring it into conformity with GAAP would not be likely to improve the quality of financial reporting or contribute to an environment in which depository institutions would make credit available to creditworthy borrowers and work with troubled borrowers—which were important objectives behind the development of the proposal.

Additionally, at least thirty respondents, both among those who agreed with and those who rejected the proposal, explicitly indicated that the applicability of the proposal would be limited by GAAP's existing rules for insubstance foreclosure (ISF) accounting, as those rule are currently applied. Seven respondents implored the agencies to "fix" the ISF rules. The agencies are not in a position to unilaterally amend these rules as they are contained in GAAP which are established by the private sector. However, staffs at the agencies have begun discussions with the staff of the Securities and Exchange Commission to address whether the current ISF rules are being applied as intended by those who developed them and the agencies will work to the extent necessary with the GAAP standard setters to promote consistent application.

In addition, some respondents said the standard would not enhance the quality of financial reporting and would present implementation problems for financial institutions and auditors. Some respondents stated that the proposed disclosures would cause analysts to continue considering the reported loans in an unfavorable light.

Others commented that GAAP does not explicitly address whether income can be accrued on partially charged-off loans and urged that the development of accounting standards in this area be left to the private sector. These considerations also contributed to the agencies' decision to withdraw the proposal.

Apart from the questions as to compliance with GAAP, many respondents suggested changes to various components of the proposal. Areas of focus included the level of required disclosure, potential application to uncollateralized loans, suggested clarifications to the several qualifying criteria, and transition periods for adoption. Because the agencies have decided to withdraw the proposed reporting treatment, these types of comments are not further addressed.

As indicated in the summary of comments above, several respondents provided various interpretations of GAAP, modifications of the proposal to address shortcomings relative to GAAP or alternatives to the proposal. While appreciating these comments, the agencies did not find any such suggestions persuasive in light of the arguments set forth by other respondents concerning the proposal's lack of conformity with GAAP and the changes to the proposal that would be needed to achieve conformity.

IV. Comments on Specific Questions Asked in Request for Comment

Following is a summary of the comments on each of the questions specifically asked in the proposal. These questions were asked in order to assist the agencies in assessing whether the proposal, if adopted for regulatory reporting purposes, would conform to GAAP. For the most part, the views expressed in the comment letters on

these questions came from respondents who opposed the proposal, as most who supported the proposal did not directly address these questions.

(1) Is the method permitted under this proposed reporting treatment an acceptable interpretation under existing GAAP? Specifically:

(a) Under FAS 5 and the AICPA Industry Audit Guides, "Audits of Banks" and "Audits of Savings and Loan Associations", is it acceptable for an institution to utilize both discounted and undiscounted techniques to measure probable losses on loans? Is the use of both methods acceptable, particularly if the less conservative method is used for lower-quality loans that do not qualify for application of the proposed method?

The majority of the thirty-six commenters who addressed this issue stated that GAAP allows for the use of discounted and undiscounted measurement techniques in assessing loan impairment. However, they stated that GAAP does not allow different techniques to be applied to similar loans. Additionally, many of these commenters indicated that the proposal introduces a new variation of the acceptable loss recognition methods in that it requires discounting to reflect the maintenance of a market rate of return and a level of cash flow support above that required to simply service the debt. Respondents indicated this was not acceptable under GAAP because it would require loss recognition greater than that currently required by FAS 5.

Furthermore, because the proposal's discounting approach is intended to result in a market rate of return, five respondents took exception to the proposal being a prelude to a market value based accounting model for commercial loans.

Eleven commenters noted the existing inconsistencies in loan impairment assessment guidance in GAAP and the lack of definitive GAAP guidance on income recognition issues. They acknowledged that these issues were being addressed by projects currently being undertaken by FASB and the AICPA, respectively. These commenters indicated that the proposal would add to the already diverse practice. They suggested that development of GAAP in these areas be left to the private sector and that the FFIEC actively participate in these processes.

(b) Is the use of a market discount rate an acceptable interpretation of the AICPA Savings and Loan Audit Guide which requires the reduction of proceeds at a rate equivalent to the cost of capital in determination of net realizable value? Can an institution use two discount rates for similar loans?

Only ten respondents addressed this issue. Some of these respondents indicated that a market rate of interest would be acceptable and that an institution should use the same rate for similar loans. Others pointed out that the use of a market rate would be at variance with the AICPA's Savings and Loan Audit Guide. The agencies understand that this matter is included in the FASB's ongoing loan impairment project.

(c) Is the proposed method consistent with Statement of Financial Accounting Standards No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings" (FAS 15), in which the gain or loss on restructuring is measured on an undiscounted basis?

Responses to this question were mixed. A consensus of the twenty-six commenters who addressed this question indicated that the proposal did not comply with FAS 15. Some accepted this lack of conformity given the fact that the proposal and FAS 15 have different objectives and measurement bases. FAS 15 measurement is based on undiscounted cash flows. FAS 15 also provides for varying effective interest rates to the extent that expected cash flows exceed the recorded balance. These commenters also noted that FAS 15 limits loss recognition to situations where the recorded balance will not be recovered. The proposal would currently recognize an additional loss to ensure a market rate of return on the remaining balance.

Other commenters cited FAS 15 as a basis for supporting the optionality of the proposal. They indicated that just as FAS 15 accounting was available for those who opted to enter into a formal debt restructuring, the proposal should be available to those who opted for a "unilateral restructuring."

(d) Is the proposed method consistent with AICPA Practice Bulletin 5, which prohibits accrual of income on certain loans unless, among other things, the loan becomes current as to principal and interest payments?

Most of the fourteen respondents who addressed this issue acknowledged that the proposal is not consistent with Practice Bulletin 5. However, most stressed that the practice bulletin addressed a narrow issue related to loans to developing countries and should not be analogized in the agencies' assessment of the propriety of accrual treatment.

(2) Should the proposed reporting treatment be limited only to collateral dependent loans? If not, are the proposed limitations set forth in this document, (i.e., loans where the primary source of repayment is a dedicated and readily determinable stream of cash flows) sufficiently clear and appropriate, or are other criteria for applicability necessary? For example, should the proposed reporting treatment be required for a broader subset of loans or for other assets such as leases?

A variety of responses to this question were received. Some of the twenty-nine respondents on this issue stated the proposal should be limited to collateral dependent loans. They were concerned that without some objective source of cash flows, the values ascribed to the loans would be arbitrary. Others stated that the proposal should be applicable to non-collateral dependent loans which met the test for a dedicated and determinable stream of cash flows. Six commenters asserted that the proposal should be applied to all loans on a mandatory basis. No guidelines were provided by these commenters on how the proposal could be applied to loans without dedicated and readily determinable cash flows.

Several respondents added that the final rule should provide guidance on what sources of repayment would represent "dedicated and readily determinable" cash flows. Some indicated that this definition was too subjective and would lead to abuse. Conversely, others stated that this was too restrictive a criterion and recognized that it would preclude certain loans, such as construction loans, from being eligible for return to accrual status.

(3) Is it reasonable to believe that loans meeting the requirements for the proposed reporting treatment will not also meet the criteria requiring insubstance foreclosure accounting?

Most of the thirty-three respondents addressing this question indicated that few loans would qualify for this proposed treatment due to the fact that most would likely represent ISFs. The responses to this question also appear to indicate that the existing ISF rules are interpreted in a variety of ways. Some indicated that any loan with a partial charge-off was potentially an ISF. Others said that the degree of charge-off required in the proposal would force an ISF, indicating that some threshold of tolerance for partial charge-offs exists in assessing ISFs. Several respondents indicated that the proposed reporting standard's requirement that the loan not be an ISF would so limit the applicability of the proposal as to make proceeding with the proposal not worthwhile. A large number of respondents indicated that the agencies should work with the private sector rulemaking bodies on a priority basis to clarify the application of the ISF rules.

(4) Can existing GAAP be interpreted to permit selective or discretionary application of the proposed reporting treatment by a depository institution to only certain of the loans within the defined scope? Further, would existing GAAP permit an institution to elect to adopt or forego this proposed reporting treatment entirely? Do the proposed bank Call Report and TFR items alleviate the concerns inherent in selective application, or is the collection of additional information in regulatory reports necessary to alleviate these concerns? If so, what additional information would be needed?

The majority of the forty-six respondents to this question concluded that GAAP did not allow the selective application of different accounting methods to similar loans. They stated that, if adopted by an institution, the proposal would have to be applied to all loans in order for its application to be acceptable under GAAP. They further noted that an institution may not consider the proposal to be a preferable method from among acceptable alternatives and that the institution could forego its adoption entirely.

Most of the respondents on this question stated that a rule allowing optional accounting would seriously diminish the credibility of bank financial reporting. Some observed that the required disclosure adequately mitigated the inherent risks of selective application. However, the proposed Call Report and TFR disclosure requirement was also criticized. Several respondents indicated that the disclosure defeated the original purpose of the proposal. They stated the disclosure would continue to characterize the remaining loan as something less than fully performing. They stated that the subtle accounting distinctions would be overlooked and these loans would be categorized with troubled loans by analysts.

Ten respondents stated that the benefits of the proposal would be outweighed by the regulatory reporting burden which would be caused by the proposed additional quarterly disclosures.

A few respondents indicated the proposal should be applied by all institutions. Conversely, six respondents indicated they would not support the proposal if it were made mandatory for all institutions.

(5) Would the adoption of this proposed reporting treatment represent a change to a preferable accounting principle under APB 20? Does the discretionary application aspect preclude, or make more difficult or otherwise impact the determination of whether the change is preferable?

Most of the twenty-five respondents to this question thought this was a moot point because they did not view the proposal as acceptable under GAAP. Therefore, it could not be considered to be preferable. Thus, the discretionary application feature led to the respondents' inability to justify this as a preferable approach.

(6) If a loan to which this reporting treatment were applied subsequently became contractually current, should it be excluded from being reported in the bank Call Report and TFR items for partially charged-off loans returned to accrual status? If so, should it happen immediately, or after one year-end reporting, similar to the requirements for FAS 15 disclosure?

Most of the seventeen respondents to this issue suggested that a loan to which the reporting treatment would be applied should be removed from disclosure after a nominal period of performance at the market rate without regard to whether it had become contractually current. If a loan became contractually current, most respondents indicated it should be eliminated from the disclosure.

Dated: July 30, 1991.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 91-18440 Filed 8-2-91; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Board of Trustees of Galveston Wharves et al; Agreements(s) 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 10220. 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: 224-200552.

Title: Board of Trustees of the Galveston Wharves/Transportacion Maritima Mexicana, S.A. De C.V.

Parties: Board of Trustees of the Galveston Wharves (Port), Transportacion Maritima Mexicana, S.A. De C.V. (TMM).

Synopsis: The Agreement, filed July 26, 1991, provides for TMM to participate with the Port in an incentive program to increase the movement of cargo through the Port of Galveston. TMM's container ships shall call on the Port's East End Container Terminal and pay to the Port tariff rates that were in effect as April 1, 1991 for dockage, wharfage and crane hire. Dockage for a second vessel call within a 10-day period shall be charged at one-half the tariff rate. The agreement further provides for: (1) crane downtime in the amount of $250.00 per quarter hour of gang detention; (2) relief from the storage charges in Item 375 of the tariff; and (3) a guaranteed berth with two container cranes.

Agreement No.: 224-200043-001.

Title: City of Long Beach/Forest Terminals, Corporation Terminal Agreement.

Parties: City of Long Beach, Forest Terminals Corporation (FTC).

Synopsis: The Agreement, filed July 29, 1991, amends the parties' basic preferential assignment agreement to: modify the description of the premises; provide for a relinquishing and release of a portion of the assigned premises; adjust the compensation payable by FTC; and extend the term of the agreement to August 31, 2001.

Dated: July 31, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18479 Filed 8-2-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 30, 1991.

BACKGROUND: Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance

officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATE: Comments on this proposed revision to information collection are welcome and should be submitted on or before September 6, 1991.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–3740).

Request for OMB approval to extend, without revision, the following reports:

1. *Report title:* Annual Report of Trust Assets.

Agency form number: FFIEC 001.

OMB Docket number: 7100–0031.

Frequency: Annual.

Reporters: State member banks with trust powers, and trust company subsidiaries of bank holding companies not otherwise supervised by a federal banking agency.

Annual reporting hours: 2,025.

Small businesses are affected.

General description of report:

This information collection is mandatory (12 U.S.C. 248(a) and 1844(a)) and is not given confidential treatment.

This interagency report is the only report on fiduciary asset totals and activities. It is used to monitor changes in the volume and character of discretionary trust activity, the volume of nondiscretionary trust activity, and the resource needs for supervisory purposes. The data are also used for statistical and analytical purposes.

2. *Report title:* Annual Report of International Fiduciary Activities.

Agency form number: FFIEC 006.

OMB Docket number: 7100–0031.

Frequency: Annual.

Reporters: State member banks and foreign banking affiliates.

Annual reporting hours: 232.

Small businesses are not affected.

General description of report:

This information collection is mandatory (12 U.S.C. 248(a)(1), 325, 334, 602, 625, and 1844) and is given confidential treatment (5 U.S.C. 552(b)(8)).

This report provides the only available known source of the volume of trust or fiduciary activities of foreign banking affiliates of U.S. banking organizations. The information reported is used for supervisory purposes.

Board of Governors of the Federal Reserve System, July 30, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–18481 Filed 8–2–91; 8:45 am]

BILLING CODE 6210–01–M

Banc One Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to merge with Marine Corporation, Springfield, Illinois, and thereby indirectly acquire Marine Bank of Springfield, Springfield, Illinois; Marine Bank of Bloomington-Normal, Bloomington, Illinois; Marine Bank of Monticello, Monticello, Monticello, Illinois; and Marine Bank of Champaign-Urbana, Champaign, Illinois.

In connection with this application, Applicant also proposes to acquire Marine Investment Management Company, Springfield, Illinois, and thereby engage in providing investment advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18482 Filed 8-2-91; 8:45 am]

BILLING CODE 6210-01-F

Doris A. Brosius; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 26, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Doris A. Brosius, Brady, Nebraska; to acquire 25 percent of the voting shares of Stapleton Investment, Co.,

Stapleton, Nebraska, and thereby indirectly acquire Bank of Stapleton, Stapleton, Nebraska.

Board of Governors of the Federal Reserve System, July 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18483 Filed 8-2-91; 8:45 am]

BILLING CODE 6210-01-F

First National of Nebraska, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than August 26, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National of Nebraska, Inc., Omaha, Nebraska; to acquire 100 percent of the voting shares of Pathfinder Bancshares, Inc., Fremont, Nebraska, and thereby indirectly acquire Fremont National Bank and Trust, Fremont, Nebraska.

Board of Governors of the Federal Reserve System, July 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18484 Filed 8-2-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M-0183]

Progressive Chemical Research, Ltd.; Premarket Approval of Alberta Lens 'S' (Sulfocon A) Rigid Gas Permeable Contact Lens for Daily Wear (Clear and Tinted) With an Ultraviolet Light Absorber

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Progressive Chemical Research, Ltd., Calgary, Alberta, T2J 2V4, Canada, for premarket approval, under the Medical Device Amendments of 1976, of the spherical Alberta Lens 'S' (sulfocon A) Rigid Gas Permeable Contact Lens for Daily Wear (clear and tinted) with an Ultraviolet Light Absorber. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 3, 1991, of the approval of the application.

DATES: Petitions for administrative review by September 4, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

SUPPLEMENTARY INFORMATION: On December 27, 1989, Progressive Chemical Research, Ltd., Calgary, Alberta, T2J 2V4, Canada, submitted to CDRH an application for premarket approval of the Alberta Lens 'S' (sulfocon A) Rigid Gas Permeable Contact Lens for Daily Wear (clear and tinted) with an Ultraviolet Light Absorber. The spherical lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 3.00 diopters (D) or less that does not interfere with visual acuity. The spherical lens ranges in powers from −20.00 D to +12.00 D and is to be disinfected using a chemical lens care system. The lens contains the ultraviolet light absorber Tinuvin P. Additionally, the blue tinted lens contains the color additive D&C Green No. 6, in accordance with the color additive listing provisions of 21 CFR 74.3206.

On June 14, 1990, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 3, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of the Alberta Lens 'S' (sulfocon A) Rigid Gas Permeable Contact Lens for Daily Wear (clear and tinted) with an Ultraviolet Light Absorber states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing

the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 4, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 23, 1991.

James S. Benson,

Director, Center for Devices and Radiological Health.

[FR Doc. 91-18464 Filed 8-2-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Agenda Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the agenda of a meeting of the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee which is scheduled for August 16, 1991. This meeting was announced in the Federal Register of July 24, 1991 (56 FR 33937). There are no other changes. The date, time, and place of the meeting remain the same as announced in the July 24, 1991 Federal Register. This amendment will be announced at the beginning of the open portion of the meeting. This action is being taken to clarify the actual issues to be discussed at the meeting.

FOR FURTHER INFORMATION CONTACT: Marie A. Schroeder, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1036.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 24, 1991, FDA announced that a meeting of the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee would be held on August 16, 1991. On page 33937, column 3, the agenda for this meeting is amended as follows:

Open committee discussion. The committee will discuss premarket approval applications for an uncemented porous metal-coated unicompartmental knee prosthesis, a bone void filler device, and an anterior cruciate ligament augmentation prosthesis. The committee will also discuss galvanic corrosion potential of orthopedic implants using dissimilar metals.

Closed presentotion of doto. The committee may discuss trade secret or confidential commercial information regarding materials, design, and/or manufacturing information for the above premarket approval applications. This portion of the meeting will be closed to permit discussion of this information.

Authority: 5 U.S.C. 552b(c)(4).

Dated: July 30, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-18465 Filed 8-2-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Reinstatement; *Title of Informotion Collection:* Information Collection Requirements in 42 CFR 412.118—Indirect Medical Education; *Form Number:* HCFA-R-64; *Use:* This collection of information on interns and residents is needed to calculate Medicare program payments for hospitals for the indirect costs they incur for medical education and affects 1,250 hospitals which participate in approved medical education programs; *Frequency:* Annually; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimoted Number of Responses:* 1,250; *Average Hours per Response:* 4; *Total Estimated Burden Hours:* 5,000.

2. *Type of Request:* Extension; *Title of Information Collection:* Requests for Exception to End Stage Renal Disease Composite Rates, Provider Reimbursement Manual Sections 2721, 2722, and 2725; *Form Number:* HCFA-9044; *Use:* These requirements describe the information that End Stage Renal Disease Facilities must submit in justifying an exception request to their composite rate for outpatient dialysis services; *Frequency:* On occasion; *Respondents:* Businesses/other for profit, Federal agencies/employees, non-profit institutions, and small businesses/organizations; *Estimoted Number of Responses:* 200; *Averoge Time per Response:* 48; *Totol Estimoted Burden Hours:* 9,600.

3. *Type of Request:* Extension; *Title of Information Collection:* Methodology for Estimating Waiver Costs of Health Care Financing Administration Demonstration Projects; *Form Number:* HCFA-482; *Use:* The information collected is intended to provide guidance to individuals responsible for the preparation of waiver cost estimates for HCFA demonstrations. These estimates are used in the analysis of potential costs and benefits associated with implementing a proposed policy; *Frequency:* Monthly; *Respondents:* Businesses/other for profit; non-profit institutions; State/local governments; and small businesses/organizations; *Estimated Number of Responses:* 50; *Average Hours per Response:* 80; *Totol Estimated Burden Hours:* 4,000.

4. *Type of Request:* Extension; *Title of Informotion Collection:* Hospice Request for Certification in the Medicare Program; *Form Number:* HCFA-417; *Use:* This form is used by all hospice facilities applying for entrance into the Medicare program. The information is used by State agencies that perform the Medicare certification survey process to schedule on-site surveys and to ensure that the applying facility meets preliminary requirements prior to receiving an on-site survey; *Frequency:* Annually; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 1,000; *Averoge Hours per Response:* .25; *Total Estimated Burden Hours:* 250.

5. *Type of Request:* New; *Title of Information Collection:* A Policy Study of the Cost Effectiveness of Institutional Subacute Care Alternatives and Services; *Form Number:* HCFA-800-A-D; *Use:* This study of skilled nursing facility and rehabilitation hospital care provided to Medicare beneficiaries will

assess cost effectiveness of rehabilitation services and model prospective payment methodologies. This project will yield policy recommendations relating to reimbursement, quality assurance and coverage of Medicare services; *Frequency:* One-time; *Respondents:* Individuals/households, businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 24,480; *Average Hours per Response:* .37; *Total Estimated Burden Hours:* 8,960.

6. *Type of Request:* New; *Title of Information Collection:* Evaluation of the Home Health Prospective Payment Demonstration; *Form Number:* HCFA–R–9; *Use:* To reduce costs for Medicare home health care, HCFA is developing, conducting, and evaluating demonstrations of per visit and per episode prospective payment. These data will be used in assessing the impact of per visit prospective payment and in developing a case-mix adjustor for per episode prospective payment; *Frequency:* One-time; *Respondents:* Individuals/households; *Estimated Number of Responses:* 2,000; *Average Hours per Response:* .33; *Total Estimated Burden Hours:* 667.

7. *Type of Request:* Extension; *Title of Information Collection:* Identification of Extension Units of Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP) Providers; *Form Number:* HCFA–381; *Use:* This form is used by OPT/OSP providers who participate in the Medicare program to identify locations where services are provided to beneficiaries. These locations are locations other than their primary office location and must also meet the Medicare requirements for OPT/OSP providers; *Frequency:* Annually; *Respondents:* State and local governments; *Estimated Number of Responses:* 600; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 150.

8. *Type of Request:* Reinstatement; *Title of Information Collection:* Home Office Cost Statement; *Form Number:* HCFA–287; *Use:* These forms are used to report the home office cost for chain organizations providing covered services to the Medicare population, in accordance with section 1815a and 1833 of the Social Security Act; *Frequency:* Annually; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 850; *Average Hours per Response:* 138; *Total Estimated Burden Hours:* 117,300 (reporting) and 278,800 (recordkeeping) for a total of 396,100.

9. *Type of Request:* Reinstatement; *Title of Information Collection:* Skilled Nursing Facility Prospective Payment Cost Report; *Form Number:* HCFA–2540S–87; *Use:* This form is used by skilled nursing facilities with less than 1,500 Medicare-patient days, at their option, to report costs incurred for providing services to Medicare patients; *Frequency:* Annually; *Respondents:* Small businesses/organizations and non-profit institutions; *Estimated Number of Responses:* 1,441; *Average Hours per Response:* 14; *Total Estimated Burden Hours:* 20,174 (reporting) and 122,485 (recordkeeping) for a total of 142,659.

2. *Type of Request:* Extension; *Title of Information Collection:* Intermediary Request to Skilled Nursing Facilities for Medical Information on Claims to be Processed; *Form Number:* HCFA–9031; *Use:* This information is used by the fiscal intermediaries to assure reimbursement is made only for services that are covered under Medicare Part A or B for skilled nursing facilities. The medical information describes the patient's condition and level of medical needs and/or services provided. These records or information are submitted with claims or as requested; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 217,669; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 108,835. *Additional Information or Comments:* Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 29, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–18471 Filed 8–2–91; 8:45 am]

BILLING CODE 4120–03–M

Public Health Service

National Institutes of Health; Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09–25–0165, "National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD." We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed internal and routine uses on or before September 4, 1991. PHS has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on July 23, 1991. This system of records will be effective 60 days from the date of publication unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESSES: Please submit comments to: Privacy Act Officer, National Institutes of Health, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496–2832.

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, NIH AIDS Research Loan Repayment Program, Office of AIDS Research, National Institutes of Health, Building 31, Room 3B19, 9000 Rockville Pike, Bethesda, MD 20892, (301) 402–0852.

The numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) proposes to establish a new system of records: 09–25–0165, "National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD." This system of records will be used by NIH staff to: (1) Identify and select applicants for the NIH AIDS Research Loan Repayment Program (LRP); (2) monitor loan repayment activities, such as payment tracking, deferment of service obligation, and default; and (3) to assist NIH officials in the collection of overdue debts owed under the NIH AIDS Research LRP. Records may be transferred to Privacy Act System, 09–15–0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes when NIH officials are unable to collect overdue debts owed under the NIH AIDS Research LRP.

The system will comprise records that contain the names, addresses, Social Security numbers; service pay-back obligations, standard school budgets, educational loan data, including deferment and repayment/delinquent/default status information; employment data; professional and credentialing

history of licensed health professionals including schools of attendance; personal, professional, and demographic background information; employment status verification (which includes certifications and verifications of continuing participation in AIDS research); Federal, State and local tax information, including copies of tax returns.

The amount of information recorded on each individual will be only that which is necessary to accomplish the purpose of the system. Each record is established from an application form that has been submitted to the NIH AIDS Research LRP by the applicant.

The records in this system will be maintained in a secure manner compatible with their content and use. NIH staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager will control access to the data. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are HHS employees and contractors responsible for implementing the NIH AIDS Research LRP. The records will be stored in file folders, computer tape, discs and file cards. Manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the UHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

Data stored in computers will be accessed through the use of keywords known only to authorized users. Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Security guards perform random checks on the physical security of the data.

The routine uses proposed for this system are compatible with the stated purposes of the system. The first routine use proposed for this system, permitting disclosure to a congressional office, allows subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to a request of the individual. The second routine use allows disclosure to the Department of Justice or a court in the event of litigation. The third routine use allows referral to the appropriate agency in the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law. The fourth routine use allows disclosure of records to contractors for the purpose of processing or refining records in the system. The fifth routine use allows disclosure to private parties such as present and former employers, references listed on applications and associated forms, other references and educational institutions to evaluate an individual's professional accomplishments, performance, and educational background, and to determine if an applicant is suitable for participation in the NIH AIDS Research LRP. The sixth routine use permits disclosure to a consumer reporting agency (credit bureau to obtain a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. The seventh routine use allows disclosure of a delinquent debtor's or a defaulting participant's record to another Federal agency so that agency can effect a salary offset for debts owed by Federal employees or so that the agency can effect an unauthorized administrative offset; or to the Treasury Department, Internal Revenue Service (IRS), to request an individual's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared. The eighth routine use allows disclosure to another agency that has asked the Department to effect a salary or administrative offset to help collect a debt owed to the United States. The ninth routine use allows disclosure to the Treasury Department, Internal Revenue Service (IRS), of information about an individual applying for loan repayment to find out whether the applicant has a delinquent tax account. The tenth routine use allows reporting to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible. The eleventh routine use allows disclosure to debt collection agents, other Federal agencies, and other third parties of information necessary to identify a delinquent debtor or a defaulting participant. The twelfth routine use allows disclosure to any third party that may have information about a delinquent debtor's or a defaulting participant's current address. This disclosure will be strictly limited to information necessary to identify the individual, without any reference to the reason for the agency's need for obtaining the current address. The thirteenth routine use allows disclosure to other Federal agencies that also provide loan repayment at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal loan repayment programs, and to collect delinquent loans or benefit payments owed to the Federal Government. The fourteenth routine use allows disclosure to the Department of Treasury, Internal Revenue Service (IRS) so that IRS can offset against the debt any income tax refunds which may be due to the debtor or the defaulting participant. The fifteenth routine use allows disclosure of information provided by a lender to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt for the purpose of identifying an individual who is delinquent in loan or benefit payments owed to the Federal Government.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: July 29, 1991.

Wilford J. Forbush,

Director, Office of Management.

09–25–0165

SYSTEM NAME:

National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of AIDS Research (OAR), National Institutes of Health, Building 31, room 3B19, 9000 Rockville Pike, Bethesda, Maryland 20892.

Division of Computer Research and Technology (DCRT), National Institutes of Health, Building 12A, room 4037, 9000 Rockville Pike, Bethesda, Maryland 20892.

Division of Financial Management (DFM), Operations Accounting Branch, National Institutes of Health, Building 31, room B1B55, 9000 Rockville Pike, Bethesda, Maryland 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for, who have been approved to receive, who are

receiving, and who have received funds under the NIH AIDS Research LRP; and individuals who are interested in participation in the NIH AIDS Research LRP.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number; service pay-back obligations, standard school budgets, educational loan data including deferment and repayment/delinquent/default status information; employment data; professional and credentialing history of licensed health professionals including schools of attendance; personal, professional, and demographic background information; employment status verification (which includes certifications and verifications of continuing participation in AIDS research); Federal, State and local tax information, including copies of tax returns.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 487A (42 USC 288–1) of the PHS Act, as amended, directing the NIH to establish and implement a program of educational loan repayment for qualified health professionals who agree to conduct, as employees of NIH, AIDS research. The provisions of section 338B of the PHS Act (42 USC 2541–1), as amended, governing the NHSC loan repayment program, are incorporated except as inconsistent. The Internal Revenue Code at 26 USC 6109 requires the provision of the SSN for the receipt of loan repayment funds under the NIH AIDS Research LRP.

PURPOSE(S) OF THE SYSTEM:

(1) To identify and select applicants for the NIH AIDS Research LRP.

(2) To monitor loan repayment activities, such as payment tracking, deferment of service obligation, and default.

(3) To assist NIH officials in the collection of overdue debts owed under the NIH AIDS Research LRP. Records may be transferred to system No. 09–15–0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes when NIH officials are unable to collect overdue debts owed under the NIH AIDS Research LRP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. NIH may disclose information from this system of records to private parties such as present and former employers, references listed on applications and associated forms, other references and educational institutions. The purpose of such disclosures is to evaluate an individual's professional accomplishments, performance, and educational background, and to determine if an applicant is suitable for participation in the NIH AIDS Research LRP.

6. NIH may disclose information from this system of records to a consumer reporting agency (credit bureau) to obtain a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the applicant or claim is being processed.

7. NIH may disclose from this system of records a delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

b. To another Federal agency so that agency can effect an unauthorized administrative offset; i.e., withhold money, other than federal salaries, payable to or held on behalf of the individual.

c. To the Treasury Department, Internal Revenue Service (IRS), to request an individual's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

8. NIH may disclose information from this system of records to another agency that has asked the Department to effect a salary or administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual to information about the money payable to or held for the individual, and other information concerning the offset.

9. NIH may disclose to the Treasury Department, Internal Revenue Service (IRS), information about an individual applying for loan repayment under any loan repayment program authorized by the Public Health Service Act to find out whether the applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number, other information necessary to identify him/her, and the program for which the information is being obtained.

10. NIH may report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible,

either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

11. NIH may disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor or a defaulting participant. Disclosure will be limited to the individual's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

12. NIH may disclose information from this system of records to any third party that may have information about a delinquent debtor's or a defaulting participant's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the individual's current address. This disclosure will be strictly limited to information necessary to identify the individual, without any reference to the reason for the agency's need for obtaining the current address.

13. NIH may disclose information from this system of records to other Federal agencies that also provide loan repayment at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal loan repayment programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

14. NIH may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's or a defaulting participant s name, address, Social Security number, and other information necessary to identify the individual; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the individual.

15. NIH may disclose information provided by a lender to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt. The purpose of this disclosure is to identify an individual who is delinquent in loan or benefit payments owed to the Federal Government.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURES PURSUANT TO 5 USC 552A(B)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 USC 1681a(f)) or the Federal Claims Collection Act of 1966 (31 USC 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable NIH to improve the quality of loan repayment decisions by taking into account the financial reliability of applicants, including obtaining a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, computer tape, discs, and file cards.

RETRIEVABILITY:

Records are retrieved by name, Social Security number, or other identifying numbers.

SAFEGUARDS:

1. Authorized Users: Data on computer files is accessed by keyword known only to authorized users who are NIH employees responsible for implementing the NIH AIDS Research LRP. Access to information is thus limited to those with a need to know.

2. Physical Safeguards: Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Security guards perform random checks on the physical security of the data.

3. Procedural and Technical Safeguards: A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 2300–537–1. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESSES:

Director, NIH AIDS Research Loan Repayment Program, Office of AIDS Research, National Institutes of Health, Building 31, Room 3B19, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is

inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual; participating lending institutions; educational institutions attended; other Federal agencies; consumer reporting agencies/credit bureaus; and third parties that provide references concerning the subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91-18466 Filed 8-2-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3297]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 25, 1991.

John T. Murphy,

Director, Informotion Policy and Monogement Division.

Submission of Proposed Information Collection to OMB

Proposal: Report on Occupancy for Public Housing.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The information collected will be used to measure and evaluate the utilization of Public and Indian Housing units by low-income families as well as assure that all persons have an equal opportunity to participate in and receive the benefits of the housing assistance offered. Occupancy and tenant characteristic information is required for monitoring and compliance activities.

Form Number: HUD-51234.

Respondents: State or local governments, and non-profit institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-51234	3,330		1		1		3,300

Total Estimated Burden Hours: 3,300.

Status: Reinstatement.

Contact: Edward C. Whipple, HUD (202) 708-0744, Wendy Swire, OMB (202) 395-6880.

Dated: July 25, 1991.

[FR Doc. 91-18518 Filed 8-2-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-680-1-4130-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act (44 U.S.C. Chapter 35)

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0110), Washington, DC 20503, telephone (202) 395-7340.

Title: Multiple Use Mining and Mining Law Administration.

OMB approval number: 1004-0110.

Abstract: Several statutes affecting the location of operations on, patenting of, and contesting of mining claims or sites on the public lands require certain information to be filed with the Bureau of Land Management if the owners of the mining claims or sites wish to exercise their rights under the mining

laws. The Acts of August 11, 1955 and April 8, 1948 (30 U.S.C. 621) require that a notice or certificate of location and annual assessment work be filed with the Bureau. The Stockraising Homestead Act of 1916 (43 U.S.C. 299) requires that an operator on the reserved mineral interest of the United States on these lands provide the Bureau with either a bond or a narrative statement in the form of a waiver from the surface owner, or an agreement for damage compensation between the owner and the operator. The Act of May 10, 1872 (30 U.S.C. 22 *et seq.*) provides for the patenting of a mining claim or site and for adverse claims against such before the Bureau. Information specified in the act must be provided to the Bureau if the owner wishes to patent or adverse another claimant.

Bureau Form Number: 3814–1.

Frequency: Respondents only file once to claim the benefits of the various statutes.

Description of respondents: Respondents may range from an individual to multi-national corporations.

Estimated completion time: 24 hours.

Annual responses: 294.

Annual burden hours: 6,980.

Bureau Clearance Officer (Alternate): Gerri Jenkins, (202) 653–8853.

Adam A. Sokoloski,

Deputy Assistant Director, Energy and Mineral Resources.

[FR Doc. 91–18456 Filed 8–2–91; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT 760439

Applicant: Los Angeles, Zoo, Los Angeles, CA.

The applicant requests a permit to import two male and eleven female captive-born Southern pudu (*Pudu pudu*) from Criadero Experimental Rucapangue, Talagante, Santiago, Chile, for breeding purposes.

PRT 760444

Applicant: Los Angeles Zoo, Los Angeles, CA.

The applicant requests a permit to import one female captive-born white-cheeked gibbon (*Hylobates concolor gabriellae*) from the Hong Kong Zoo, Hong Kong, for breeding purposes.

PRT 760701

Applicant: William G. Stratton, Billings, MT.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Pine Louw, National Parks Board, Swellington, Cape Province, Republic of South Africa for the purpose of enhancement of survival of the species.

PRT 730746

Applicant: Los Angeles Zoo, Los Angeles, CA.

The applicant requests a permit to import one male captive-born white-cheeked gibbon (*Hylobates concolor gabriellae*) from the Mulhouse Zoo, Mulhouse, France for breeding purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 31, 1991.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–18496 Filed 8–2–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA

In accordance with Department Policy, 28 CFR 50.7, and pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that a proposed consent decree in *United States* v. *Monsanto Co., Inc.*, Civil Action No. 191–143 was lodged with the United States District Court for the Southern District of Georgia on July 17, 1991. This agreement resolves a judicial enforcement action brought by the United States against the defendant pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607.

The proposed consent decree provides that Monsanto will design a system to extract and treat contaminated groundwater from the surficial aquifer in the vicinity of its plant located in Augusta, Georgia. Monsanto will also conduct groundwater monitoring to assess whether arsenic contamination in the surficial aquifer continues to decrease as predicted by the Remedial Investigation and Feasibility Study (RI/FS) previously conducted at the Site. If arsenic levels in the surficial aquifer should increase, the Decree requires that Monsanto begin construction of the groundwater extraction and treatment system. The proposed Decree also requires that Monsanto reimburse the Hazardous Substances Superfund in the amount of $131,506 for costs incurred by EPA at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Monsanto Co., Inc.*, D.O.J. Ref. 90–11–2–664.

This Consent Decree may be examined at the offices of the United States Attorney, Southern District of Georgia, Eighth and Telfair Streets, Augusta, Georgia 30903, at the Office Regional Counsel, EPA 345 Courtland Street, NE., Atlanta, Georgia 30365, and at the Offices of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, 202–347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $16.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resource Division.

[FR Doc. 91–18455 Filed 8–2–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed

Consent Decree in *United States, et al.*, v. *National Steel Corporation* Civil Action No. 81–3009 was lodged July 24, 1991 with the United States District Court for the Southern District of Illinois. The complaint alleged that certain facilities at defendant's Granite City Steel Division located in Granite City, Illinois, were operating in violation of the Illinois State Implementation Plan (Illinois SIP) and the Clean Air Act, 42 U.S.C. 7401 *et seq.*

The consent decree, as amended, requires National Steel to implement an environmentally beneficial project, specifically, installing and operating emission control equipment at its slab ripping operation. Defendant has installed and operated the required emission control equipment and has demonstrated continued compliance with the associated emission limits set forth in the decree. Defendant now wishes to disconnect and remove the aforementioned emission control equipment to allow for the construction of a continuous caster facility.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States, et al.*, v. *National Steel Corporation* D.J. Ref. 90–5–2–1–262.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of Illinois, room 330, 750 Missouri Avenue, East St. Louis, IL 62201; the Region V Office of the Environmental Protection Agency 230 South Dearborn Street, Chicago, Illinois; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202) 247–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $2.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General Environment and Natural Resources Division.

[FR Doc. 91–18454 Filed 8–2–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. General Binding Corp. and VeloBind Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a civil suit and an accompanying proposed Final Judgment, Stipulation, and Competitive Impact Statement has been filed with the United States District Court for the District of Columbia in *United States* v. *General Binding Corporation, et al.*, Civil No. 91–1822.

The Complaint alleges that the proposed acquisition of VeloBind Incorporated of Freemont, California, by the General Binding Corporation of Northbrook, Illinois, would violate section 7 of the Clayton Act since it would likely lessen competition substantially in the high-volume mechanized binding machine market in the United States.

High-volume mechanized binding machines are electric machines that can easily and securely bind documents in a professional-looking manner. General Binding is the largest manufacturer of such machines in the United States. VeloBind is the second largest manufacturer of such machines and the sole manufacturer of plastic strip-binding machines in the United States. Together the two firms account for about 88 percent of all domestic sales of high-volume mechanized binding machines.

As originally structured, the merger agreement would have made General Binding the sole manufacturer and distributor of VeloBind high-volume plastic strip-binding machines and related supplies. As a result of the restructuring, General Binding will establish the Gestetner Corporation of Greenwich, Connecticut, as a competing source of these plastic strip-binding machines and supplies, which it will resell under a private label.

Gestetner is a leading office products retailer nationwide. Its product lines include copiers and fax machines. The addition of high-volume machines will complement Gestetner's existing product lines.

General Binding has agreed to supply Gestetner with plastic strip-binding machines and the plastic strips used in the machines at favorable prices. General Binding has also agreed to license Gestetner at a favorable royalty rate under VeloBind's basic patent covering the plastic strips. Both agreements will expire on January 18, 2000, the expiration of the plastic strip patent.

The proposed Final Judgment would require General Binding to notify the Department sixty (60) days prior to making any modification, cancellation, rescission, or amendment to the supply or license agreements. GBC may not proceed with any such modification, cancellation, rescission, or amendment without the written permission of the Department. The Final Judgment also would enjoin General Binding and Gestetner from discussing or exchanging any information relating to the prices at which General Binding or Gestetner will sell high-volume binding machines and related supplies.

Public comment is invited within the statutory sixty (60) day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, Department of Justice, room 10–437, 555 Fourth Street, NW., Washington, DC 20001 (telephone: 202–307–0924).

John W. Clark,

Acting Director of Operations, Antitrust Division.

Civil Action No. 91 1822

Filed: July 24, 1991.

Judge Harris:

Stipulation

It is hereby stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

(2) The parties consent that a Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment.

(4) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of

this stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: July 23, 1991.

For Plaintiff United States of America.

James F. Rill,
Assistont Attorney General.
Judy Whalley.
John W. Clark.
P. Terry Lubeck.
John F. Greaney,
Attorneys, Antitrust Division, U.S. Deportment of Justice.
M. Lee Anne Washington.
Katherine J. Palmer,
Attorneys, Antitrust Division, U.S. Department of Justice, Room 10–437, 555 4th Street, NW., Woshington, DC 20001. (202) 307–0948.

Mark Crane, John H. Spellman, D.C.Bar #061465, Hopkins & Sutter, 888 Sixteenth Street, NW., Washington, D.C. 20006, (202) 835–8000

Richard William Austin, John R. Keys, Jr., D.C. Bar #203539, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

Steve Rubin, General Binding Corporation, One GBC Plaza, Northbrook, Illinois 60062, (708) 272–3700.

Counsel for General Binding Incorporated

Ronald G. Carr, D.C. Bar #379167, Thomas E. Unterman, Esquire, W. Stephen Smith, Esquire, D.C. Bar #376179, Morrison & Foerster, 2000 Pennsylvania Avenue, NW., Washington, DC 20006–1812.

Counsel for VeloBind Incorporated

Stipulation Approved for Filing

Done this _____ day of _____, 1991.

United States District Judge

Final Judgment

Whereas plaintiff, United States of America, having filed its Complaint herein on July 24, 1991, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas defendant General Binding Corporation proposes to acquire defendant VeloBind Incorporated;

And Whereas the essence of this Final Judgment is prompt and certain remedial action to ensure that after the acquisition the number of viable firms competing in the sale of high-volume binding machines and related supplies in the United States is not reduced;

And Whereas General Binding Corporation has agreed to supply Gestetner Corporation with high-volume plastic strip binding machines and related supplies until the year 2000 and to license Gestetner Corporation under U.S. Patent No. 4,369,013, the basic patent covering plastic strips for use in such binding machines, which expires in that year;

And Whereas defendants have represented to plaintiff that the remedial action required below can be undertaken and that they will later raise no claim of financial hardship arising out of this Final Judgment or the supply agreement or the license agreement as grounds for asking the Court to modify any of the provisions contained below;

Now Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "GBC" means defendant General Binding Corporation, each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

B. "VeloBind" means defendant VeloBind Incorporated, each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

C. "Gestetner" means Gestetner Corporation, each subsidiary and division thereof, and each officer, director, agent, and other person acting for or on behalf of any of them.

D. "Supply agreement" means the contract dated as of April 10, 1991, between GBC and Gestetner entitled "OEM Distribution Agreement, Hot Knife Process Products," which provides, among other things, for the sale by GBC to Gestetner of high-volume plastic strip-binding machines and related plastic strips.

E. "License agreement" means the contract dated May 24, 1991, between GBC and Gestetner entitled "License Agreement," which provides, among other things, for the grant of an exclusive license from GBC to Gestetner to manufacture or have manufactured plastic strips of the type that are the subject of the supply agreement.

F. "Addendum No. 1" means the contract dated July 15, 1991, between GBC and Gestetner entitled "Addendum No. 1 to OEM Distribution Agreement," which provides, among other things, that should Gestetner exercise the license agreement it will be under no obligation to purchase any machines from GBC.

III

A. The provisions of this Final Judgment shall apply to defendants, to each of their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

C. GBC shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

A. GBC shall not, without first providing plaintiff with sixty (60) days prior written notification, cancel, rescind, modify, or amend the supply agreement or the license agreement. In the event that plaintiff does not object within sixty (60) days of receiving such notice, GBC may proceed with such cancellation, rescission, modification, or amendment. In the event that plaintiff does object within sixty (60) days of receiving such notice, GBC shall not proceed with such cancellation, rescission, modification, or amendment without plaintiff's prior written permission.

B. GBC shall not offer or give Gestetner, directly or indirectly, any payment or other consideration for eliminating or reducing its orders from GBC during the term of the supply agreement, or for altering, amending, or adjusting the prices at which Gestetner sells binding machines or related supplies, or the quantities, terms, or manner of such sales.

V

GBC is enjoined and restrained, except when acting pursuant to the supply or license agreements, from:

A. Entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program,

combination, or conspiracy with Gestetner to fix, establish, raise, stabilize, or maintain the prices at which Gestetner or GBC sells or will sell binding machines or related supplies;

B. Discussing with or suggesting to Gestetner the prices at which Gestetner or GBC sells or will sell binding machines or related supplies; and

C. Communicating with, requesting from, or exchanging with Gestetner any information concerning any prices at which Gestetner or GBC sells or will sell binding machines or related supplies.

VI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice made to any defendant at its principal offices, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, employees, agents, or other persons acting for or on behalf of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section VI shall be divulged by any representatives of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of privilege under rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than grand jury proceedings) to which the defendant is not a party.

VII

GBC shall, within ninety (90) days after entry of this Final Judgment and annually thereafter, give copies of this Final Judgment, together with a statement from GBC as to the importance of and procedures for complying with this Final Judgment, to all then-current GBC distributors of high-volume binding machines and to all GBC marketing and sales executives and sales persons.

VIII

Jurisdiction is retained by this Court for the purpose of enabling plaintiff and defendants to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement or compliance herewith, and for the punishment of any violations hereof.

IX

This Final Judgment will expire at 12:01 am., central standard time, on January 18, 2000.

X

Entry of this Final Judgment is in the public interest.

United States District Judge

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On July 24, 1991, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, 15 U.S.C. 25, alleging that the proposed acquisition of VeloBind Incorporated ("VeloBind") by General Binding Corporation ("GBC") would violate section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale in the United States of high-volume binding machines, which are electric machines that can easily and securely bind numerous documents up to three inches thick in a professional-looking manner. GBC is the largest domestic seller of these machines, and VeloBind is the second largest.

The United States, GBC, and VeloBind have consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects likely to result if GBC acquires VeloBind. As explained more fully below, GBC has entered into two contracts with Gestetner Corporation ("Gestetner") that would make Gestetner a viable competitor in the sale of high-volume binding machines in the United States, and the proposed Final Judgment would prevent GBC from altering its arrangement with Gestetner without the permission of the United States.

The United States, GBC, and VeloBind have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the Final Judgment.

II

Events Giving Rise to the Alleged Violation

On September 22, 1990, GBC and VeloBind entered into a definitive merger agreement in which GBC proposed to acquire VeloBind for approximately $50 million. GBC and VeloBind both manufacture high-volume binding machines and related supplies, which they sell throughout the United States.

GBC's principal high-volume binding machines use a plastic comb that is

inserted through nineteen rectangular holes punched in the paper. VeloBind's machines use a plastic strip with eleven circular posts that are inserted through holes punched in the paper and then melted onto an opposing strip to produce a secure bind. Other types of high-volume binding machines use thermally sealed adhesive tape, wires, or clamps to bind the paper.

The complaint alleges that the manufacture and sale of high-volume binding machines is a relevant product market for antitrust purposes. Other forms of binding are not adequate substitutes for high-volume binding machines. Some binding methods, such as strip-stapling, perfect binding, or stitching, require capital investments significantly greater than the high-volume machines manufactured by GBC and VeloBind. Other binding methods, such as paper clips and ordinary stapling, do not produce the professional-looking binds available from machines. Still other methods tend to be significantly more expensive and more cumbersome for high-volume use. Fully manual machines, while producing an end-product similar or identical to the high-volume machines, are not suitable for binding numerous documents.

GBC's market share of about 68 percent makes it the largest seller of high-volume binding machines in the United States. VeloBind's share of about 20 percent makes it the second largest seller of high-volume binding machines. After the acquisition, their combined market share would be about 88 percent. The transaction would cause the Herfindahl-Hirschman Index,[1] a measure of market concentration, to increase by at least 2686 points to at least 7717.

Entry into the manufacture and sale of high-volume binding machines is difficult and time-consuming. GBC has established an effective distribution system consisting of dedicated distributors and in-house sales offices, which provide buyers with various services that are essential to GBC's sales success, including on-site demonstrations, emergency repair services and in many cases access to graphics expertise. To design and manufacture a machine and to establish such a distribution system would require two or more years.

Further, the plastic strips used in VeloBind high-volume binding machines are protected by a patent, which will not expire until the year 2000. The demand for high-volume plastic strip-binding machines is closely linked to the demand for plastic strips, and hence to the prices and availability of plastic strips. Thus, entry into the manufacture and sale of plastic strip-binding machines is difficult.

III

Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the proposed acquisition of VeloBind by GBC may be substantially to lessen competition in the domestic high-volume binding machine market. The transaction would eliminate actual and potential competition between VeloBind and GBC and lessen competition generally in this market. In particular, after the acquisition GBC could increase strip-binding prices significantly without fear of substantial loss of customers, because many customers who would switch to other products in response to such a price increase would switch to GBC's comb products. These risks to competition posed by this acquisition would be substantially eliminated by the relief provided in the proposed Final Judgment.

Specifically, the proposed Final Judgment would provide that GBC would have to obtain the permission of the United States before GBC could change any of the terms of the two contracts it entered into with Gestetner, a large international distributor of office equipment and supplies. One of these two contracts is a supply agreement pursuant to which GBC would sell to Gestetner substantial quantities of high-volume strip-binding machines and related plastic strips that are compatible with those currently sold by VeloBind. It is contemplated that Gestetner will then resell those items under a private label in competition with GBC. The other contract is a license agreement that grants Gestetner the exclusive right at a favorable royalty to produce the patented plastic strips. If exercised, the license agreement would enable Gestetner to manufacture the plastic strips itself or to obtain them from another manufacturer. An addendum to the supply agreement, dated July 15, 1991, insures that if Gestetner exercises its rights under the license agreement, it will not be obligated to purchase any machines from GBC. All of the agreements will expire in January 2000, the expiration date of the plastic strip patent.

The supply and license agreements should enable Gestetner, which sells other large, private label office products, to compete successfully with GBC. The prices it will pay to purchase the machines and strips from GBC under the supply agreement are substantially below VeloBind's current dealer prices, and future price increases are limited by the agreement. These favorable prices should permit Gestetner to sell strip-binding machines and related supplies at competitive prices. In the event that GBC fails to supply Gestetner's demands for strip-binding machines and supplies, the supply agreement provides that Gestetner will receive a royalty-free license of VeloBind's basic patent covering the manufacture of strips and the necessary know-how to permit it to manufacture machines and strips.

The license agreement also assures that Gestetner will be a new, viable competitor sufficient to deter or counteract any new diminution in competition caused by the merger. Gestetner may exercise the license agreement at any time and for any reason. The license agreement would enable Gestetner to quickly begin manufacturing the patented strips. If the license is exercised, the rights, duties, and obligations under the supply agreement remain intact. However, if Gestetner exercises the license agreement, it is no longer under any obligation to purchase any machines from GBC. In that event, Gestetner could also manufacture the machines, since no significant patents cover them.

An additional provision of the Final Judgment would prohibit GBC from reaching an agreement with Gestetner regarding the quantities or prices or terms at which either Gestetner or GBC would sell high-volume binding machines or related supplies or from even discussing such prices with Gestetner.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has

[1] The Herfindahl-Hirshmen Index ("HHI") is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30%, 30%, 20%, and 20%, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgement

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and responses of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Judiciary Center Building, room 10–437, 555 4th Street, NW., Washington DC 20001.

The proposed Final Judgment would provide that the Court would retain jurisdiction over this action and that any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI

Alternatives to the Proposed Final Judgment

The only alternative to the proposed Final Judgment the United States considered was to file suit and seek an injunction that would block GBC's acquisition of VeloBind. The United States rejected this alternative because the supply and license agreements, backed up by the proposed Final Judgment, should establish Gestetner as a viable, effective competitive presence in the domestic high-volume binding machine market, thus preventing the acquisition from having a significant anticompetitive effect in that market. The government believes that Gestetner could quickly obtain a substantial share of the high-volume binding machine market. Gestetner, which has numerous outlets nationwide, currently is engaged in on-site sales of office equipment. The firm is also very familiar with the VeloBind product line, having been a distributor of VeloBind products in the United States until the late 1980's. Under its supply agreement with GBC, Gestetner will be able to obtain a supply of high-volume plastic strip-binding machines and plastic strips at very attractive prices. Moreover, Gestetner has the option, at any time during the duration of the supply agreement, to exercise the license agreement. Thus, at its own option, Gestetner could begin producing both the patented plastic strips and strip-binding machines, for which no significant patent protection exists.

Under the circumstances, the United States determined that the public interest in preserving competition in the United States high-volume mechanized binding market would be served best by obtaining an enforceable consent decree and filing the decree with the Court prior to the consummation of any part of the proposed acquisition. Although the proposed Final Judgment may not be entered until the criteria established by the APPA have been satisfied, the safeguards of the Final Judgment will begin immediately because the defendants have stipulated that they will comply with the terms of the Final Judgment pending its entry by the Court.

VII

Determinative Materials and Documents

The United States considers the supply agreement and corresponding addendum and the license agreement between GBC and Gestetner to be determinative documents. These contracts include the terms of the proposed relationship between GBC and Gestetner and were determinative in formulating the proposed Final Judgment. Accordingly, the United States will file copies of them with this Competitive Impact Statement. The information in the supply agreement relating to specific prices at which Gestetner can purchase high-volume binding machines and plastic strips is highly confidential and has been redacted. The United States will file an unredacted copy of the supply agreement with the Court, under seal.

Dated: July 23, 1991.

Respectfully submitted,

M. Lee Anne Washington,

Katherine J. Palmer,

Attorneys, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Room 10–437, Washington, DC 20001.

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Drug Enforcement Administration

[Docket No. 90–03]

Kenneth Behymer, M.D.; Revocation of Registration

On December 1, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kenneth Behymer, M.D. (Respondent), of Anchorage, Alaska, proposing to revoke his DEA Certificate of Registration, AB8645028, and to deny any pending applications for renewal. The statutory basis for seeking the revocation of the registration was that Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and in 21 U.S.C. 824(a)(4), and as evidenced by the fact that Respondent had twice been convicted of felony offenses relating to controlled substances, and that the State of Alaska had temporarily suspended his medical license and permanently restricted his authority to prescribe Schedule II and III controlled substances.

Respondent, through counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Anchorage, Alaska, on August 21 and 22, 1990. On April 18, 1991, in her opinion and recommended ruling, findings of fact, conclusions of law, and decision, the administrative law judge recommended that the Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied.

No exceptions were filed to Judge Bittner's opinion. On June 10, 1991, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that on September 21, 1978, Respondent was indicted on 147 felony counts relating to controlled substances, including a charge of conspiracy to distribute Schedule II non-narcotic controlled substances. On September 29, 1978, the Respondent was convicted in the United States District Court for the District of Alaska, upon his plea, of one count of unlawful distribution of

controlled substances, a felony violation of 21 U.S.C. 841(a)(1) and 846. He was sentenced to three years imprisonment, which was suspended to three years probation, on condition that he pay a fine of $15,000, surrender his DEA registration for the term of suspension, and not practice medicine for one year.

In 1986, an area pharmacist's concern over a patient's use of prescribed controlled substances, prompted a survey of the Respondent's prescribing practices. Upon further investigation, it was discovered that the Respondent had been excessively prescribing controlled substances for his own use. He also prescribed Percocet, Tylox, and Mepergan Fortis for two former nurse-employees. Additionally, Respondent prescribed methadone for three heroin addicts without ever holding the separate DEA narcotic treatment program registration required by 21 U.S.C. 823(g) and 21 CFR 1301.22.

During the subsequent DEA investigation, two physicians were requested to review Respondent's medical files for prescriptions that he had written. One physician found that the Respondent had inappropriately prescribed excessive quantities of Empirin with codeine and Paregoric for himself, and that his prescribing practices were "way out of bounds of the normal medical practice." Another physician concluded that "there is a significant problem in the [Respondent's] judgment relating to the use of medications * * *. The physician's own use of medication strongly suggests the possibility of a significant impairment in the physician's ability to judge appropriately how medical care should be dispensed."

In October 1987, the Respondent was indicted by a Federal grand jury on seven counts of unlawful distribution of controlled substances, and one count of obtaining controlled substances by fraud. In March 1988, in the United States District Court for the District of Alaska, the Respondent pled guilty to one count of unlawful distribution of medicine. The Court sentenced him to two years suspended probation, on the conditions that he write all future prescriptions on triplicate forms, that he not prescribe controlled substances for himself, his family, his employees or their families, or for others not bona fide patients; that prescriptions for Percocet, Percodan, and Dilaudid, unless co-signed by another physician, be limited to less than one-third of his Schedule II prescriptions, and be for no more than 30 dosage units per visit; and lastly, that he be required to seek a consulting specialist for patient usage beyond three prescriptions.

In 1989, a hearing officer appointed by the Alaska Medical Board held hearings regarding Respondent's license to practice medicine. On May 23, 1989, the Board adopted a decision which found in part that Respondent had frequently prescribed narcotics in excessively high doses and that his "over-prescription of scheduled narcotic drugs without adequate documentation and patient monitoring constitutes professional incompetence, repeated negligent conduct and in [two] cases * * * gross negligence." The Board suspended Respondent's license to practice medicine for sixty days, permanently prohibited his ability to prescribe any Schedule II and III controlled substances, ordered Respondent to participate in and successfully complete the Impaired Physician Program, and placed his license on probation for three years. In light of the action of the Alaska Medical Board, the administrative law judge found that the Respondent is not eligible for DEA registration in Schedules II and III, since 21 U.S.C. 823(f) provides that the DEA may only register practitioners to the extent that they are authorized by the State.

Respondent testified that his previous convictions grew out of his medical concerns for a putative cancer patient and pregnant drug addict, respectively. He also presented witnesses who testified that Respondent was well liked and respected, had a reputation for providing quality care. and was a very hard worker. The Respondent stated that in August 1989, he had participated in a mandatory thirty day in-patient program, and had sought help from the Alcoholics Anonymous program and a psychologist. He presented a medical witness who stated that the Respondent was "genuinely in recovery", and who further asserted that two years of treatment is the norm before monitoring would cease. The Respondent maintained that since the Alaska Medical Board had not revoked his ability to prescribe Schedule IV and V drugs, the DEA should do likewise.

The Government contended that Respondent's current rehabilitation efforts were incomplete and that he had not demonstrated that even a limited registration would be in the public interest.

The Administrator may revoke a DEA Certificate of Registration or deny an application for such a registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See, Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87-47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86-69, 53 FR 5326 (1988).

The administrative law judge found that the Respondent's past history of misusing controlled substances demonstrates the failure of past sanctions. Judge Bittner concluded that the Respondent's continued registration would be inconsistent with the public interest and that his DEA Certificate of Registration should be revoked.

The Administrator adopts the recommended ruling, finding of fact, conclusions of law and decision of the administrative law judge in their entirety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AB8645028, previously issued to Kenneth Behymer, M.D., be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective September 4, 1991.

Dated: July 26, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-16426, Filed 8-2-91; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-8533, et al.]

Proposed Exemptions; City Capital Counseling Inc. (CCC), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certainof the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the notice of proposed exemption, within 45 days from the date of publication of this Federal Register notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each notice of proposed exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

City Capital Counseling, Inc. (CCC) Located in Atlanta, GA

[Application No. D-8533]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) shall not apply to the acquisition, sale or redemption of limited partnership interests (the Interests) between CCC, the general partner of City Associates, L.P. (the Limited Partnership) and pension plans (the Plans) or individual retirement accounts (the IRAs) investing in the Limited Partnership[1], provided the following conditions are satisfied:

(1) The investment of a Plan's assets in the Limited Partnership shall be approved by a Plan fiduciary who is independent of CCC and its affiliates.

(2) CCC shall determine and document, pursuant to a written procedure, that the investment decision is being made by a Plan fiduciary who is independent of CCC and its affiliates and who is capable of making an informed investment decision about investing in the Limited Partnership.

(3) Prior to making an investment in the Limited Partnership, each Plan fiduciary shall receive offering materials which disclose, among other things, all material facts concerning the purpose, structure and operation of the Limited Partnership as well as associated risk factors.

(4) No participating Plan may invest an amount which exceeds 20 percent of the total assets of the Limited Partnership.

(5) At the time the transactions are entered into, the terms of the transactions shall be at least as favorable to the Plans as those obtainable in arm's length transactions between unrelated parties.

(6) No participating Plan shall pay a fee or commission by reason of the acquisition, sale or redemption of an Interest in the Limited Partnership.

(7) The total fees paid to CCC shall constitute no more than reasonable compensation.

(8) Each participating Plan shall receive, not later than 90 days after the end of the period to which the report relates, the following from CCC with respect to investing in the Limited Partnership:

(a) An audited financial statement of the Limited Partnership prepared annually by a qualified independent public accountant; and

(b) A quarterly statement of a Plan's percentage interest in the Limited Partnership and the value of such Interest.

Such reports shall also disclose the total fees paid to CCC by the participating Plans.

(9) CCC shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (10) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of CCC and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than CCC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for

[1] The Plans and the IRAs are collectively referred to herein as the Plans.

examination as required by paragraph (10) below.

(10)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (9) of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any fiduciary of a participating Plan which invests as a limited partner (the Limited Partner) or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any Plan investing as a Limited Partner or any duly authorized employee representative of such employer;

(4) Any participant or benefifciary of any participating Plan investing as a Limited Partner, or any duly authorized representative of such participant or beneficiary; and

(5) Any other Limited Partner.

(b) None of the persons described above in subparagraphs (2)–(5) of this paragraph (10) shall be authorized to examine the trade secrets of CCC or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

1. CCC, which maintains its headquarters in Atlanta, Georgia is an investment advisor registered under the Investment Advisers Act of 1940, as amended. At present, CCC serves as an investment manager to the Southern Orthopedic Clinic, P.A., the Capital Atlantic, Inc. Profit Sharing Plan and Trust, and the Christine A. Simmons Rollover, IRA.[2] As of December 31, 1990, CCC had $251 million in assets under management and total shareholders' equity of $128,994. Although the majority of its clients's are individuals, CCC acts as an investment manager to a number of corporations, pension and profit sharing plans, trusts, estates, charitable organizations, foundations and foreign investment accounts.

2. To provide an investment vehicle that will facilitate effective diversification and management of investor assets, CCC proposes to form a limited partnership by means of a private placement of interests in such partnership (the Offering) in accordance with the private placement provisions of section 4(2) of the Securities Exchange Act of 1933, as amended (the 1933 Securities Act) which provides statutory exemptive relief from the registration requirements of section 5 of the 1933 Act. The Limited Partnership will become operational once CCC has received subscription for the purchase of Interests in the aggregate amount of $2 million. The closing will take place as soon as it is practicable after the minimum number of subscriptions have been received.

3. The Limited Partnership will be called City Associates, L.P. and it will maintain its principal place of business in Atlanta, Georgia. As its primary purposes, the Limited Partnership will invest in and trade in publicly-traded securities, including subscriptions, warrants, bonds, notes, debentures, treasury bills, trust receipts, certificates of beneficial interest and rights and options. The Limited Partnership is also empowered to enter into contractural arrangements in connection with the investment and trading of securities.

4. CCC will serve as the sole general partner of the Limited Partnership and will have full discretion in the management and control of the business of the Limited Partnership. The Limited Partners will be individuals, corporations, tax-exempt organizations, IRAs and Plans qualified under section 401 of the Code. Some of the Plans may have participated in the Bank Trust or currently have their assets managed directly by CCC. Each Plan may invest up to 100 percent of its assets in the Limited Partnership, but no Plan may invest an amount which exceeds 20 percent of the total assets of the Limited Partnership.[3]

5. For purposes of investing in the Limited Partnership, an existing or prospective client of CCC will not be permitted to have its assets individually managed in a separate account that has been established by CCC. Because the Limited Partnership is designed to facilitate the diversification and management of the assets of investors having small asset bases, no Limited Partner will be permitted to invest more than $1 million in the Limited Partnership. In the event that a Limited Partner's Interest exceeds $2 million, due to the appreciation of such investment, the Limited Partner will not be permitted to continue to invest in the Limited Partnership. Such Limited Partner may then have its assets managed on an individual account basis by CCC.

6. CCC will not be an investor or a sponsor of a Plan that invests in the Limited Partnership. In addition, no officer, director or employee of CCC who owns or controls, directly or indirectly, five percent or more of the beneficial ownership or voting power of CCC will be permitted to invest in the Limited Partnership. At all times, the number of Limited Partners will be restricted to fewer than 100 persons so that registration under the Investment Company Act of 1940 will not be required. Unless terminated earlier by CCC or extended by a majority of the Limited Partnership Interests, the Limited Partnership will cease to exist on December 31, 2009.[4]

7. CCC requests prospective exemptive relief for the acquisition, sale or redemption of Interests in the Limited Partnership by the participating Plans. No commissions or fees will be paid with respect to such transactions. CCC states that the initial purchase of an Interest in the Limited Partnership by a Plan may give rise to a prohibited transaction because of a pre-existing service provider relationship with the Plan. CCC also assets that a prohibited transaction could arise upon a subsequent purchase, sale or redemption of Interests in the Limited Partnership by a participating Plan

[2] Formerly, CCC provided investment advisory services to First American Bank of Georgia, N.A. (FAB) which managed the assets of qualified pension and profit sharing plans having assets of less than $1 million through investment in a bank trust fund (the Bank Trust). In its capacity as adviser to the FAB, CCC did not have the power to direct any investments or to cause the purchase or sale of any particular securities. At the beginning of 1990, FAB phased out the Bank Trust and thus terminated its advisory relationship with CCC. Certain fiduciaries of these plans have, however, expressed an interest in engaging CCC as an investment manager. Because these plans are too small to allow effective management and portfolio diversification on an individual basis, CCC believes the Limited Partnership that is described herein will accomplish this objective.

[3] The applicant believes that the assets of a Plan that proposes to invest in the Limited Partnership will be sufficiently diversified because of the Limited Partnership will be a pooled investment fund containing investments that have been diversified within the pool. The applicant notes that CCC will establish, within the Limited Partnership, a number of separate funds with different investment objectives, different types of portfolio securities and different risk/return characteristics. Thus, the applicant represents that a decision by a Plan fiduciary to invest all of the assets of a Plan in the Limited Partnership is consistent with the requirements of section 404 of the Act. In this regard, the Department is expressing opinion regarding the application of the general fiduciary responsibility provisions of section 404 of the Act, including the diversification requirement of Act section 404(a)(1)(C), to a Plan's investment in the Limited Partnership.

[4] Since a number of Plans have expressed an interest in investing in the Limited Partnership, CCC represents that the equity participation by Plans investing in the Limited Partnership is expected to exceed 25 percent of the value of all Limited Partnership Interests. Therefore, CCC believes that the underlying assets of the Limited Partnership will constitute Plan assets within the meaning of 29 CFR 2510.3–101.

inasmuch as the party in interest relationship between it and the Plan would then be established.

8. Prior to accepting a subscription from a person or entity proposing to invest in the Limited Partnership, each prospective investor must represent in writing to CCC that such investor is: (a) An accredited investor as defined in rule 501 of Regulation D of the 1933 Securities Act; or (b) a non-accredited investor who has sufficient knowledge and experience in financial, business, tax and related matters to evaluate the merits and risks of the investment and that such prospective Limited Partner is able to bear the economic risks of the investment. In this regard, the subscription documents will require that the non-accredited investor furnish such investor's net worth, gross income and previous investment in securities and that the investor offer specific evidence of its knowledge and experience in financial and business matters.

9. In the case of a non-accredited investor that is a Plan, CCC will determine that the investment decision is being made by a Plan fiduciary who is: (a) Independent of CCC and its affiliates; (b) capable of making an independent decision; and (c) knowledgeable with respect to the Plan in administrative benefits, and funding matters related thereto, and able to make an informed decisions concerning investment in the Limited Partnership. In addition, the fiduciaries of the Plans proposing to invest in the Limited Partnership will be required to state in writing that they are not relying upon the advice of CCC in order to invest in the Limited Partnership.

10. CCC states that it will not, in any fiduciary capacity, cause a Plan to invest in the Limited Partnership. In this regard, CCC represents that it will not act as an investment adviser within the meaning of section 3(21)(a)(ii) of the Act to a Plan proposing to invest in the Limited Partnership because, in each instance, the Plan fiduciary who makes the investment decision has agreed not to rely on CCC's advice as the primary basis for a Plan's investment and such Plan fiduciary is specifically required to so acknowledge in every instance. CCC represents that the decision of a Plan to invest in the Limited Partnership will be made by an unrelated Plan fiduciary acting on the basis of his or her own investigation into the advisability of investing in the Limited Partnership.[5]

11. CCC will make the Offering to investors in the Limited Partnership pursuant to rule 506 of Regulation D of the 1933 Securities Act. This rule permits limited offers and sales of securities by an issuer without regard to the dollar amount of the offering.[6] Such Offering will also be made by means of a private placement memorandum (the Memorandum) which will describe, in relevant part, investor suitability standards, risk factors associated with an investment in the Limited Partnership, investment objectives and policies, Federal income tax information and the material terms of the Limited Partnership Agreement.[7]

In addition to the Memorandum, each Limited Partner will be provided with the following documents: (a) A certificate evidencing such Limited Partner's investment in the Limited Partnership; (b) a copy of the Limited Partnership Agreement; and (c) a schedule reflecting the Limited Partner's initial investment. The schedule will be updated periodically to reflect changes in the constituency of the Limited Partnership.[8]

12. Although the Limited Partnership Agreement does not impose a maximum or minimum on the number of Interests that may be sold, each Limited Partner will generally make a basic cash investment to the Limited Partnership of at least $100,000. Additional capital investments may be made in cash by the Limited Partners, subject to acceptance by CCC, on the first day of any month. CCC may also accept basic investments and additional capital contributions in the form of securities rather than cash.

13. CCC will establish and maintain a capital account (the Capital Account) for each Limited Partner reflecting the Limited Partner's pro rata share of Interests in the Limited Partnership. The Capital Account will be credited for any capital contributed by the Limited Partner and it will be debited for any distributions made to the Limited Partner. The Limited Partner's Capital Account will also reflect the Limited Partner's allocable share of net profits or net losses as well as the Limited Partner's allocable share of income or expenses credited to or debited against such Limited Partner. As general partner, CCC will also maintain a Capital Account for itself in the Limited Partnership (or contribute to such Capital Account) in an amount that is equal to one percent of all of the Limited Partner's Capital Accounts. In the event that its interest in the Limited Partnership exceeds the one percent contribution by more than one percent due to fluctuations in the market values of securities underlying the Capital Accounts, CCC will withdraw from its Capital Account the amount necessary to reduce its interest to below 2 percent.

14. The Limited Partnership Agreement authorizes the Limited Partners (including CCC) to allocate their Capital Accounts among any of three separate funds (the Funds) established within the Limited Partnership and specify the allocation

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[5] The Department is not expressing an opinion on whether CCC would be deemed to be a fiduciary under section 3(21)(A)(ii) of the Act. In this regard, the Department believes, as a general matter, that when a person is deemed to be a fiduciary by virtue of rendering investment advice as described in regulation § 2510.3–21(c)(1)(ii)(B), the presence of an unrelated second fiduciary acting on the investment adviser's recommendations on behalf of the Plan is not sufficient to insulate the investment adviser from fiduciary liability under section 406(b) of the Act. The Department's regulation § 2510.3–21(c)(1)(ii)(B) presupposes the existence of a second fiduciary who by agreement or conduct manifests a mutual understanding to rely on the investment adviser's recommendations as a primary basis for the investment of Plan assets. In the presence of such an agreement or understanding, the rendering of investment advice involving self-dealing, such as the acquisition of limited partnership interests which results in the payment of fees to the adviser, will subject the investment adviser to liability under section 406(b) of the Act. The Department is unable to conclude that fiduciary self-dealing of this type (if present) is in the interests or protective of the Plans and their participants and beneficiaries. If, however, the unrelated second fiduciary has not agreed to rely on the investment adviser's recommendations, the investment adviser will not be deemed to be a fiduciary under section 3(21)(A)(ii) because the requirements of regulation § 2510.3–21(c)(1)(ii)(B) will not be met. Accordingly, the Department has limited exemptive relief for the acquisition, redemption or sale or Interests in the Limited Partnership to section 406(a) violations only.

[6] In particular, rule 506(b)(2)(i) limits to 35 the number of purchasers of securities in an offering. The applicant notes that the number of Limited Partners will be restricted to fewer than 100 persons to ensure that the Limited Partnership will be exempt from the Investment Company Act of 1940. Therefore, the applicant does not believe that rule 506(b)(2)(i) will be violated because, for purposes of calculating the number of purchasers under rule 506(b), accredited investors are excluded. The applicant states that an offering under rule 506 may be extended to an unlimited number of accredited investors but to only 35 non-accredited investors which will include the Plans.

[7] Although the Limited Partnership Interests will not be registered with the Securities and Exchange Commission (the SEC), CCC represents that the Interests will be protective of the Limited Partners because: (a) Such Interests will be subject to the anti-fraud provisions of section 10(b) and rule 10b–5 of the Securities Exchange Act of 1934; (b) the Offering Memorandum (as described above) will disclose the risks and other material information concerning investment in the Limited Partnership; and (c) as a registered investment adviser, CCC asserts that it is subject to annual, unannounced examinations of its activities and investments by the SEC.

[8] The Department notes that CCC will give each potential investor access to all necessary information that will permit such investor to make an intelligent investment judgment with regard to deciding whether to invest in the Limited Partnership.

percentages attributed to each Fund. The Funds have been designated as Equity Fund A which will allow the Limited Partners to invest in equities, cash equivalents, convertible preferred stock or bonds; Fixed Income Fund A which will invest in taxable fixed income securities such as United States government bonds, notes and bills; and Fixed Income Fund B which will invest in tax-exempt municipal bonds and taxable bonds.

Decisions regarding the investments made by each Fund will be made by portfolio managers and principals of CCC.

In order to provide diversification and minimize risk, CCC will generally invest no more than 5 percent of the assets of the Limited Partnership in the equity securities of a single issuer or 10 percent of the assets of the Partnership in the debt securities of a single issuer. CCC also represents that, with the exception of securities that are guaranteed by the United States government or agencies thereof, the Limited Partnership will, in no event, invest more than 10 percent of the assets of any Fund in the securities of a single issuer.

15. All Limited Partners will have the right to change the allocations of their investments among the respective Funds by giving at least 30 days prior written notice to CCC. A Limited Partner may change an investment allocation decision up to twelve times annually on the first day of any month.

16. Although the Limited Partnership Agreement does not permit a Plan to assign its Interest, it allows a Limited Partner to redeem its entire Interest in the Limited Partnership or withdraw any amount in excess of $20,000 from the Limited Partner's Closing Capital Account (the Closing Capital Account) on the last day of any month.[9] However, the Limited Partner must give CCC 60 days' advance written notice in order for a withdrawal or redemption to take place.

As an alternative redemption procedure, the Limited Partnership Agreement permits the systematic redemption of a Limited Partner's Interest. In this connection, the Limited Partnership Agreement provides that a Limited Partner may withdraw, on a semiannual basis (on the last day of such semiannual period), an amount not greater than 4 percent, but at least $20,000, of such Limited Partner's Closing Capital Account. However, the Limited Partner must give notice to CCC not less than 30 days prior to the first day of any fiscal year in which withdrawals are to be made in order to permit the systematic redemption of the Limited Partner's Interest.

For purposes of redeeming an Interest under either procedure, the amount available for withdrawal will be based upon the Limited Partner's Closing Capital Account as of the date of the withdrawal. In other words, the Limited Partner's Capital Account will be adjusted pro ratably for profits and losses that are derived from the fair market values of the securities investments which underlie the Capital Account.[10]

17. Each Limited Partner will pay CCC a quarterly fee equal to .25 percent of the total amount of the Limited Partner's Closing Capital Account for CCC's services as investment manager to the Limited Partnership. In calculating the fee, the Limited Partner's Closing Capital Account will be valued at its current fair market value in the manner noted above at the end of each quarter. The fee will be allocated ratably among the Funds in accordance with the Limited Partner's Closing Capital Account.[11] In the event that the value of a Limited Partner's Interest exceeds $2 million due to investment appreciation, CCC will reimburse the difference between the fee charged on such excess and the fee which the Limited Partner would have been paid had such assets been managed in a separate account.

18. The books of the Limited Partnership will be audited annually by an independent public accountant. All Limited Partners will be provided with copies of an audited financial report (the Annual Report) 90 days after the close of the fiscal year. The books and financial records of the Limited Partnership will be open for inspection by any Limited Partner, as well as the Department and the Service, at all times during regular business hours.

19. In summary, it is represented that the proposed transactions will meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) The investment of a Plan's assets in the Limited Partnership shall be approved by a Plan fiduciary who is independent of CCC and its affiliates; (b) CCC will institute and maintain a written procedure and records establishing criteria for determining that the Plan fiduciaries are independent of CCC and are sufficiently knowledgeable to make informed decisions regarding the transactions described herein; (c) independent fiduciaries of the Plans which invest as Limited Partners will maintain complete discretion with respect to such investments; (d) fiduciaries of the Plans will have an opportunity to redeem their Limited Partnership Interests pursuant to applicable provisions of the Limited Partnership Agreement and in such fiduciaries' individual discretion; and (e) CCC will make periodic disclosures to each participating Plan with respect to the financial condition of the Limited Partnership, the total fees that it will receive from such Plans and the value of a Plan's Interest in the Limited Partnership.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Profit Sharing Plan & Trust of Spartanburg Radiological Associates, P.A. (the Plan), Located in Spartanburg, SC

[Application No. D–8524]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a parcel of undeveloped real property (the Property) by the individually directed account (the Account) of Dr. Robert E. Mitchell in the Plan to Dr. Mitchell provided that the sales price is the greater of (1) the original purchase price paid by the Account for the Property, plus all additional expenses incurred by the Account in holding the Property, or (2)

[9] A Limited Partner's Closing Capital Account is determined by crediting the Limited Partner's pro rata share of net profits and debiting such Account with the Limited Partner's pro rata share of net losses.

[10] According to section 4.08 of the Limited Partnership Agreement, a security listed on a national securities exchange will be valued at its closing sales price on the date of valuation or, if no sales occurred on such date, at the mean between the closing bid and asked prices on such exchange on such date. If the security is listed on more than one national exchange, CCC will make reference to the closing sales price or the closing bid and asking prices on the exchange which CCC determines to be the principal exchange for such security. However, if the security is not listed on a national securities exchange and CCC determines that an active trading market exists, such security will be valued at its closing price as of the valuation date.

[11] CCC represents that the fee it will receive for investment management services it renders to the Limited Partnership will comply with the terms of section 408(b)(2) of the Act. The Department expresses no opinion herein on whether CCC's provision of services and compensation therefor will satisfy the terms and conditions of section 408(b)(2) of the Act.

the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan, a defined contribution plan with 12 participants, is sponsored by Spartanburg Radiological Associates, P.A. The Plan's trustees are Doctors Neil H. Parnes, Robert E. Mitchell, and F. Peter Ryan. The Plan allows participants to direct investments for their own accounts, and as of March 31, 1990, the Account had assets of approximately $433,142.

2. The Property is unimproved real property located in Chimney Rock Township, Rutherford County, North Carolina. In 1984, the Account acquired the Property as an investment from Gray Eagle Enterprises, an unrelated third party at a purchase price of $77,650. The only access is via eroded logging roads and development of the area is not planned. The applicant states that the Account's holding costs associated with owning the Property total $2064.

3. Mr. David Caulder of Caulder Realty & Land Co., an independent real estate appraiser, calculated the fair market value of the Property to be $91,000. Market value as reported by Mr. Caulder is based upon like property sales or market availability. Currently the adjoining tract of land is on the market for sale. This tract is similar to the Property. This adjoining property has been on the market for five years for the asking price of $92,000. There has been little interest in that adjoining tract. The market for property in the area of the Property is very low as the Property is very remote, and there are no plans to improve the roadways.

4. The applicant states that the proposed transaction is in the best interest of the Account. The sale of the Property will allow the Account to divest itself of the Property and reinvest the proceeds in investments which yield greater returns. The applicant states that the Account will not pay any sales commission or other expenses in connection with the transaction, and the appraisal of the Property will be updated on the date of the sale.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Account will receive the greater of either the fair market value of the Property or the original purchase price paid by the Account plus all incurred expenses associated with holding the Property; (c) the Account will not pay any sales commission with respect to the sale; and (d) the sale of the Property will allow the Account to divest itself of the Property and reinvest the proceeds in other investments which provide greater returns.

Notice to Interested Persons

Becaue Dr. Mitchell is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute notice of the proposed exemption to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption in the **Federal Register.**

Tax Consequences of Transactions

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4) and 404 and 415.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Bobson Construction Company Defined Benefit Pension Plan (the Plan), Located in Southfield, MI

[Application No. D–8717]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1)(A) through (E) of the Code, shall not apply to the proposed loan by the Plan of amounts not to exceed the lesser of: (a) $495,000, or (b) 25% of its total assets, to Bobson Construction Company, Inc. (Bobson), the Plan's sponsor, on a recurring basis over a five-year period, under the terms and conditions described in this proposed exemption, provided such terms and conditions are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Temporary Nature of Exemption

This proposed exemption, if granted, will be effective for five years from the date a grant of an individual exemption is published in the **Federal Register** for the subject transactions. Subsequent to the expiration of the exemption, the Plan may continue to hold any loan provided such loan was made during the five year period.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with 10 participants which had assets of approximately $1,980,000 as of April 30, 1991. Bobson has been in the residential, commercial and industrial remodeling business since 1954.

2. The applicant has requested an exemption to permit the Plan to loan up to $495,000 to Bobson (the Loans) on a recurring basis over a five year period. The total amount of the Loans will not exceed the lesser of 25% of the Plan's assets or $495,000. The first Loan will be for $495,000 and will be fully amortized over a five year period with equal monthly payments of principal and interest. During the five year period and as the first Loan is reduced, additional Loans may be made under the same terms as the first Loan.

3. The applicant represents that the interest rate on the first Loan will be 11½%. The interest rate to be set on any future Loan will be a similar or better rate than that charged by third party lending institutions on similar loans, but in no event less than 11½%. Ms. Jean Davis, Assistant Vice President of NBD Bank, N.A. (the Bank) in Birmingham, Michigan, represents that Bobson has maintained a similar line of credit with the Bank since 1975. Ms. Davis states that the interest rate for Bobson's credit line is at ½% over prime, and that Bobson's rate, as of May 1, 1991, was at 9.5%.

4. In order to assist its customers in the purchase of its products and services, Bobson finances such customer purchases by accepting mortgages on the homes and commercial properties of its customers. As collateral for the Loans, Bobson will pledge first mortgages (the Mortgages) in an amount in excess of 200 percent of the Loans. Bobson represents that if the value of the Mortgages should fall below 200 percent of the Loans, Bobson will add additional first mortgages as collateral. The applicant represents that no Mortgages used as collateral will be to parties in interest with respect to the Plan.

5. Mr. Paul Blankenburg of Burnham Associates, an independent real estate and banking expert in Battle Creek, Michigan, has represented that the Mortgages currently have an aggregate discounted value of at least $1,007,669. Thus, the Mortgages would have a current fair market value approximately 2.04 times the principal amount of the proposed Loans. Mr. Blankenburg represents that he has spent 30 years in banking, during which time he was responsible for all types of retail lending including real estate and home improvement loans.

6. Mr. Robin Hoag, a CPA in Birmingham, Michigan, has been appointed as independent fiduciary for the Plan with respect to the subject transactions. Mr. Hoag represents that he has no relationship with Bobson, and that neither Bobson nor the Plan is a client of his or of the CPA firm of which he is a partner. Mr. Hoag represents that he understands and accepts his duties, liabilities and responsibilities as a fiduciary under the Act.

7. Mr. Hoag represents that the proposed transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries. In this regard, Mr. Hoag states that the Loans will be collateralized by first Mortgages on real property held by Bobson, and the terms of repayment and the collateralization of the Loans will be equal to or better than those terms which the Plan would receive in dealing with an unrelated party. Mr. Hoag represents that before any subsequent Loan is entered into, he will determine that such Loan is appropriate for the Plan and in the best interest of its participants and beneficiaries. Mr. Hoag represents that he will monitor the repayment of the Loans by requiring monthly statements reflecting the Loan balances and changes in the collateral, including copies of all Mortgages. A mortgage appraiser will update the value of the Mortgages annually to verify that the collateral for the Loans is equal to or greater than 200% of the outstanding Loan balance with Bobson. Mr. Hoag will monitor the collateal to assure that it remains at least 200% of the outstanding balance of the Loans, and will act on behalf of the Plan to require additional collateral should the existing collateral fall below the 200% limit. The collateralization of the Loans shall be reflected by a written document to be recorded with the Register of Deeds in the county in which the applicable properties are located. Any revisions to the collateralization shall be reflected in a written document recorded with the Register of Deeds of the applicable county in which the properties are located, on a monthly basis.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (1) The Loans will at no time represent more than 25% of the assets of the Plan; (2) the Loans will be adequately secured at all times by the Mortgages, which will have an aggregate current fair market value not less than 200% of the principal amount of the Loans; (3) the interest rate on the Loans will be equal to or greater than that charged by third party lending institutions on similar loans; (4) Mr. Hoag, the Plan's independent fiduciary, has determined that the Loans are appropriate for the Plan and in the best interests of its participants and beneficiaries; and (5) Mr. Hoag will monitor the Loans and will take whatever action is necessary to protect the Plan's rights under the Loans.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of July, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

FR Doc. 91-18512 Filed 8-2-91; 8:45 am]

BILLING CODE 4510-29-M

[Exemption Application No. D-9600, et al.]

Prohibited Transaction Exemption 91-40; Grant of Individual Exemptions; Gemco Ware, Inc., Amended and Restated Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification

to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Gemco Ware, Inc. Amended and Restated Pension Plan (the Plan), Located in Freeport, NY

[Prohibited Transaction Exemption 91–40; Exemption Application No. D–8600]

Exemption

The restrictions of section 406 (a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of mortgage loan participation interests (the Participations) to Walter Schlessel, a party in interest with respect to the Plan; provided that the sale price is no less than the greater of (1) the principal amount of the Participations plus accrued interest to the date of sale, or (2) the fair market value of the Participations as of the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1991 at 56 FR 26440.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Electro-Matic Products, Inc. Profit Sharing Plan (the Plan), Located in Farmington Hill, MI

[Prohibited Transaction Exemption 91–41; Exemption Application No. D–8684]

Exemption

The restrictions of section 406 (a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of certain vacant land to Electro-Matic Products, Inc., the sponsor of the Plan; provided that the Plan receives the greater of $260,000 or the fair market value at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to notice of proposed exemption published on June 7, 1991 at 56 FR 26444.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Graham J. Newstead, M.D., Inc. Pension Plan (the Plan), Located in Providence, RI

[Prohibited Transaction Exemption 91–42; Exemption Application No. D–8449]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions from the application of section 4975(e) (1)(A) through (E) of the Code shall not apply to the proposed purchase of property by the Plan from Graham and Gillian Newstead, parties in interest with respect to the Plan, provided that the Plan pays no more than the fair market value for the property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 18, 1991 at 56 FR 15949.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department of Labor (the Department) telephone (202) 523–8971. (This is not a toll-free number.)

AAXICO, Incorporated Profit Sharing Plan (the Plan), Located in Mt. Clemens, MI

[Prohibited Transaction Exemption 91–43; Exemption Application No. D–8477]

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of right, title and interest in a loan (the Note) made by the Plan to an unrelated third party to Mr. James L. Van Camp, a party-in-interest with respect to the Plan provided that the Plan receives $68,500 in cash for the Note which is equal to the amount of the Loan principal plus interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 18, 1991 at 56 FR 27978.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department of Labor, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of July, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91-18513 Filed 8-2-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on August 22, 1991, from 9 a.m.-5:45 p.m. and August 23 from 9 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will be introductions, role of overview panel, review of current program activity, FY 92 budget review/discussion, FY 93 guidelines review/discussion, and summary and conclusions.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 30, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-18462 Filed 8-2-91; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Inter-arts Advisory Panel (Presenting Organizations "A" Section) to the National Council on the Arts will be held on August 20, 1991 from 9 a.m.-7 p.m., August 21-22 from 9 a.m.-8 p.m. and August 23 from 9 a.m.-5 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 23 from 2 p.m.-5 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on August 20 from 9 a.m.-7 p.m., August 21-22 from 9 a.m.-8 p.m. and August 23 from 9 a.m.-2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 30, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-18463 Filed 8-2-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-312]

Sacramento Municipal Utility District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from the requirements of sections 55.41, 55.43, 55.45, 55.53(e), 55.53(f)(2), and 55.59 of part 55 of title 10 of the Code of Federal Regulations (10 CFR part 55) concerning the requirements for granting and maintaining operators' licenses to the Sacramento Municipal Utility District (SMUD, the licensee for the Rancho Seco Nuclear Generating Station located in Sacramento County, California).

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of the aforementioned rules to the extent that these regulations address the granting and maintaining of operators' licenses for operating power reactors and to the extent that sections 55.53(e) and 55.53(f)(2) delineate the time requirements for operators to maintain and regain active proficiency. By letter of December 28, 1989, and supplements of March 30, 1990 and June 24, 1991, the licensee requested an exemption from the above specified requirements of 10 CFR part 55, "Operators' Licenses," in the case of section 55.53(e), a reduction in the time requirement for operators to maintain active proficiency from seven 8-hour shifts or five 12-hour shifts per calendar quarter to 4-hours per calendar quarter and in the case of section 55.53(f)(2), a reduction in the number of hours of shift functions that must be completed under the direction of an operator or senior operator in order to regain an active operator status from 40 hours to one shift.

The Need for the Proposed Action

The requirements of 10 CFR part 55 for granting and maintaining operators' licenses are designed for operating power reactors. The licensee ceased power operations at Rancho Seco on June 7, 1989, and completed defueling the reactor vessel on December 8, 1989, with all fuel stored in the spent fuel pool. In addition, the Commission issued a Confirmatory Order on May 2, 1990, prohibiting refueling at Rancho Seco without first receiving NRC approval. With the reactor in this defueled condition, the operators will primarily monitor and maintain the spent pool storage facility to ensure that the special nuclear material continues to be stored safely and ensure that the health and safety is not compromised. Additionally, the knowledge required of operators and senior operators to operate a reactor in a defueled status is far less than that required for an operating facility; therefore, the operators would be required to spend far less time actively performing operator functions per calendar quarter in order to maintain a proficient status. Likewise, far less time would be required for an operator to regain his proficiency if he failed to meet the minimum proficiency time. The request for an exemption from the requirements of 10 CFR part 55 as mentioned above, is based on the above plant conditions and the licensee's intent not to resume power operations at Rancho Seco.

Environmental Impact of the Proposed Action

The proposed exemption does not affect the risk of facility accidents caused by the defueled condition of the plant. With reactor vessel defueled and the licensee not intending to resume power operations at Rancho Seco, there are no longer any credible design basis accidents associated with an operating plant from start-up through full power operations. Design basis accidents for a nuclear facility in a defueled condition are all associated with loss of fuel pool water inventory or with fuel handling. Because of the geometric storage arrangement of the fuel assemblies underwater, a criticality accident is not considered credible. In addition, the Confirmatory Order prohibiting movement of the fuel to the reactor building further diminishes the possibility for a fuel handling accident. The operator training requirements which remain relevant to the defueled status, a 4-hour per calendar quarter requirement for maintaining active proficiency, and a one shift reproficiency requirement, ensure protection of the public health and safety and are consistent with the defueled condition of the facility.

The post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. The proposed exemption does not affect plant non-radiological effluents and has no other adverse environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternative will either have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require operator training and requalification criteria that pertain to power operations and to require the usual operating power reactor time criterion for maintaining and regaining proficiency. Such action would not enhance the protection of the environment and would require the licensee and the Commission to spend resources unnecessarily.

Alternate Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Rancho Seco Nuclear Generating Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter of December 28, 1989, and supplements of March 30, 1990 and June 24, 1991, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Dated at Rockville, Maryland this 30th day of July 1991.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18505 Filed 8–2–91; 8:45 am]

BILLING CODE 7590–01–M

First Memorandum of Understanding Between the Office of the Nuclear Waste Negotiator and the Nuclear Regulatory Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of a memorandum of understanding.

SUMMARY: On July 26, 1991, the Office of the U.S. Nuclear Waste Negotiator (ONWN) and the U.S. Nuclear Regulatory Commission (NRC) signed a Memorandum of Understanding (MOU) outlining the initial procedures for interactions between the two Offices. The text of the MOU is printed below.

FOR FURTHER INFORMATION CONTACT: Robert M. Bernero, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3352.

Dated in Rockville, Maryland, this 30th day of July, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

First Memorandum of Understanding Between the Office of the U.S. Nuclear Waste Negotiator and the U.S. Nuclear Regulatory Commission

I. Introduction

This Memorandum of Understanding (MOU) outlines the initial procedures for interactions between the Office of the U.S. Nuclear Waste Negotiator (ONWN) and the U.S. Nuclear Regulatory Commission (NRC) in carrying out the Nuclear Waste Policy Amendment Act of 1987 (title V of Pub. L. 100–203),[1] which amended the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425) (the Act) and, *inter alia*, created the ONWN. The ONWN is an independent establishment in the Executive Branch, separate from NRC and all other operating departments and agencies of the Federal Government. This independence facilitates the mission of the ONWN to find States or Indian Tribes willing to negotiate regarding the

[1] 42 U.S.C. 10241 et seq.

siting of a monitored retrievable storage facility or a permanent repository within their jurisdictions as part of an integrated waste management system for the disposal of spent nuclear fuel and high-level radioactive waste.

II. Purpose

The purpose of this MOU is to establish a working relationship between the ONWN and NRC that assures a timely flow of information between the parties; provides the ONWN with use of such NRC services, facilities, and personnel as the Commission determines appropriate and consistent with the scope described in Section V. and maintains each party's independence.

III. Authority

This MOU is entered into under the authority of section 409 of the Act (42 U.S.C. 10249), which provides that each department, agency, and instrumentality of the United States may furnish the Negotiator such information as he determines to be necessary to carry out the functions of the ONWN, and under the authority of section 408 of the Act (42 U.S.C. 10248(4)), which specifies that the Negotiator may utilize the services, personnel, and facilities of other Federal agencies, subject to the consent of the head of any such agency.

IV. Matters Not Addressed

Subsequent MOU's between the parties addressing procedures and relations regarding other provisions of the Act may be entered into at a later date.

V. Policy

The working relationship of the parties under this MOU will be consistent with the provisions of the Act related to high-level nuclear waste regulatory matters associated with a monitored retrievable storage facility and a geologic repository including transportation and safeguards. The NRC will respond in a timely maner to all written requests made by the ONWN to NRC for services, personnel, facilities, or information, subject to the discretion of the Commission and as permitted by law. The scope of the NRC activity generally will be limited to pre-licensing consultations and discussion with the Office of the Nuclear Waste Negotiator, a potential applicant, or a potential host State or Indian tribe.

Information made available to the ONWN under this agreement may be used at that agency's option in carrying out its responsibilities under the Act. The ONWN and NRC contemplate that all information requested and provided would be information that may be released to the public.

VI. Points of Contact

The points of contact for routine daily communication between the ONWN and NRC will be Counsel for the ONWN located in the Washington, DC liaison office and the Director of the Office of Nuclear Material Safety and Safeguards within NRC.

VII. Supplemental Interagency Agreements

Unless otherwise agreed by the Commission and the Negotiator, when requested by the Negotiator to provide services, personnel, facilities or information, NRC shall determine whether compliance with such requests will be in furtherance of its purposes, responsibilities, and obligations. To the extent NRC determines that compliance is in furtherance of such purposes, responsibilities, and obligations, it will assume the costs of such compliance.

If it is determined that a commitment, obligation, or transfer of funds is required, the details of the levels of support to be furnished by one organization to the other, with respect to funding, will be developed in specific interagency agreements.

All obligations or expenditures emanating from activities conducted under this MOU or any subsequent interagency agreements are subject to the availability of appropriated funds.

VIII. Amendment or Termination

This MOU may be modified, amended, or terminated by mutual written agreement, or may be terminated unilaterally by either part upon thirty (30) days written notice to the other party.

IX. Effective Date

This MOU shall be effective upon execution by the Negotiator and the NRC's Chairman.

Dated: July 26, 1991.

United States Nuclear Regulation Commission.

Ivan Selin,

Chairman.

Office of the United States Nuclear Waste Negotiator.

David H. Leroy,

Negotiator.

[FR Doc. 91-18500 Filed 8-2-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 142 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company, which revised the Technical Secifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to allow for the storage of zircaloy clad fuel assemblies in the new and spent fuel storage racks.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 9, 1991 (56 FR 14395). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement.

Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 4, 1991, (2) Amendment No. 142 to License No. DPR-61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention:

Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 25th day of July 1991.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 91–18503 Filed 8–2–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–440–A, 50–346–A (Suspension of Antitrust Conditions); ASLBP No. 91–644–01–A]

Atomic Safety and Licensing Board

Before Administrative Judges: Marshall E. Miller, Chairman, Charles Bechhoefer, G. Paul Bollwerk, III.

In the Matter of Ohio Edison Company (Perry Nuclear Power Plant, Unit 1, Facility Operating License No. NPF–58); The Cleveland Electric Illuminating Company, The Toledo Edison Company (Perry Nuclear Power Plant, Unit 1, Facility Operating License No. NPF–58) (Davis-Besse Nuclear Power Station, Unit 1, Facility Operating License No. NPF–3).

Rescheduled Prehearing Conference

The initial prehearing conference in this anti-trust proceeding, previously scheduled for July 25, 1991, is hereby rescheduled for Thursday, September 19, 1991, beginning at 9:30 a.m., in the NRC Hearing Room, 5th floor, 4350 East West Highway, Bethesda, Maryland. To the extent necessary, the conference will continue on September 20.

For the Atomic Safety and Licensing Board.

Bethesda, Maryland.

Charles Bechhoefer,

Administrative Judge.

[FR Doc. 91–18501 Filed 8–2–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–602]

University of Texas; Order Extending Construction Completion Date

The University of Texas is the current holder of Construction Permit No. CPRR–123, issued by the U.S. Nuclear Regulatory Commission on June 4, 1985, for construction of the University of Texas TRIGA Mark II research reactor. The reactor facility is presently under construction at the Balcones Research Center in Austin, Texas.

On May 24, 1991, the University of Texas (UT or the applicant) filed a request for an extension of the construction completion date from June 30, 1991 to October 31, 1991. The extension has been requested because additional time is required to close open items identified during the inspection program and to review documentation to support issuance of the Facility Operating License.

Good cause has been shown for the delay; the cause is beyond the control of the applicant; and the requested extension if for a reasonable period, the bases for which are set forth in the staff's evaluation of the request for extension.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment (56 FR 33477) published on July 22, 1991.

The NRC staff's safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

It Is Hereby Ordered That the latest completion date for Construction Permit No. CPRR–123 is extended from June 30, 1991 to October 31, 1991.

Date of Issuance: July 30, 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18504 Filed 8–2–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 30, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Blackstone 1998 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–7112).

International Movie Group, Inc.
Common Stock, $.01 Par Value (File No. 7–7113).

Thermoelectron Technologies Corporation
Common Stock, $.01 Par Value (File No. 7–7114).

ETZ Lavud Limited
Common Stock, IL 5.25 Par Value (File No. 7–7115).

Sanifill, Inc.
Common Stock, $.01 Par Value (File No. 7–7116).

MGM Grand, Inc.
Rights to Subscribe to Common Stock (File No. 7–7117).

Tie/Communications, Inc.
Common Stock, $.10 Par Value (File No. 7–7118).

Time Warner, Inc.
Rights to Subscribe to Common Stock (File No. 7–7119).

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 20, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–18445 Filed 8–2–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC –18251; 811–6245]

CellTelCo Nationwide Paging Partnership; Application

July 26, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: CellTelCo Nationwide Paging Partnership.

RELEVANT ACT SECTIONS: Section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 30, 1991, and was amended on July 15, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 20, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, suite 138, 1555 Lynnfield Road, Memphis, Tennessee 38119.

FOR FUTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504–2524, or Jeremy N. Rubenstein, Assistant Director, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a general partnership under the laws of the District of Columbia and is a closed-end non-diversified management company registered under the Act. On February 27, 1991, applicant filed a Notification of Registration pursuant to section 8(a) of the Act and a Registration Statement pursuant to section 8(b) of the Act. The Registration Statement was never declared effective and applicant never operated as an investment company.

2. At meetings held on December 19, 1990 and April 2, 1991, the execution, delivery, and performance of an agreement of sale relating to the sale of applicant's principal asset and the winding up of applicant's affairs were approved.

3. On April 11, 1991, applicant distributed a total of $30,361,580.75 to its partners in proportion to each partner's interest in applicant.

4. Applicant expects to incur expenses consisting of legal, accounting, and administrative fees in the approximate amount of $200,000 in connection with the liquidation of applicant. It has retained assets in sufficient quantity to discharge these expenses. Applicant has no assets other than the assets retained for the purpose described in the preceding sentence. Any assets remaining after payment of expenses will be distributed to applicant's partners in proportion to each partner's interest in applicant.

5. As of the date of the application, applicant had 409 partners. Applicant is not a party to any litigation or administrative proceeding. Applicant does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18446 Filed 8–2–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25354]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 26, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 19, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates, et al. (70–7825)

Eastern Utilities Associates ("EUA"), a registered, holding company, and its subsidiary company, EUA Cogenex Corporation ("Cogenex"), both located at P.O. Box 2333, Boston, Massachusetts 02107, have filed a post-effective amendment under sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45 and 50(a)(5) thereunder to their application-declaration previously filed under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43 and 45 thereunder.

By order dated March 29, 1991 (HCAR No. 25289), the Commission authorized the increase in Cogenex's financing authority from $75 million to $100 million, consisting of: (i) $35 million of long-term unsecured notes issued by Cogenex in 1990; (ii) approximately $12.8 million in capital contributions from EUA, and; (iii) $52.2 million from any combination of the following sources: (a) Up to an aggregate principal amount of $50 million of short-term borrowings from lending institutions under the EUA system existing lines of credit and (b) up to an aggregate principal amount of $40 million from: (A) Short-term borrowings from EUA, (B) capital contributions from EUA, and/or (C) sales of common stock to EUA (collectively, "Investments"). The Commission also authorized EUA to borrow up to $25 million under the EUA system credit lines to finance the Investments in Cogenex, and to guarantee Cogenex's borrowings under the EUA system credit lines. Such authority expires December 31, 1991.

EUA and Cogenex now propose to finance Cogenex's business in an amount not to exceed $100 million through December 31, 1993, from the following sources: (i) Up to an aggregate of $50 million from EUA in any combination of short-term borrowings, capital contributions or proceeds from sales of common stock to EUA (the "EUA Investments"); (ii) up to $35 million from the issuance and sale of additional long-term unsecured notes (the "New Notes"); and (iii) up to $50 million of short-term borrowings under the EUA system credit lines.

EUA also requests authority for the period ending December 31, 1993 to (i) make investments in Cogenex in an aggregate amount of up to $50 million in one or any combination of EUA Investments, (ii) borrow up to $25 million under the EUA system credit lines to finance EUA Investments in Cogenex and (iii) continue to guarantee Cogenex's borrowings under the EUA system credit lines.

Cogenex expects that the New Notes will mature in not less than 3 nor more than 30 years from the first day of the month in which they are issued. The New Notes are expected to be sold at not less than 98% nor more than 102.75% of their principal amount and to bear interest payable quarterly or

semiannually in arrears. It is proposed that other terms of the New Notes and of a purchase agreement for the New Notes, including redemption provisions, security provisions, if any, sinking fund provisions, if any, covenants and default provisions will be determined by negotiation. If it becomes necessary in order to obtain more favorable terms for the the New Notes, EUA proposes to guarantee all or a portion of the obligations with respect to the New Notes.

The net proceeds from the sale of the New Notes will be used for one of any combination of the following purposes: (i) To pay or reduce short-term borrowings from banks; (ii) to pay or reduce short-term loans from EUA; (iii) to acquire nonutility tangible assets for Cogenex; and (iv) for general corporate purposes.

Cogenex requests that the Commission, pursuant to paragraph (a)(5) of rule 50, grant an exception from that rule with respect to the New Notes, so that it may carry out the negotiation of the terms of the New Notes itself, with one or a few institutional investors, or to engage a placement agent to negotiate the terms of and place the New Notes with institutional purchasers. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18444 Filed 8-2-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25356]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 1, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 19, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. after said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70-7901)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807-0020, a registered holding company, has filed a declaration under sections 6, 7, and 12 of the act and rules 44 and 50 thereunder.

To enable it to fund the operations of certain of its subsidiaries, Columbia, a debtor in possession under Chapter 11 of the Bankruptcy Code, 11 U.S.C., proposes to issue and sell short-term secured promissory notes ("Notes") in an aggregate amount not exceeding $75 million or such lesser amount as may be approved by the Bankruptcy Court, prior to September 30, 1991 or such earlier date when longer term and enlarged debtor in possession financing may be approved by the Bankruptcy Court and this Commission.[1] A letter of credit of up to $10 million will be available to Columbia as part of the $75 million borrowing. The Notes will evidence Columbia's borrowings under a proposed credit facility with Manufacturers Hanover Trust Company, as agent for a syndicate of banks. A facility fee of $550,000 and a commitment fee on the unused portions of the total facility of ½% per annum and interest on all outstanding balances at the rate of no more than 1½ percent over the lender's alternate reference rate (the higher of the lender's announced prime rate or the federal funds rate plus 50 basis points), or such lesser rates and fees as shall be approved by the Court, will be charged to Columbia.

The lender will have a lien on all property of Columbia except voting securities of subsidiaries which are gas public-utility companies as defined under section 2(a)(4) of the Act. The loans would be secured by a lien upon all assets of Columbia, excluding the voting securities of Columbia's public-utility subsidiaries.

Columbia will use the proceeds of the loans primarily to make short-term advances to its subsidiaries (other than Columbia Gas Transmission Corporation ("Transmission"), which is itself a debtor in possession in a proceeding under Chapter 11 of the Bankruptcy Code) to fund current operating needs.[2] Columbia will make the advances in accordance with the terms and conditions of a previous order of the Commission which, among other things, authorized Columbia to fund advances to its subsidiaries through December 31, 1991 by short-term borrowings in an aggregate principal amount of up to $525 million at any one time outstanding.[3]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-18580 Filed 8-1-91; 12:18 pm]

BILLING CODE 8010-01-M

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[1] The long-term debtor in possession financing will be the subject of a future filing with the Commission.

[Rel. No. IC-18250; 812-7683]

Transamerica Bond Fund, et al.; Application

July 26, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Transamerica Bond Fund, Transamerica California Tax-Free Income Fund, Transamerica Cash Reserve, Inc., Transamerica Current Interest, Inc., Transamerica Investment Trust, Transamerica Special Equity Portfolios, Transamerica Special Series, Inc., Transamerica Sunbelt Growth Fund, Inc., Transamerica Tax-Free Bond Fund, Transamerica Capital Appreciation Fund (collectively, "Applicant Funds"), Transamerica Fund Management Company (the "Adviser"), Transamerica Fund Distributors, Inc. (the "Distributor"), and such other registered, open-end, management investment companies for which the

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[2] Columbia and Transmission filed for protection with the Bankruptcy Court for the District Court of Delaware on July 31, 1991, in response to recent financial difficulties related to Transmission's obligations under above-market gas purchase contracts. Columbia will file with the Bankruptcy Court a petition for approval of the subject interim financing. Transmission, which will also file with the Bankruptcy Court for approval of a short term line of credit, will rely upon rule 49(c) under the Act to exempt from the requirement of Commission approval its proposed transactions.

[3] *Columbia Gas System, Inc.*, Holding Co. Act Release No. 25001 (Dec. 18, 1989).

Adviser (or any affiliated person of the Adviser) may hereafter serve as investment adviser and for which the Distributor (or any affiliated person of the Distributor) may hereafter serve as principal underwriter, that may at any time hereafter offer shares on a basis that is identical in all material respects to the arrangements described herein (collectively with the Applicant Funds, the "Funds").

RELEVANT ACT SECTIONS: Exemptions requested under section 6(c) from the provisions of section 18(f), 18(g) and 18(i).

SUMMARY OF APPLICATION: The Applicants seek an exemption from the provisions of section 18(f), 18(g) and 18(i) of the Act to the extent necessary to offer two classes of shares of certain non-money market investment companies, and to offer multiple classes of shares in certain money market funds.

FILING DATE: The application was filed on February 13, 1991, and amended on June 26, 1991 and July 25, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, 1000 Louisiana, suite 6000, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263 or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Applicant Funds is registered under the Act as an open-end, diversified, management investment company.

2. Transamerica Current Interest, Inc. ("TCI") and Transamerica Cash Reserve, Inc. ("TCR") are money market funds that offer and sell shares at net asset value ("NAV") without any sales charge and seek to maintain constant $1.00 share prices. (These two companies, together with other investment portfolios of the Funds that may in the future invest in money market instruments and seek to maintain constant $1.00 share prices, are hereinafter referred to as the "Money Market Funds").

3. Transamerica Special Series, Inc. (the "CDSC Fund"), presently comprised of nine separate investment portfolios, offers shares of each of its portfolios at their respective current NAVs with no initial sales charge, but subject to a contingent deferred sales charge ("CDSC") and a distribution fee charged in compliance with rule 12b–1 under the Act (a "12b–1 fee"). The CDSC is imposed and, under certain circumstances, waived in accordance with the terms of an order issued by the SEC, pursuant to section 6(c) of the Act, granting exemptions from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder. Criterion Special Series, Inc., et al., Investment Company Act Release Nos. 16009 (Sept. 28, 1987) (notice) and 16073 (October 23, 1987) (order). Each of the other Applicant Funds (the "Load Funds") presently offers its shares for sale at their current NAV plus a front-end sale charge and a 12b–1 fee.

4. The Applicants seek an exemption that would allow the non-money market Funds to offer two classes of shares (the "Dual Distribution System"). This will be accomplished by, in effect, dividing shares of the investment portfolios to be offered on such a basis into two classes of shares ("Class I" and "Class II"). Class I shares would be offered subject to a CDSC and a rule 12b–1 distribution plan similar to the CDSC Fund's current distribution plan (the "Deferred Option"). Class II shares would be offered subject a front-end load and a rule 12b–1 distribution plan similar to the present distribution plans of the Load Funds (the "Front-End Option"). Shares of the Funds being offered at the time of the creation of the new class of shares will be reclassified as Class I shares if such shares are of a class that has been offered subject to the CDSC arrangement, or as Class II shares if such shares are of a class that has been offered subject to a front-end sales charge. The Class I shares and Class II shares will be identical in all respects, except for differences relating to the impact of the respective rule 12b–1 distribution payments borne by each class, any incremental transfer agency costs identified by the Funds' transfer agent as being attributable to a specific class, and any other incremental expenses subsequently identified that should properly be allocated to one class that shall be approved by the SEC pursuant to an amended order. Although the transfer agency fees of the CDSC Funds are presently the same as those of the Load Funds, industry experience to date suggests that in the future higher transfer agency fees with respect to Class I shares may be imposed than are imposed for Class II shares as a result of the higher costs associated with processing shareholder accounts with CDSC features. Other differences between Class I and Class II shares will include (i) voting rights on matters affecting only a particular class, such as approval of the rule 12b–1 distribution plan, (ii) different exchange privileges available to each class and (iii) the designation of each class of shares of an investment portfolio. Shares purchased through the reinvestment of dividends and other distributions will be of the same class as the shares on which the distributions were paid.

5. The NAV of all outstanding shares of each class of an investment portfolio will be computed on a pro rata basis for each outstanding share based on the proportionate interest in the portfolio represented by the shares of that class. All income earned, and expenses incurred by an investment portfolio, will be borne on a pro rata basis by each outstanding share of a class, based on the proportionate interest in the portfolio represented by the shares of such class, except that because of the particular distribution expenses and other costs that might be allocable to each class, it is expected that the net income of and dividends payable to each class of a portfolio will vary.

6. The Applicants also seek an exemption that would allow the Money Market Funds to offer multiple classes of shares. Each class of shares may adopt one or more of the following: A rule 12b–1 distribution plan, a non-rule 12b–1 shareholder services plan with payments made by the Fund, or an administrative plan with payments made by the Adviser or the Distributor. The classes of shares will be identical in all respects, except: (i) Each class will have a different designation; (ii) each class of shares will bear any expenses specifically attributable to that class ("Class Expenses") limited to: (a) Payments made pursuant to a rule 12b–1 distribution plan or a shareholder service plan; (b) any incremental transfer agency costs as identified by the Funds' transfer agent as being

attributable to a specific class; (c) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders attributable to an individual class; (d) Blue Sky registration fees attributable to an individual class; (e) registration fees under the Securities Act of 1933 incurred by a class of shares; (f) any expense of administrative personnel and services as required to support the shareholders of a specific class; and (g) any director's fees incurred as a result of issues relating to one class of shares; (iii) voting rights on the rule 12b–1 distribution plan of that class or other matters relating solely to such class; (iv) each class will have different exchange privileges; and (v) one class of each portfolio may be offered subject to a CDSC (the principal purpose of which is to allow holders of other CDSC classes to exchange in and out of a Money Market Fund).

7. All shares of the Money Market Funds, regardless of class, will be sold and redeemed daily at NAV without a sales charge or redemption charge, except in the case of one class per Money Market Fund that will be subject to the possible imposition of a CDSC.

8. Each Money Market Fund will accrue its payments for any Class Expenses daily. Further, before offering shares on a multi-class basis, each Money Market Fund may seek to obtain undertakings from its service providers stating that, if necessary to prevent accrued Class Expenses of any class from exceeding the allocated gross income of such class on any given day, they will waive some or all of the payments to which they otherwise would have been entitled. If such waivers are not obtained or they are not sufficient to prevent accrued Class Expenses for the day from exceeding a class's gross income for the day, the Adviser and/or the Distributor will waive their fees up to the amount by which such day's accrued Class Expenses exceed a class's gross income. If after giving effect to such waivers by service providers, if any, and by the Adviser and the Distributor, Class Expenses for the day would nevertheless exceed a class's gross income, the Adviser and/or the Distributor will, within five business days, reimburse the Money Market Fund in such amount as may be necessary to prevent such Class Expenses from exceeding a class's gross income for the day. In this way, each Money Market Fund will maintain a stable NAV.

9. Class I shares of an investment portfolio will be exchangeable for Class I shares of another investment portfolio (or shares of a portfolio that has not adopted the Dual Distribution System but that offers its shares on a CDSC basis). Class II shares of an investment portfolio will be exchangeable for Class II shares of another investment portfolio (or shares of a portfolio that has not adopted the Dual Distribution System but that offers its shares on a front-end sales charge basis). In addition, shares of a Money Market Fund acquired in exchange for shares of a class offered with a CDSC may be re-exchanged for shares of any other portfolio of the Funds offered with a CDSC; and shares of a Money Market Fund acquired in exchange for shares of a class offered with a front-end sales charge may be re-exchanged for shares of any other portfolio offered with a front end sales load. Shares of a portfolio of a Money Market Fund will not otherwise be exchangeable for shares of any portfolio that imposes a CDSC or front-end sales charge. All offers of exchange will be made in accordance with the requirements of rule 11a–3 under the Act.

Applicants' Legal Analysis

10. The Funds request an exemptive order pursuant to section 6(c) of the 1940 Act to the extent that the proposed issuance of dual classes and multiple classes of shares of the Funds might be deemed (1) to result in the creation of a "senior security" within the meaning of section 18(g) and to be prohibited by section 18(f)(1) of such Act; and (2) to violate the equal voting provisions of section 18(i) of the 1940 Act.

11. Section 6(c) of the Act permits the SEC to exempt applicants from provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

12. The Applicants argue that their request for an exemption meets the standards of section 6(c) of the Act because (a) the dual and multi-class distribution systems will attract more investors which will have the beneficial effect of spreading fixed cost over a broader investor base; (b) only those shareholders enjoying the benefits of arrangements such as distribution plans or shareholder servicing plans will bear the expenses and voting responsibilities of such arrangements; and, (c) the proposed dual and multi-class arrangements will not involve borrowing, nor will they effect a Fund's current assets or reserves, nor will they increase the speculative nature of any Fund.

Applicants' Conditions

The Applicants agree that any order granting the exemptions requested by the application will be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of the Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares will relate solely to: (a) The impact of the disproportionate payments made under a rule 12b–1 distribution plan and/or a shareholder services plan (in the case of the Money Market Funds), any incremental transfer agency costs as identified by the Fund's transfer agent as being attributable to a specific class, and any other incremental expenses subsequently identified that should be properly allocated to one class that shall be approved by the Commission pursuant to an amended order; (b) in the case of the Money Market Funds only: Printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders attributable to an individual class; Blue Sky registration fees attributable to an individual class; registration fees under the Securities Act of 1933 incurred by a class of shares; the expense of administrative personnel and services as required to support the shareholders of a specific class; and Directors' fees incurred as a result of issues relating to one class of shares; (c) the fact that the classes will vote separately with respect to rule 12b–1 distribution plans and other matters exclusively affecting one class of shares; (d) different exchange privileges of the classes of shares; and (e) the designation of each class of shares.

2. The Directors of the Fund, including a majority of the Independent Directors, will approve the system of the offering of dual classes or, in the case of the Money Market Funds, multiple classes, of shares. The minutes of the meetings of Directors regarding deliberations of the Directors with respect to the approval necessary to implement the dual class or multiple class system will reflect in detail the reasons for the Directors' determinations that the system is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the Directors of the Fund, pursuant to their fiduciary responsibilities under the Act and

otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the outstanding classes of shares. The Directors, including a majority of the Independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The investment adviser and the distributor of the Fund will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, the investment adviser and the distributor of the Fund, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 plan adopted or amended to permit assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of such class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of that class of shares. Such meeting is to be held within 16 months from the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.[1]

5. In the case of the Money Market Funds, which shall be the only Funds that may adopt a shareholder services plan, such plans will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating a shareholder services plan, the Directors will specifically consider whether: (a) The shareholder services plan is in the best interest of the applicable classes and their respective shareholders; (b) the services to be performed pursuant to the shareholder services plan are required for the operation of the applicable classes; (c) the service organizations can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services; and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each shareholder services agreement entered into pursuant to a shareholder services plan will contain a representation by the service provider that any compensation payable to the service provider in connection with the investment of its customer's assets in the Fund (a) will be disclosed by it to its customers; (b) will be authorized by its customers; and (c) will not result in an excessive fee to the service provider.

7. Each shareholder services agreement entered into pursuant to a shareholder services plan will provide that, in the event an issue pertaining to the shareholder services plan is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

8. The Directors of the Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not relating to the sale or servicing of a particular class will not be presented to the Directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors in the exercise of their fiduciary duties.

9. Dividends paid with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that expenses of the type that are authorized by Condition 1 above to be allocated to a particular class will be borne exclusively by that class.

10. The methodology and procedures for calculating the NAV and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an on-going basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. The Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the NAV and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in Condition 10 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in Condition 10 above. The Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

12. The prospectus of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation with respect to one particular class of shares over another.

13. The distributor of the Fund will adopt compliance standards as to when

[1] In the Applicants' opinion, since the distribution plan in connection with the Deferred Option for Class I shares will be the distribution plan now in effect for the CDSC Fund, except as amended to provide that the fee thereunder will be assessed only on Class I shares, it will not be necessary for the CDSC Fund's existing shareholders (all of whom will be holders of Class I shares upon implementation of the Dual Distribution System) to "reapprove" such plan. Applicants also believe the same is true for distribution plans of other Funds which have previously been approved by public shareholders and thereafter are similarly amended to accommodate the dual class or multiple class structure.

each class of shares may be sold to particular investors. The Applicants will require all persons selling shares to agree to conform to such standards.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors of the Fund with respect to the dual class or multiple class system of the Fund will be set forth in guidelines which will be furnished to the Directors.

15. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares of an investment portfolio in every prospectus for shares of that investment portfolio, regardless of whether all classes of shares are offered through each prospectus. The Fund's per share data in shareholder reports will disclose the respective expenses and performance data applicable to all classes of shares of an investment portfolio in every shareholder report for an investment portfolio. To the extent any advertisement of sales literature describes the expenses or performance data applicable to any class of shares of an investment portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of its shares. The information provided by the Applicants for publication in any newspaper or similar listing of NAV and public offering priced will present each class of shares separately.

16. The Applicants acknowledge that the grant to the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 distribution plans or shareholder services plans in reliance on the exemptive order.

17. To ensure that the NAV per share of each class of shares of a Money Market Fund does not deviate from the NAV per share of the other classes as a result of variations in net income among the classes from day to day, no Money Market Fund class will on any day bear any accrued Class Expenses that would cause the accrued expenses of such class for such day to exceed its allocated gross income. To accomplish this, each Money Market Fund may seek to obtain undertakings from its service providers stating that, if necessary to prevent accrued Class Expenses of any class from exceeding the allocated gross income of such class on any given day, they will waive some or all of the payments to which they otherwise would have been entitled. If such waivers are not obtained or they are not sufficient to prevent accrued Class Expenses for the day from exceeding a class's gross income for the day, the Adviser and/or the Distributor will waive their fees up to the amount by which such day's accrued Class Expenses exceed a class's gross income. If after giving effect to such waivers by service providers, if any, and by the Adviser and the Distributor, Class Expenses for the day would nevertheless exceed a class's gross income, the Adviser and/or the Distributor will, within five business days, reimburse the Money Market Fund in such amount as may be necessary to prevent such Class Expenses from exceeding a class's gross income for the day. Fees and expenses waived by a service provider or reimbursed to the Fund by the Adviser and/or the Distributor will not be carried forward or recouped at a future date.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18447 Filed 8–2–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CCGD8–91–15]

Public Hearing Concerning Proposed Regulations, Barge Mooring Facility Mile 151.7 GIWW. Gulf Shores, Alabama

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given of a public hearing to be held by the Commander, Eighth Coast Guard District, at Gulf Shores, Alabama. The purpose of the hearing is to provide an opportunity to all interested persons to present data, views and comments orally or in writing concerning a proposal to moor barges along the Gulf Intracoastal Waterway Mile Mark 151.7, Gulf Shores, Alabama.

DATES: Tuesday, September 3, 1991 commencing at 7 p.m., until all speakers in attendance have had the opportunity to comment.

ADDRESSES: The hearing will be held at the Gulf State Park Resort, 21250 East Beach Boulevard, Gulf Shores, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, tel. (504) 589–4686.

SUPPLEMENTARY INFORMATION: REL Marine is seeking both U.S. Coast Guard and Army Corps of Engineers approval to construct a barge mooring facility along the north shoreline of the Gulf Intracoastal Waterway Mile Mark 151.7 East of the Harvey Locks. The mooring facility would start at the existing canal/boatyard facility and extend to the west 1,000 feet with a width of approximately 90 feet. Spud mooring barges on 200 foot centers would be used for mooring points. Therefore, a joint public hearing is being held by the U.S. Coast Guard and the U.S. Army Corps of Engineers to collect information concerning this permit request. On June 14, 1990, the Coast Guard authorized the mooring of barges in this vicinity with the stipulation that the mooring not adversely impact navigation safety. Since that time, information has come to the Coast Guard's attention that navigation safety may be adversely affected if barges are permitted to be moored at the proposed site. In an effort to gather additional information, the Coast Guard will give the public and all interested parties an opportunity to make comments on navigation safety issues for consideration in the decision making process. The Army Corps of Engineers has the ultimate decision on permitting the construction of a barge fleeting facility and will provide an opportunity for public comments on all other related issues immediately following. This is *not* an adversarial proceeding. Therefore there will be no cross examination of the speakers. The audience, however, may ask the panel of Coast Guard and Army Corps of Engineers representatives to clarify specific points.

Any person who wishes may appear and be heard at this public hearing. Persons planning to appear and be heard are requested to notify the Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, tel. (504) 589–4686, any time prior to the hearing. Speakers will be limited to 5 minutes for oral presentations. Written statements and exhibits may be submitted in lieu of, in support of, or to supplement oral statements and will be made a part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed in advance to the Commander, Eighth Coast Guard District, at the above address. Transcripts of the hearing will be made available for purchase upon request.

Dated: July 18, 1991.

J.M. Loy,

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

[FR Doc. 91-18384 Filed 8-2-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 30, 1991.

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 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0502.
Form Number: ATF REC 5210/12 and ATF REC 5210/1.
Type of Review: Extension.
Title: Tobacco Products Manufacturers—Notice for Tobacco Products (ATF REC 5210/12); Records of Operation (ATF REC 5210/1).
Description: ATF requires tax identification on packages or cases, which is used to validate excise tax payments and verify claims. Manufacturers records systems are needed to ensure product traceability and satisfaction of Tax Liabilities.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 145.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 1 hour.
Clearance Officer: Robert N. Hogarth (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.
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. 91-18485 Filed 8-2-91; 8:45 am]

BILLING CODE 4810-31-M

Office of Thrift Supervision

Ensign Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Ensign Federal Savings Bank, New York, New York, ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18431 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Sentry Savings Bank, FSB; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Sentry Savings Bank, FSB, Hyannis, Massachusetts ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18432 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Vanguard Savings Bank, FSB; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Vanguard Savings Bank, FSB, Vandergrift, Pennsylvania, ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 5, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18433 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Beach Savings Bank, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Beach Savings Bank, FSB, Fountain Valley, California, OTS No. 9046 on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18434 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Colonial Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Colonial Federal Savings Association, Roselle Park, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 5, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18430 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Family Savings & Loan Association, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Family Savings & Loan Association, F.A., Seattle, Washington, OTS No. 9058, on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18435 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

First Savings & Loan Company, F.A. Massillon, OH; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (F) of 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Savings & Loan Company, F.A., Massillon, Ohio, ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18429 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Malibu Savings Bank, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Malibu Savings Bank, FSB, Costa Mesa, California, OTS No. 7888, on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18436 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Southwest Savings & Loan Association, FA; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Southwest Savings and Loan Association, FA, Phoenix, Arizona, OTS No. 8836, on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18437 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-32; OTS No. 7035]

First Federal Savings & Loan Association of Bryan, Bryan, TX; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that on July 26, 1991, the Director of the Office of Thrift Supervision or his designee approved the application of First Federal Savings and Loan Association of Bryan, Bryan, Texas, for permission to convent to the stock form of organization in a voluntary supervisory conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporation Secretary.

[FR Doc. 91-18428 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Meeting of Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on August 7, 1991, in room 3557, 400 Sixth Street, SW., Washington, DC. Below is the intended agenda.

Wednesday, August 7, 1991

Agenda

Part One—Closed to the Public

9:30 a.m.

1. Briefing on Marti Security Measures.
2. TV Marti Broadcast Schedule.
3. Radio Marti Program—Second Frequency Option.

Part Two—Open to the Public

11:30 a.m.

4. TV Marti.
   a. TV Marti Staffing Pattern.
   b. TV Marti Space Assignments.
   c. TV Marti Non-News Programming.
5. Radio Marti. a. Leasing Commercial Radio Time.
6. Presidential Task Force on International Broadcasting—Impact on Office for Cuba Broadcasting.
7. OCB Budget Update.
8. Ethics Update (Agency Ethics Officer).

Items one, two and three, which will be discussed from 9:30 a.m. to 11:30 a.m., will be closed to the public. Information in item one involves the discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 522b(c)(1). Discussion of items two and three will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522b(c)(9)(B)).

Members of the public interested in attending the meeting should contact James Skinner at (202) 401-7312 to make prior arrangements, as access to the building is controlled.

Dated: July 30, 1991.

Henry E. Catto,

Director.

Determination to Close Portions of Advisory Board Meeting of August 7, 1991

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 9:30 a.m. to 11:30 a.m. portion of the meeting may be closed to the public.

The Advisory Board has requested that items one, two and three of the August 7, 1991 meeting be closed to the public. Item one on the agenda involves the discussion of classified information. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(1). Items two and three will involve information the premature disclosure of which would likely frustrate implementation of a proposed agency action (5 U.S.C. 522b(c)(9)(B)).

Item one on the agenda will involve a discussion by the Advisory Board of classified information relating to allegations that an individual working on behalf of the Cuban government was an employee of the Office of Cuba Broadcasting. Item two on the agenda involves a discussion about broadcasting TV Marti to Cuba during alternate hours of the day. Item three on the agenda includes a briefing to the Advisory Board about the feasibility of acquiring a second medium wave frequency for radio broadcasting to Cuba.

Dated: July 30, 1991.

Henry E. Catto,

Director.

[FR Doc. 91-18470 Filed 8-2-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 150
Monday, August 5, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:15 p.m. on Tuesday, July 30, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Matters relating to certain financial institutions.

Matters relating to the Corporation's assistance agreements with insured banks.

Application of Public Savings Association, Bala Cynwyd, Pennsylvania, an operating nonfederally insured state savings and loan association, for Federal deposit insurance.

Recommendations regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,724
Dallas Consolidated Office, Various Savings and Loans
Case No. 47,727
Various Banks and Savings and Loans

Administrative Enforcement Proceedings.

Reports of the Office of Inspector General:

Audit Report re:
Champion Federal Savings and Loan Association, Bloomington, Indiana, Case Number: C-320c (Memo dated July 12, 1991)
Audit Report re:
Red River Federal Savings and Loan Association, Lawton, Oklahoma, Case Number: SWP-009c (Memo dated July 2, 1991)
Audit Report re:
Superior Bank, FSB, Oakbrook Terrace, Illinois, Case Number: C-389c (Memo dated July 12, 1991)
Audit Report re:
Inventory Closing Procedures, Houston Consolidated Office, (Memo dated July 11, 1991)
Audit Report re:
Audit of Asset Management Contractor, Republic Realty Services Inc. (Memo dated July 10, 1991)
Audit Report re:
Report on Audit of FSLIC Corporate Assets (Memo dated July 10, 1991)
Audit Report re:
Audit of the Management and Control of Collateral, Midland Consolidated Office (Memo dated July 12, 1991)
Audit Report re:
Information System Audit Report of the Liability and Dividend System (Memo dated July 12, 1991)
Audit Report re:
Audit of Legal Expenses Paid to the Law Firm of Morrison, Hecker, Curtis and Parrish (Memo dated June 28, 1991)
Audit Report re:
Audit of Legal Expenses Paid to the Law Firm of Steptoe and Johnson (Memo dated June 28, 1991)

Matters relating to the Corporation's corporate activities.

Application of Brunswick Bank and Trust Company, Manalapan, New Jersey, for the Corporation's consent to merge, under its charter and title, with Mutual Aid Federal Savings and Loan Association, Manasquan, New Jersey, and for consent to establish branches.

Matters relating to Corporation litigation.

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 Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public, that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: July 31, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-18556 Filed 8-1-91; 10:00 am]

BILLING CODE 6714-0-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: A meeting of the Board of Directors will be held on August 12, 1991. The meeting will commence at 9:00 a.m.

PLACE: Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001 (202) 628-2100.

STATUS OF MEETING: Open, except that a portion of the meeting will be closed pursuant to: (1) A majority vote taken in open session during the July 8, 1991 meeting of the Board of Directors, and (2) a supplemental vote taken by telephone on July 23, 1991, during which the specific information contained herein was provided members of the Board of Directors. At the closed session, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is a party, and will consider pending personnel actions and personnel-related rules and practices, including matters related to current investigations being undertaken by the Corporation's Office of the Inspector General. In addition, the Board will interview four applicants for the position of Inspector General of the Corporation, will consider the qualifications of these applicants, and will select from among the applicants one individual to fill the position of Inspector General. The closing is authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5(a), (e), and (h)]. The closing pursuant to the July 8, 1991 and July 23, 1991 votes has been certified by the Acting General Counsel as authorized by the above-cited provisions of law. A copy of the Acting General Counsel's certification is posted for public inspection at the Corporation's headquarters, located at 400 Virginia Avenue, SW., Washington, DC 20024, in its three reception areas, and is otherwise available upon request.

VOTE TO CLOSE:

Board Member	*Vote*
Vote of July 8, 1991	
Howard Dana, Jr	Yes.
Luis Guinot, Jr	(Absent).
J. Blakeley Hall	Yes.
William Kirk, Jr	Yes.
Jo Betts Love	Yes.
Guy Molinari	(Absent).
Penny Pullen	Yes.
Thomas Rath	(Absent).
Basile Uddo	(Absent)
George Wittgraf	Yes.
Jeanine Wolbeck	Yes.

Vote of July 23, 1991

Board Member	*Vote*
Howard Dana, Jr	Yes.
Luis Guinot, Jr	Yes.
J. Blakeley Hall	Yes
William Kirk, Jr	Yes.
Jo Betts Love	Yes.
Guy Molinari	Yes.
Penny Pullen	Yes.
Thomas Rath	Yes.
Basile Uddo	Yes.
George Wittgraf	Yes.
Jeanine Wolbeck	Yes.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of July 8, 1991 Meeting.
3. Chairman's Report.
4. President's Report.
5. Consideration of Report on the Competition Study.
6. Consideration of Legislative Report and Report by Special Reauthorization Committee.
7. Consideration of Report by Office of the Inspector General Oversight Committee, and Consideration of Recommendations of the Inspector Gencral.

Closed Session

8. Interview of First Candidate for the Position of Inspector General of the Legal Services Corporation.
9. Interview of Second Candidate for the Position of Inspector General of the Legal Services Corporation.
10. Consideration of Report by Inspector General on Current Investigations and Other Matters, and Consultation with Board's Special Counsel.
11. Consideration of Pending Personnel Actions and Personnel-Related Rules and Practices.
12. Consideration of Acting General Counsel's Litigation Report.
13. Interview of Third Candidate for the Position of Inspector General of the Legal Services Corporation.
14. Interview of Fourth Candidate for the Position of Inspector General of the Legal Services Corporation.
15. Consideration of and Vote on Candidate to Fill the Position of Inspector General of the Legal Services Corporation.

Open Session

16. Consideration of Report by Staff on Status of Pending Regulations, and Consideration of Related Resolutions.
17. Consideration of Schedule of Board Committee Meetings for Remainder of 1991.
18. Consideration of Plans for Annual Meeting with Legal Services Project Representatives.
19. Consideration of and, if necessary, Vote on Closure of a Portion of the September 16, 1991 Meeting of the Board of Directors.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: July 31, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–18542 Filed 7–31–91; 4:19 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting and Annual Conference of Legal Services Providers; Advance Notice

TIME AND DATE: _____.

MEETING: A meeting of the Board of Directors and the Annual Conference of Legal Services Providers will be held on December 9–10, 1991. The meeting and conference are tentatively scheduled to commence at 9:00 a.m. each day.

PLACE: Clarion Hotel, 200 South 4th Street, St. Louis, Missouri 63102, (314) 241–9500, 1–800–325–7353 (Reservations).

The Legal Services Corporation has made arrangements with the Clarion Hotel to make available to the public the hotel lodging rate obtained by the Corporation. Accordingly, and due to the limited number of rooms available, interested members of the public are requested to contact the hotel directly at either of the telephone numbers listed above to make lodging reservations. Please advise the hotel reservationist that you are seeking to reserve a room being held in the name of the Legal Services Corporation. Members of the public must make reservations by November 9, 1991, and will be responsible for making direct payment for lodging costs to the Clarion Hotel upon departure. Please note that hotel reservations cannot be made through the Legal Services Corporation.

STATUS OF MEETING: Open.

STATUS OF CONFERENCE: Open.

MATTERS TO BE CONSIDERED: [Matters to be considered at the meeting of the Board of Directors and at the annual conference will be announced at a future date]

CONTACT PESON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

[For Hotel Reservations and/or Related Information, Please Contact The Clarion Hotel at the Above-noted Telephone Numbers.]

Date Issued: July 31, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–18543 Filed 7–31–91; 4:19 pm]

BILLING CODE 7050–01–M

RESOLUTION TRUST CORPORATION

Notice of Changes in Subject Matter 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 following changes were made to the open agenda of the Resolution Trust Corporation Board of Directors meeting Tuesday, July 30, 1991 in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.:

The following subject was withdrawn from the agenda:

Memorandum re:
Revised Indemnification for Contractors Providing Professional Services to the RTC.

The following subject was added to the agenda:

Memorandum re:
Delegations of Authority Relating to Administrative Expenses.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Corporation, at 202–416–7282.

Dated: July 31, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–18549 Filed 8–1–91; 9:08 am]

BILLING CODE 6714–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:36 p.m. on Tuesday, July 30, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider: (1) The resolution of failed thrift institutions; (2) leasing and furnishing office space; (3) contracting matters relating to (a) real estate educational training programs, (b) an automated securities tracking system, and (c) an automated financial management system; (4) the sale of assets by securitization and negotiated transactions; and (5) recommendations regarding the 1988–89 FSLIC-assisted transactions restructuring proposals and disclosure of the Southwest Plan Report.

In calling the meeting, the Board determined, on motion of Director C.C. Hope (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan Jr. (Director of 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)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: July 31, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–18550 Filed 8–1–91; 9:08 am]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 56, No. 150
Monday, August 5, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 8, 9, 10, 14, 15, 16, 17, 19, 25, 27, 31, 35, 36, 42, 43, 44, 45, 49, and 52

RIN 9000-AC43, 9000-AE12, 9000-AD85, 9000-AE00, 9000-AD32, 9000-AE01,9000-AD66, 9000-AD21, 9000-AD57, 9000-AD08, 9000-AE05, 9000-AD73, 9000-AD02, 9000-AD78, 9000-AD81, 9000-AD77, 9000-AD33

[FAC 90-4]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

Correction

In the correction to rule document 91-8647 appearing on page 33487, in the issue of Monday, July 22, 1991, make the following correction:

In the first column, amendatory instruction 1. should read:

1. On page 15146, in the 1st column, in the 14th line "Robert H. Hope" should read "Richard H. Hopf, III".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Metro Health Medical Center, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 91-15357 appearing on page 29469 in the issue of Thursday, June 27, 1991, in the second column, in the first full paragraph, in the first line "*Docket Number: 90-026*" should read "*Docket Number 91-026*".

BILLING CODE 1505-01-D

federal register

Monday
August 5, 1991

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 33

Federal Acquisition Regulation; General Accounting Office Protest Costs; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 90-6; FAR Case 91-41]

Federal Acquisition Regulation; General Accounting Office Protest Costs

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 90-6 amends the Federal Acquisition Regulation (FAR) with respect to the following: FAR 33.104 is amended at paragraphs (g) and (h) to provide that the General Accounting Office's awards of contract protest costs will be treated as advisory recommendations. Agencies may continue to pay protest costs out of funds available for the acquisition of services or supplies, but such payments may be subject to recoupment if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional.

DATES: *Effective Date:* August 5, 1991.

ADDRESSES: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell at (202) 501-4082 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-6, FAR case 91-41.

SUPPLEMENTARY INFORMATION:

A. Background

The changes made by this final rule arose as a result of a Department of Justice (DOJ) recommendation to revise FAR 33.104 (g) and (h) because the coverage is based on an unconstitutional statute, 31 U.S.C. 3554(c). DOJ has advised that the award of protest costs and attorney fees by the General Accounting Office is unconstitutional because it violates the separation of powers doctrine. Therefore, DOJ is seeking a declaratory judgment that the provision is unconstitutional and the Comptroller General has no authority to order Executive branch agencies to pay attorney fees and protest costs to successful bid protesters.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this rule and a Final Regulatory Flexibility Analysis has been performed. A copy of the Analysis may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 33

Government procurement.

Dated: July 30, 1991.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-6 is effective August 5, 1991.

Dated: July 30, 1991.

Eleanor R. Spector,

Director of Defense Procurement (DOD).

Dated: July 29, 1991.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy, GSA.

Dated: July 30, 1991.

Darleen A. Druyun,

Assistant Administrator for Procurement (NASA).

Federal Acquisition Circular (FAC) 90-6 amends the Federal Acquisition Regulations as specified below:

General Accounting Office Protest Costs

FAR Part 33 is being revised to clarify the General Accounting Office's (GAO) authority to award bid protest costs and attorney fees. FAR 33.104(g) is amended to provide that GAO awards of bid protest costs and attorney fees are to be treated as recommendations to the agency. FAR 33.104(h) is revised to provide that any agency may pay protest costs as a result of a GAO recommendation, but such payments may be subject to recoupment if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional. The final rule applies to any payments which have not been made as of the effective date thereof.

Therefore, 48 CFR part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR part 33 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 33.104 is amended by revising paragraphs (g) and (h) to read as follows:

33.104 Protests to GAO.

* * * * * *

(g) *Notice to GAO.* The head of the agency or a designee (not below the level of the head of the contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 days of receipt of the GAO's recommendation, if the agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation, including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be followed by the agency.

(h) *Award of protest costs.* Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. 3554(c), a recommended award of protest costs (as defined under paragraph (g)) may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the agency if 31 U.S.C. 3554(c) is judicially determined not to be constitutional. Before paying a recommended award of protest costs (as defined under paragraph (g)), agency personnel should consult the General Counsel's office of the agency. This paragraph (h) applies to all recommended awards of protest costs (as defined under paragraph (g)) which have not yet been paid.

[FR Doc. 91-18460 Filed 8-2-91; 8:45 am]

BILLING CODE 6820-34-M

federal register

Monday
August 5, 1991

Part III

Department of the Interior

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska, Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024-AB99

Glacier Bay National Park, Alaska; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: Expanding fishing uses of Glacier Bay National Park (GLBA) have compelled the National Park Service (NPS) to review the relationship of such fisheries to management of the Park.

The NPS is proposing to amend regulations regarding fishing in GLBA. These proposed amendments will allow commercial fishing to continue, exempted from currently existing nationwide NPS prohibitions on such activities, until December 31, 1997. Any continuance of commercial fishing beyond that date would require a finding that such uses are compatible with protection of park values and purposes, and promulgation of a new regulation at that time. The statutory prohibition on commercial fishing in designated wilderness in the park is clarified by these regulations. Non-commercial consumptive fishing methods are designated and "subsistence" uses are prohibited by these regulations.

Studies and research are proposed to be conducted on the relationship for fishing uses to park values and purposes. The results will be used for any future NPS regulatory actions.

The proposed regulatory revisions set forth below are necessary to fulfill the statutorily mandated duties of the NPS which are to ensure the preservation, enjoyment, and scientific value of the unique marine ecosystem of GLBA. These regulations do not affect Glacier Bay National Preserve where commercial and subsistence fishing are authorized by statute and no proposal for their prohibition is being made.

DATES: Written comments, suggestions or objections will be accepted until October 4, 1991.

The NPS also intends to provide an opportunity for public comment in a series of public hearings to be announced separately in the **Federal Register** (FR).

ADDRESSES: Comments should be directed to: Paul Haertel, National Park Service, Alaska Regional Office, 2525 Gambell Street, rm. 107, Anchorage, Alaska 99503-2892.

FOR FURTHER INFORMATION CONTACT: Paul Haertel, National Park Service, Alaska Regional Office, 2525 Gambell Street, rm. 107, Anchorage, Alaska, 99503-2892, telephone: (907) 257-2684; or, Marvin Jensen, National Park Service, Glacier Bay National Park, Bartlett Cove, Gustavus, Alaska, 99827, telephone: (907) 697-2230.

SUPPLEMENTARY INFORMATION:

Background

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925. 43 Stat. 1988. The monument was established to protect the dynamically changing glacial environment of mountains, tidewater glaciers, and associated movements and development of flora and fauna, and promote the scientific study of such. The early monument included marine waters within Glacier Bay north of a line running approximately from Geikie Inlet on the west side of the bay to the northern extent of the Beardslee Islands on the east side of the bay. The monument was expanded by a second presidential proclamation on April 18, 1939. 53 Stat. 2534. The expanded monument included additional lands and marine waters off: all of Glacier Bay; portions of Cross Sound, North Inian Pass, North Passage, Icy Passage, and Excursion Inlet; and, Pacific coastal waters to a distance of three miles seaward between Cape Spencer in the south and Sea Otter Creek, north of Cape Fairweather. The inclusion of substantial tracts of marine waters within the boundaries of the monument, and present-day park, presents unique opportunities for the study and preservation of marine flora and fauna, in an unimpaired state.

Glacier Bay National Monument was redesignated as Glacier Bay National Park in 1980 by the Alaska National Interest Lands Conservation Act (ANILCA). The new park included all lands and waters of the previously existing monument, plus additional land areas. 94 Stat. 2382. The legislative history of ANILCA provides that certain NPS units in Alaska including Glacier Bay National Park "* * * are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause." Sen. Rep. No. 96-413, 96th Cong., 1st Sess. 137 (1979); and, Cong. Rec. H 10532 (Nov. 12, 1980).

The management of the previous Glacier Bay National Monument, and current Glacier Bay National Park, is governed by the original monument proclamations and the NPS Organic Act and its amendments. The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1. The Organic Act also grants the Secretary the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service." 16 U.S.C. 3. In addiiton, the Redwood National Park Act of 1978 states: "The authorization of activities shall be construed and the protection, management and administration of" NPS areas "shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." 92 Stat. 166.

Commercial Fishing

The marine waters of Glacier Bay National Park have been fished commercially since prior to the monument's existence. Commercial fishing continued under Federal regulation after the proclamation of the area as a national monument in 1925 and its subsequent enlargement in 1939.

Under the Act of June 6, 1934, 43 Stat. 464, the Secretary of Commerce was authorized to "set apart and reserve fishing areas in any of the waters of Alaska * * * and within such areas * * * establish closed seasons during which fishing may be limited or prohibited * * *." The first Alaska Fishery Regulations of the Bureau of Fisheries, promulgated between 1937 and 1939, addressed fisheries of an area designated as the Icy Strait district including Glacier Bay National Monument. See 2 FR 305 (February 12, 1937); and 4 FR 927 (February 15, 1939). Those regulations, and regulations of the United States Fish and Wildlife Service (USFWS) enacted between 1941 and 1959 specifically addressed allowances for, and restrictions on, commercial fisheries in areas within the boundaries of Glacier Bay National Monument. See 6 FR 1252 (March 4, 1941), 50 CFR part 222; 16 FR 2158 (1951), 50 CFR part 117; 24 FR 2053 et seq. (March 19, 1959), 50 CFR part 115.

Early NPS fishing regulations prohibited any type of fishing "with nets, seines, traps, or by the use of drugs or explosives, or for merchandise or profit, or in any other way than with hook and line, the rod or line being held in the hand * * *." 6 FR 1627 (March 26, 1941), 36 CFR 2.4. However, in conjunction with the previously mentioned USFWS regulations, the 1941 NPS regulations also stated: "commercial fishing in the waters of Fort Jefferson and Glacier Bay National Monuments is permitted under special regulations." *Id.* NPS regulations continued to reference allowance of commercial fishing in Glacier Bay National Monument through 1966 in accordance with special regulations approved by the Secretary of the Interior. See 20 FR 618 (1955), 36 CFR 1.4; and, 27 FR 6281 (July 3, 1962).

In 1966 NPS regulations were revised. The fishing regulations were revised in such a way, that unlike the earlier versions, they only specifically prohibited fishing for "merchandise or profit" in fresh waters of NPS areas. 31 FR 16653 (Dec. 29, 1966), 36 CFR 2.13(j)(2). Nevertheless, all unauthorized commercial activities, including commercial fishing, in all National Park System areas were generally prohibited by 36 CFR 5.3. at that time. See 31 FR 16661 (Dec. 29, 1966). In contrast to earlier NPS regulations, the 1966 regulations did not contain any special authorization for commercial fishing in Glacier Bay National Monument.

Provisions of the Alaska National Interest Lands Conservation Act (ANILCA), enacted in 1980, redesignated Glacier Bay National Monument as Glacier Bay National Park, and designated certain areas of the Park as wilderness. See 94 Stat 2371, sections 202 and 701. Commercial activities, other than those related to recreational and wilderness purposes, are prohibited by the Wilderness Act of 1964. 78 Stat. 892, section 4(c). Consequently, all commercial fishing was prohibited by statute in waters within designated wilderness in Glacier Bay National Park as of 1980. Marine waters within designated wilderness areas include upper Dundas Bay, Adams Inlet, Rendu Inlet, the Hugh Miller Inlet complex, and waters in and around the Beardslee Islands.

Where commercial fishing activities were intended to continue, ANILCA made specific provision for such activities, as in the case of the Dry Bay area of Glacier Bay National Preserve, the Malaspina Forelands area of Wrangell-St. Elias National Park and Preserve, and Cape Krusenstern National Monument. See 94 Stat. 2371, section 205. No such provision was made for Glacier Bay National Park.

Due to the consumptive nature of commercial fishing, NPS "Management Policies" in effect in 1983 stated: "Commercial fishing is permitted only where authorized by law." (1978). In addition, in 1978 the Department of the Interior directed USFWS to convene an Ad Hoc Fisheries Task Force to review NPS fisheries management. The NPS made the Task Force report available for public comments through publication in the **Federal Register** on February 25, 1980. 45 FR 12304. The Task Force concluded that the extraction of fish for commercial purposes was a nonconforming use of park resources which should be phased out.

A revision of general NPS regulations in 1983 included a prohibition on commercial fishing throughout marine and fresh waters of park areas systemwide. See 48 FR 30252 (June 30, 1983). The resultant, and current, commercial fishing regulation reads:

> (d) The following are prohibited: * * *
> (4) Commercial fishing, except where specifically authorized by Federal statutory law.

Id. at 30283; see also, 36 CFR 2.3(d)(4). Current NPS "Management Policies" reiterate previous policy statements and the 1983 regulation, and state: "Commercial fishing will be allowed only where specifically authorized by Federal law or treaty right." (1988).

Despite the 1983 servicewide prohibition on commercial fishing, amended Glacier Bay whale protection regulations issued in 1985 acknowledge commercial fishing operations in Glacier Bay proper. 36 CFR 13.65(b). The park's General Management Plan issued in 1984 is also inconsistent with the servicewide prohibition. It states:

> Traditional commercial fishing practices will continue to be allowed throughout most park and preserve waters. However, no new (nontraditional) fishery will be allowed by the National Park Service. Halibut and salmon fishing and crabbing will not be prohibited by the Park Service.
>
> Commercial fishing will be prohibited in wilderness waters in accordance with ANILCA and the Wilderness Act.

GMP at p. 51. "Traditional commercial fishing practices" is further clarified to include: "trolling, long lining and pot fishing for crab, and seining (Excursion Inlet only) in park waters * * *." *Id.* In addition, the Wilderness Final Environmental Impact Statement issued in 1988 makes reference to the continuance of commercial fishing in waters of the park outside of designated wilderness.

Proposed Action on Commercial Fishing

The NPS participated in public meetings on these issues held by the Citizens Advisory Commission on Federal Areas of the State of Alaska, during March 1990, in Juneau, Hoonah, Pelican, Gustavus, and Yakutat, Alaska. Based upon an internal review and public input, the NPS has determined that the equitable solution to resolving contradictions among nationwide regulations and service policies, and regionally originated regulations and management plans is to propose this rulemaking.

As an equitable approach to that end, the proposed regulations set up a specific exception to the servicewide prohibition on commercial fishing, allowing the continuance of commercial fishing by traditional methods previously identified in the GLBA GMP for a period of seven years. This will allow an adequate amount of time for commercial fishermen to amortize their equipment and/or adjust their operations to areas outside of park boundaries.

In addition, during this seven year period and depending upon availability of funding, the NPS will continue, and initiate, studies and research regarding fisheries within GLBA and the relationship of those fisheries to: Marine and terrestrial ecosystems preserved in the park; the scientific values of ecosystems and resources preserved in the park; and, other park purposes including visitor enjoyment. In the event that data from such studies assuredly indicate that certain levels and/or types of commercial fishing can compatibly coexist with conserving park resources in an unimpaired state, then the NPS may consider regulatory adjustments to allow for closely monitored commercial fisheries to continue at prescribed levels beyond the presently proposed interim allowance period. Such research is proposed to be conducted by the NPS and contracted entities, with the cooperation of other Federal agencies and the State of Alaska. Research projects may require closures of specific portions of the park's marine waters for comparative purposes.

The intended effect of these regulatory changes will be to enhance the protection of park resources in an unimpaired state in accordance with the NPS Organic Act and its amendments, and protect wilderness values as mandated by the Wilderness Act. In conjunction with fulfilling the mandates of Congress, the goal of conserving the marine ecosystem of GLBA in an unimpaired state, will protect an

ecological model against which, marine related activities in other areas may be measured.

Other Fishing Activities

In 1989 and 1990, the Alaska Department of Fish and Game specified areas within GLBA as open under "subsistence" salmon fishing permits. Subsistence salmon fishing activities in GLBA were not explicitly authorized until the 1989 State action. Unlike commercial fishing, these locationally distinct fishing uses are not currently existing or continuing.

ANILCA does not authorize subsistence use of GLBA. Section 203 provides that: "Subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this Act, in national monuments and parks." 94 Stat. 2383. Subsistence uses are not specifically permitted in section 202(1) of ANILCA, which established GLBA, whereas other sections establishing other national parks do intentionally contain language specifically permitting subsistence uses.

The legislative history of ANILCA clarifies that the lack of a subsistence provision for GLBA was deliberate and not merely an oversight. The Senate Committee on Energy and Natural Resources Report on Alaska National Interest Lands clearly stated: "Subsistence uses will be allowed within the preserve, but not in the park." Senate Report No. 96–413, 1979 VI. Committee Amendments, Title II—National Park System, Section 202(1): Glacier Bay National Park and National Preserve. In addition, the Congressional Record documents similar comments from the House of Representatives which state: "Subsistence uses * * * are not allowed in the park." and "Subsistence uses * * * are allowed in the preserve in accordance with the provisions of this Act." Congressional Record, House of Representatives, November 12, 1980, H 10539.

Accordingly, temporary regulations related to the Federal assumption of subsistence management responsibilities on Federal public lands pursuant to title VIII of ANILCA and promulgated on July 1, 1990, include a prohibition on subsistence uses in Glacier Bay National Park, as well as other similarly situation NPS areas. See 50 CFR 100.3. Any other Alaska native subsistence type fishing "rights," asserted on the basis of aboriginal use were also clearly eliminated by the Alaska Native Claims Settlement Act of 1971 (ANCSA). 43 U.S.C. 1601, et. seq. Congressional intent to preclude subsistence uses of Glacier Bay National Park, including subsistence fishing use, is clear.

Proposed Action on Other Fishing Activities

The proposed regulations effectuate the statutory preclusion of subsistence uses of Glacier Bay National Park by specifically prohibiting such uses.

The proposed regulation limits all non-commercial fishing to sport methods. Allowances for traditional sportfishing activities mandated in Alaska's national parks by ANILCA, and supported by NPS policy, will be unaffected. As provided in ANILCA, "sport fishing shall be authorized in such areas [all national parks and monuments in Alaska] by the Secretary and carried out in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska." 94 Stat. 2371, section 816(a).

Public Comments and Hearings

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed regulations to the address noted at the beginning of this rulemaking. In addition, as previously mentioned, the NPS will schedule public hearings on this proposed rulemaking, to be announced through separate **Federal Register** publication.

Drafting Information

The primary author of this regulation is the Subsistence Division, Alaska Regional Office, National Park Service.

Paperwork Reduction Act

The collections of information for the special park use permit contained in paragraph (c) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. The information is being collected to allow the superintendent to issue permits to allow commercial fishing vessels to enter park waters until December 31, 1997. Response is required to obtain a benefit in accordance with 16 U.S.C. 3. Public reporting burden for the collection of information for the special use permit is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 1100 L. Street, NW., Washington, DC 20013; and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Compliance With Other Laws

The National Park Service has determined that this document is not a "major rule" under Executive Order 12291 (February 19, 1991), 46 FR 13193. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the NPS has determined that the regulations proposed in this proposed rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require a preparation of a regulatory analysis.

The NPS has reviewed this rule as directed by E.O. 12360, "Government Actions and Interference with Constitutionally Protected Property Rights", to determine if this rule has "policies that have taking implications." The NPS has determined that this rule does not have takings implications because it allows an activity (commercial fishing) currently prohibited by NPS regulations to continue for a period of seven years, and implements legislation to prohibit subsistence uses.

Pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, the Service prepared an environmental assessment on these proposed regulations which led to a finding of No Significant Impact.

List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR chapter 1 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.;* 13.65(b) also issued under 16 U.S.C. 1361, 1531.

§ 13.65 [Amended]

2. Section 13.65 is amended by adding paragraphs (a) and (c) to read as follows:

(a) *Subsistence.* Subsistence uses are prohibited in, and the provisions of

subpart B of this part shall not apply to, Glacier Bay National Park.

* * * * *

(c) *Fishing.* Except as provided in this section, or in § 2.3 of this chapter, all fishing shall be done in accordance with applicable State and Federal laws and regulations, including State license requirements, and such non-conflicting laws and regulations are adopted as a part of these regulations.

(1) *Commercial fishing.* Commercial fishing in salt waters of Glacier Bay National Park is hereby permitted and exempted from the commercial fishing prohibition contained in § 2.3(d)(4) until December 31, 1997, subject to the following provisions:

(i) Fishing by other than the following methods is prohibited: trolling; long lining for halibut; seining in Excursion Inlet only; and, pot fishing for crab.

(ii) Commercial fishing without an annual nonfee special use permit issued by the Superintendent is prohibited. The potential entry permit requirements of § 13.65(b)(3)(iii) are separate and supplemental to special use fishing permits required by this paragraph.

(iii) No commercial fishing gear shall be left unattended for more than fourteen (14) consecutive days.

(iv) Commercial fishing within designated wilderness areas is prohibited. Maps showing designated wilderness areas are available from the Superintendent.

(v) Restrictions contained in § 13.65(c)(2) shall not apply to commercial fishing operations authorized herein.

(2) *Non-commercial fishing.* Fishing in fresh and salt waters other than by a hook and line, with the rod or line being closely attended; or by the following excepted methods in salt waters, is prohibited:

(i) Shrimp may be taken by pots and ring nets.

(ii) Crabs may be taken by pots, ring nets, diving gear, dip nets, and hooked or hookless hand lines.

(iii) Clams may be taken by rakes, shovels, and manually operated clam guns.

(iv) Other shellfish may be taken by pots, ring nets, diving gear, dip nets, hooked or hookless hand lines, rakes, shovels, and manually operated clam guns.

Dated: May 1, 1991.

Scott Sewell,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91-18515 Filed 8-2-91; 8:45 am]

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

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[5] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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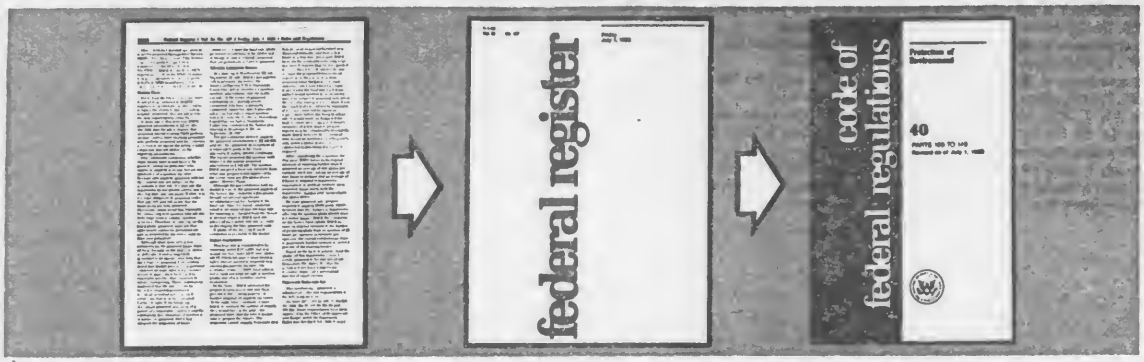

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