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Wednesday
March 11, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 7, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.
DIRECTIONS: North on 11th Street from Metro Center to corner of 11th and L Streets

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Presidential Documents

Title 3—

The President

Presidential Determination No. 92–17 of February 26, 1992

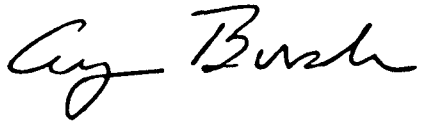
Drawdown from Department of Defense Stocks for Counternarcotics Assistance for Mexico

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the "Act"), I hereby determine that it is in the national interest of the United States to draw down defense articles from the stocks of the Department of Defense and defense services of the Department of Defense for the purpose of providing counternarcotics assistance to Mexico.

Therefore, I hereby direct the drawdown of up to $26 million of such defense articles from the stocks of the Department of Defense and defense services of the Department of Defense, for the purposes and under the authorities of Chapter 8 of Part I of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register.**



THE WHITE HOUSE,
Washington, February 26, 1992.

[FR Doc. 92–5842
Filed 3–9–92; 2:31 pm]
Billing code 3195–01–M

Editorial note: For the President's remarks at the opening session of the drug summit in San Antonio, TX, and the official declaration of the drug summit, see pp. 343 and 354 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Presidential Determination No. 92-18 of February 28, 1992

Certifications for Major Narcotics Producing and Transit Countries

Memorandum for the Secretary of State

By virtue of the authority vested in me by Section 481(h)(2)(A)(i) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2291(h)(2)(A)(i) ("the Act"), I hereby determine and certify that the following major narcotics producing and/or major narcotics transit countries/dependent territory have cooperated fully with the United States, or taken adequate steps on their own, to control narcotics production, trafficking and money laundering:

The Bahamas, Belize, Bolivia, Brazil, China, Colombia, Ecuador, Guatemala, Hong Kong, India, Jamaica, Laos, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Panama, Paraguay, Peru, Thailand, Venezuela.

By virtue of the authority vested in me by Section 481(h)(2)(A)(ii) of the Act, 22 U.S.C. 2291(h)(2)(A)(ii), I hereby determine that it is in the vital national interests of the United States to certify the following country:

Lebanon.

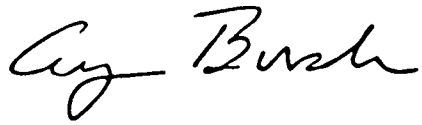
Information on this country as required under Section 481(h)(2)(D), 22 U.S.C. 2291(h)(2)(D), of the Act is enclosed.

I have determined that the following major producing and/or major transit countries do not meet the standards set forth in Section 481(h)(2)(A) of the Act, 22 U.S.C. 2291(h)(2)(A):

Afghanistan, Burma, Iran and Syria.

In making these determinations, I have considered the factors set forth in Section 481(h)(3) of the Act, 22 U.S.C. 2291(h)(3), based on the information contained in the International Narcotics Control Strategy Report of 1992. Because the performance of these countries varies, I have attached an explanatory statement in each case.

You are hereby directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 28, 1992.

[FR Doc. 92-5847
Filed 3-9-92; 2:42 p.m.]
Billing code 3195-01-M

Editorial note: For the President's remarks at the opening session of the drug summit in San Antonio, TX, and the official declaration of the drug summit, see pp. 343 and 354 of the *Weekly Compilation of Presidential Documents*.

Rules and Regulations

Federal Register
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Wednesday, March 11, 1992

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans, Interest Rates

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The SBA is amending the regulations so that lenders which make guaranteed loans of $50,000 or less are authorized to charge a higher interest rate. This will encourage lenders to make more smaller loans to eligible business concerns. On March 18, 1991, SBA had promulgated this rule for a pilot period which expired on September 30, 1991. In evaluating the effect of the rule SBA has decided that the change did encourage the making of more smaller loans. Accordingly, SBA is re-issuing the rule as a permanent authorization.

EFFECTIVE DATE: April 10, 1992.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: On March 18, 1991, SBA published a final rule in the **Federal Register** (56 FR 11354) which authorized lenders of SBA guaranteed loans of $50,000 and under to charge higher interest rates. Such rule was effective for loans approved through September 30, 1991, and SBA had promised to evaluate the effect of such new authority. The Agency has decided that the authorization to lenders to charge higher interest rates has resulted in a greater number of smaller loans to eligible small business concerns. Due to the success of the pilot, SBA is re-issuing the same rule as a permanent authority.

During the last six months of fiscal year 1991 the number of SBA guaranteed smaller loans totalled 1,553. This compares favorably with 1,340 smaller loans guaranteed during the first six months of the 1991 fiscal year, for an increase of 213 loans, or 15 percent in the number of smaller loans. However, the number of all SBA business loans usually increases by 10 to 20 percent in the second half of each fiscal year.

Many of the loans presently made in amounts up through $50,000 are made at interest rates below the SBA maximum permissible rate. Of the 1,553 such loans made during the second half of FY 1991, only 44 loans were made at a higher rate authorized during the pilot period. This indicates that authorizing a higher interest rate did not necessarily mean higher interest rates for small businesses as a group and, thus, did not have a deleterious effect on the vast majority of small business concerns which received loans under this program. Furthermore, it is SBA's strong belief that authorizing the possibility of a higher interest rate should enable additional small businesses to obtain access to credit. SBA's profile of its total loan portfolio demonstrates an increase of approximately 30 percent in the number of small loans made in FY 1991 as contrasted with FY 1990. SBA assumes that the pilot program may have been a contributing factor leading to such growth. In finalizing this rule, SBA will closely monitor the program to ascertain whether this assumption will prove correct and to insure that small businesses will not be adversely affected in the future by the higher authorized rate.

The law requires that the interest rate charged by an SBA participating lender be legal and reasonable. Within these parameters, the Agency has promulgated maximum interest rates which lenders must comply with in making guaranteed loans. Thus, for a variable rate loan with a maturity under seven years, the initial maximum interest rate cannot exceed 2¼ percentage points over a base rate (which is described in § 122.8–4(d) of SBA regulations). For a variable rate loan with a maturity of seven years or more, the initial maximum interest rate cannot exceed 2¾ percentage points over a base rate. A fixed rate loan uses the same percentage points over the prime rate. SBA is satisfied that when it increased the interest rate maximums for a six month pilot period which ended on September 30, 1991, lenders did make more smaller loans.

Accordingly, SBA is amending the regulations as a final rule (by re-issuing the earlier rule) so that for variable rate loans from $25,000 through $50,000 the lender is permitted to add one percentage point to the above-stated maximum. For variable rate loans less than $25,000, a lender is allowed to add two percentage points to the above maximum. For guaranteed loans carrying a fixed rate of interest, SBA, pursuant to § 122.8–3 of the regulations (13 CFR 122.8–3), will publish from time to time in the **Federal Register** the maximum rate permitted for smaller loans, adding the same percentage points described above. The use of these higher maximums for smaller loans is not mandated or required. SBA, as a matter of policy, prefers such rates to be as low as possible. In practice, the marketplace will determine the actual rate. The Agency is promulgating these changes to encourage lenders by giving them this option of a greater return for making smaller loans.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. ch. 35

For the purposes of Executive Order 12291, SBA certifies that this rule is not a major rule since the change is not likely to result in an annual effect on the economy of $100 million or more. This is because approximately 17 percent of the Agency's portfolio consists of smaller loans, so the effect of this rule on that portion would add only one or two percentage points to their already determinable borrowing costs and that incremental increase would not approach such dollar amount.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this final rule, though it does not constitute a major rule, will have a significant impact on a substantial number of small entities. As such, SBA offers the following Regulatory Flexibility analysis:

1. This rule to allow higher interest rates for smaller loans is being promulgated to encourage more participating lenders to make such loans to eligible businesses.

2. The legal basis for this regulation is sections 5(b) (6) and 7(a) of the Small

Business Act, as amended, 15 U.S.C. 634(b)(6) and 636(a).

3. This regulation will apply to small business borrowers who receive SBA guaranteed loans of $50,000 or less. Currently such loans account for approximately 17 percent of SBA's total loan portfolio. While it is not possible to determine the exact number of small business concerns which will receive such loans in the future, the purpose of this regulation is to increase the number of smaller loans to eligible concerns. As noted above, during the approximately six months the lenders were allowed to charge higher rates in fiscal 1991, there was an increase of 15 percent in the number of smaller loans. It is expected that this rule would be applicable to approximately 20 percent of SBA's borrowers.

4. This regulation will impose no new reporting, recordkeeping, or other compliance requirements.

5. There are no Federal rules which duplicate, overlap, or conflict with this rule.

6. Three alternative proposals were considered in promulgation of this rule. The first alternative was to allow lenders to retain the guaranty fee charged to borrowers, but the statute does not authorize this. The second alternative was to simplify the forms used for the small loan program. SBA has been pursuing this course and plans to continue the process. However, this by itself, will not substantially increase the number of small loans. The third alternative was for SBA to take no action. SBA decided that this was not acceptable since the trend towards smaller loans was not growing as quickly as the Agency had anticipated during the period in which there existed statutory authority for the lenders to retain one half of the guaranty fees. Therefore, SBA is promulgating this rule.

This final rule would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Loan programs/business, Small businesses.

In light of the foregoing, SBA amends part 122, chapter I, title 13, Code of Federal Regulations, as follows:

PART 122—BUSINESS LOANS

1. The authority citation for part 122 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2. Paragraph (g) of § 122.8-4 is revised to read as follows:

§ 122.8-4 Variable (fluctuating) rate.

* * * * *

(g) *Higher interest rates for smaller loans.* For a variable rate loan from $25,000 through $50,000, the maximum interest rate described above may be increased by one percentage point. For a variable rate loan of $25,000 or less, the maximum interest rate described above may be increased by two percentage points.

* * * * *

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

Dated: January 7, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-5353 Filed 3-10-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-61-AD; Amendment 39-8200; AD 92-07-04]

Airworthiness Directives; British Aerospace (BAe), Regional Aircraft Limited, HP 137Mk1, Jetstream Models 200, 3101, and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 90-12-14, which currently requires a modification to the detent ball catch of the flap and main landing gear selector valve on BAe, Regional Aircraft Limited, HP 137Mk1, Jetstream Models 200, 3101, and 3201 airplanes. This action will retain the modification required by AD 90-02-14 and will require repetitive inspections of the flap and main landing gear hydraulic emergency selector valve for excessive torque, and repair if excessive torque is found. The Federal Aviation Administration (FAA) has received several reports of the operators of the affected airplanes using excessive force to operate the flap and main landing gear hydraulic emergency selector valve handle. The actions specified by this AD are intended to prevent landing gear or flap extension malfunction during operation of the emergency hydraulic system.

DATES: Effective April 30, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 30, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from either British Aerospace, Regional Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628; and AP Precision Hydraulics Ltd., P.O. Box 1, Shaw Road, Speke, Liverpool, England, L24 9JY; Telephone (44-51) 486-2121; Facsimile (44-51) 486-2226. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain BAe, Regional Aircraft Limited, HP 137 Mkl, Jetstream Models 200, 3101, and 3201 airplanes was published in the Federal Register on October 29, 1991 (56 FR 55636). The action proposed to supersede AD 90-02-14 with a new AD that would 1) retain the modification to the detent ball catch of the flap and main landing gear hydraulic emergency selector valve that is required by AD 90-02-14; and 2) require repetitive inspections of the flap and main landing gear hydraulic emergency selector valve for excessive torque, and repair if excessive torque is found. The proposed actions would be done in accordance with BAe Alert Service Bulletin (SB) 29-A-JA881143, dated February 24, 1989; AP Precision Hydraulics Ltd. SB 8679-29-02, dated April 1991; and BAe SB 29-JA 901242, dated June 18, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the

proposed rule and no comments were received on the FAA's determination of the cost to the public. Since the issuance of the NPRM, British Aerospace has revised pages 1 and 4 of BAe SB 29-JA 901242, dated June 18, 1991, Revision 1, dated September 25, 1991; and AP Precision Hydraulics Ltd. has revised page 4 of SB 8679-29-02, dated April 1991, Revision 1, dated August 1991. The FAA has determined that these revisions to the service information should be incorporated into the AD. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the revisions in the service information described above and minor editorial corrections. The FAA has determined that these corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 233 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 hours per airplane to accomplish the required actions (approximately 4 hours for the actions of AD 90-02-14, which will be superseded by this action, and 1 hour for the additional actions), and that the average labor rate is approximately $55 an hour. Parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,075. This action only poses an additional cost impact of $12,815 (1 hour times $55 times 233 airplanes) than that which is already required by AD 90-02-14 (4 hours times $55 times 233 airplanes), which will be superseded by this action.

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 prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

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—AIRWORTHINESS DIRECTIVES

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); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 90-02-14, Amendment 39-6434 (55 FR 257, January 4, 1990), and adding the following new AD:

92-07-04 British Aerospace (BAe), Regional Aircraft Limited: Amendment 39-8200; Docket No. 91-CE-61-AD. Supersedes AD 90-02-14, Amendment 39-6434.

Applicability: HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent landing gear or flap extension malfunction during operation of the emergency hydraulic system, accomplish the following:

(a) Within the next 600 hours time-in-service (TIS) after February 5, 1990 (the effective date of AD 90-02-14, Amendment 39-6434), modify the detent ball catch of the emergency gear and flap extension hydraulic system selector valve in accordance with the instructions in BAe Alert Service Bulletin (SB) 29-A-JA881143, dated February 24, 1989.

(b) Upon the accumulation of 1,600 hours TIS, or within the next 200 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,800 hours TIS, accomplish the following:

(1) Modify the emergency gear and flap extension hydraulic system valve in accordance with paragraphs A.(1) through A.(5) of the "Accomplishment Instructions" in BAe SB 29-JA 901242, dated June 18, 1991, Revision 1, dated September 25, 1991.

(2) Measure for excessive torque in accordance with paragraphs A.(1) through A.(3) of the "Accomplishment Instructions" in AP Precision Hydraulics Ltd. SB 8679-29-02, dated April 1991, Revision 1, dated August 1991.

(i) If torque is not found excessive in accordance with paragraph A.(4) of the "Accomplishment Instructions" in AP Precision Hydraulics Ltd. SB 8679-29-02, dated April 1991, Revision 1, dated August 1991, prior to further flight, release the safety catch and perform paragraphs A.(7) through A.(10) of the "Accomplishment Instructions" in BAe SB 29-JA 901242, dated June 18, 1991, Revision 1, dated September 25, 1991.

(ii) If excessive torque is found in accordance with paragraph A.(4) of the "Accomplishment Instructions" in AP Precision Hydraulics Ltd. SB 8679-29-02, dated April 1991, Revision 1, dated August 1991, prior to further flight, recondition the selector valve as specified in paragraph A.(5) of the "Accomplishment Instructions" in AP Precision Hydraulics Ltd. SB 8679-29-02, dated April 1991, Revision 1, dated August 1991, release the safety catch, and perform paragraphs A.(7) through A.(10) of the "Accomplishment Instructions" in BAe SB 29-JA 901242, dated June 18, 1991, Revision 1, dated September 25, 1991.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(e) The inspections and modifications required by this AD shall be done in accordance with BAe Alert Service Bulletin 29-A-JA881143, dated February 24, 1989; BAe Service Bulletin 29-JA 901242, which incorporates the following pages:

Pages	Level	Date
2, 3, 5, and 6	Original	June 18, 1991.
1 and 4	Revision 1	Sept. 25, 1991.

and AP Precision Hydraulics Ltd. Service Bulletin 8679-29-02, which incorporates the following pages:

Pages	Level	Date
1, 2, and 3	Original	April 1991.
4	Revision 1	August 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 British Aerospace, Regional Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; and AP Precision Hydraulics Ltd., P.O. Box 1, Shaw Road, Speke, Liverpool, England, L24 9JY. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the

Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(f) This amendment (39-8200) supersedes AD 90-02-14, Amendment 39-6434.

(g) This amendment (39-8200) becomes effective on April 30, 1992.

Issued in Kansas City, Missouri, on March 5, 1992.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-5689 Filed 3-10-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-35-AD; Amendment 39-8103; AD 92-07-07]

Airworthiness Directives; Eiriavion Models PIK-20 and PIK-20B Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Eiriavion Models PIK-20 and PIK-20B sailplanes that are equipped with lead mass balance strips on the flaps and ailerons. This AD action will require inspections of the lead mass balance strips on the flaps and ailerons for cracks, and replacement if found cracked. The flap mass balance weight cracked on two of the affected sailplanes and separated from one of these sailplanes, which caused in-flight aileron control restrictions. The actions specified by this AD are intended to prevent loss of control of the sailplane because of interference to the ailerons.

EFFECTIVE DATE: April 30, 1992.

ADDRESSES: Information that is related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Program Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Eiriavion Models PIK-20 and PIK-20B sailplanes that are equipped with lead mass balance strips on the flaps and ailerons was published in the Federal Register on June 26, 1991 (56 FR 29198). The action proposed inspections of the lead mass balance strips on the flaps and ailerons, and replacement if found cracked.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 61 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,420.

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 prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-07-07 Eiriavion: Amendment 39-8103; Docket No. 91-CE-35-AD.

Applicability: Models PIK-20 and PIK-20B sailplanes (all serial numbers) that are equipped with lead mass balance strips on the flaps and ailerons, certificated in any category.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 500 hours TIS.

To prevent interference to the ailerons that could result in loss of control of the sailplane, accomplish the following:

(a) Remove the flaps and ailerons and inspect the lead mass balance strips for cracks using a 10-power magnifying glass.

Note 1: Particular attention should be given to the attachment rivets during the inspections specified in paragraph (a) of this AD.

Note 2: If the sailplane is not equipped with mass balance strips on the flaps and ailerons, then no further action is required by this AD.

(b) If cracking is detected in accordance with the inspections required by paragraph (a) of this AD, prior to further flight, fabricate and replace the mass balance strips in accordance with the following:

(1) Utilize strips made of malleable lead (not brittle or granular) that are the same weight and dimensions.

(2) Attach the strips at the same rivet holes as the cracked one and bond the lead in place with epoxy resin.

(3) Keep the counter bore holes to the minimum depth in accordance with the applicable service manual.

(4) Install washers to the rivets on the glass-reinforced plastic face.

(5) Do not increase the diameter of any rivet.

(6) Ensure that the final mass balance of each flap and aileron complies with the applicable service manual.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

(e) All persons affected by this directive may examine information that is related to this AD upon request to the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39-8103) becomes effective on April 30, 1992.

Issued in Kansas City, Missouri, on March 5, 1992.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-5688 Filed 3-10-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 558

Roxarsone et al; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for eight new animal drug applications (NADA's) from Solvay Animal Health, Inc., to A. L. Laboratories, Inc. FDA is also amending the regulations to remove references to the DOW Chemical Co. because it is no longer the Sponsor of any approved NADA's.

EFFECTIVE DATE: March 11, 1992.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION: Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to A. L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024:

NADA number	Ingredient	Product name
005-414	Roxarsone	REN-O-SAL Tablets.
007-616	Nitarsone	HISTOSTAT 50.
007-891	Roxarsone	3-NITRO Type A Articles.
011-116	Zoalene	ZOAMIX Coccidiostat.
012-680	Nystatin	MYCOSTATIN 20.
013-747	Zoalene	Zoalene 90.
046-666	Penicillin	Penicillin G Procaine Type A Articles.
093-025	Roxarsone	3-NITRO W.

The agency is amending the regulations in 21 CFR parts 510, 520, and 558 to reflect this change of sponsor.

In addition, FDA had been previously informed by Solvay Animal Health, Inc., and the Dow Chemical Co. of the transfer of NADA's 11-116 and 13-747 for zoalene to Solvay Animal Health, Inc. Inadvertently, several entries in § 558.15 (21 CFR 558.15) were not amended to replace the Dow Chemical Co. with Solvay Animal Health, Inc., as the sponsor. At this time, § 558.15 is amended to remove the Dow Chemical Co. and to add A. L. Laboratories, Inc., in its place. Since the Dow Chemical Co. is no longer the sponsor of any NADA's, 21 CFR 510.600 is amended to remove the entries "The Dow Chemical Co." and "025700."

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and Drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "The Dow Chemical Co.," and in the table in paragraph (c)(2) by removing the entry for "025700".

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

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

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

§ 520.2087 [Amended]

4. Section 520.2087 *Roxarsone soluble powder* is amended in paragraph (b) by removing the number "053501" and replacing it with "046573".

§ 520.2088 [Amended]

5. Section 520.2088 *Roxarsone tablets* is amended in paragraphs (a)(2) and (b)(2) by removing the number "053501" and replacing it with "046573".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

6. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.15 [Amended]

7. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in the table of paragraph (g)(2), under the heading "Drug sponsor," by removing "Dow Chemical Co." and "Solvay Animal Health, Inc." and replacing them with "A. L. Laboratories, Inc."

§ 558.58 [Amended]

8. Section 558.58 *Amprolium and ethopabate* is amended in the table of paragraph (d)(1), in entry (ii), under the heading "Limitations" in the 1st and 4th items and in entry (iii) under the heading "Limitations" in the 5th, 6th, 7th, and 10th items by removing "053501" and replacing it with "046573".

§ 558.95 [Amended]

9. Section 558.95 *Bambermycins* is amended in paragraphs (b)(1)(iii)(*b*), (b)(1)(iv)(*b*), (b)(1)(v)(*b*), (b)(1)(vii)(*b*), (b)(1)(ix)(*b*), (b)(1)(x)(*b*), and (b)(1)(xi)(*b*) by removing "053501" and replacing it with "046573".

§ 558.105 [Amended]

10. Section 558.105 *Buquinolate* is amended in paragraph (d)(1)(ix)(*b*) by removing "053501" and replacing it with "046573".

§ 558.195 [Amended]

11. Section 558.195 *Decoquinate* is amended in the table of paragraph (d), in the first entry, under the heading "Limitations" in the sixth item by removing "053501" and replacing it with "046573".

§ 558.311 [Amended]

12. Section 558.311 *Lasalocid* is amended in the table in paragraph (e)(1), in entry (ii), under the heading "Limitations" in the first, second, third, fourth and fifth items by removing "053501" and replacing it with "046573".

§ 558.355 [Amended]

13. Section 558.355 *Monensin* is amended in paragraphs (f)(1)(x)(*b*), (f)(1)(xi)(*b*), (f)(1)(xii)(*b*), (f)(i)(xv)(*b*), (f)(1)(xvi)(*b*), (f)(1)(xviii)(*b*), (f)(1)(xix)(*b*), (f)(1)(xx)(*b*), and (f)(1)(xxiii)(*b*) by removing "053501" and replacing it with "046573".

§ 558.363 [Amended]

14. Section 558.363 *Narasin* is amended in paragraph (c)(1)(v)(B) by removing "053501" and replacing it with "046573".

§ 558.369 [Amended]

15. Section 558.369 *Nitarsone* is amended in paragraph (a) by removing "053501" and replacing it with "046573".

§ 558.430 [Amended]

16. Section 558.430 *Nystatin* is amended in paragraph (a) by removing "053501" and replacing it with "046573".

§ 558.515 [Amended]

17. Section 558.515 *Robenidine hydrochloride* is amended in paragraph (d)(1)(ii)(*b*) by removing "053501" and replacing it with "046573".

§ 558.530 [Amended]

18. Section 558.530 *Roxarsone* is amended in paragraph (a)(2) by removing 053501" and replacing it with "046573".

§ 558.680 [Amended]

19. Section 558.680 *Zoalene* is amended in paragraph (a) by removing "053501" and replacing it with "046573".

Dated: March 4, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-5680 Filed 3-10-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE92

Reduction Because of Hospitalization

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: The Department of Veterans Affairs (VA) is correcting an error in its adjudication regulations on reductions of pensions of certain veterans receiving institutional care which appeared in the **Federal Register** on December 19, 1991 (56 FR 65848-51).

EFFECTIVE DATE: February 1, 1990.

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

SUPPLEMENTARY INFORMATION: On June 3, 1991, VA amended 38 CFR 3.551 by adding a new paragraph (h) (56 FR 25043-45). This amendment was made to implement section 8003 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, which amended 38 U.S.C. 5503 (formerly 3203) to require the reduction of pension benefits to $90 per month when a veteran, who has neither spouse nor child, is receiving Medicaid-covered nursing home care. When publishing the subsequent amendment to § 3.551 on December 19, 1991, VA failed to redesignate the paragraph described above as new paragraph (i).

PART 3—[CORRECTED]

The following correction is made to FR Doc. 91-30274 published December 19, 1991 (56 FR 65848):

1. In the third column on page 65849, the amendatory language for number 4 is corrected to read as follows:

"4. In § 3.551 paragraphs (d), (f), (g) and (h) are redesignated as (f), (g), (h), and (i) respectively, a new paragraph (d) is added, paragraph (e) is revised, and the introductory text of redesignated paragraph (h)(1) is revised to read as follows:"

Dated: March 3, 1992.

B. Michael Berger,

Director, Records Management Service.

[FR Doc. 92-5375 Filed 3-10-92; 8:45 am]

BILLING CODE 8320-01-M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule; revised appendix.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the official Federal Poverty Income Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: March 11, 1992.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2571; 202-863-1823.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2) requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income. Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the official Federal Poverty Income Guidelines as set by the Office of Management and Budget. Responsibility for revision of the official Federal Poverty Income Guidelines was shifted in 1982 from the Office of Management and Budget to the Department of Health and Human Services. The revised figures for 1992 equivalent to 125% of the current official Poverty Income Guidelines as set out at 57 FR 5455-57 (Feb. 14, 1992) are set forth below:

List of Subjects in 45 CFR Part 1611

Legal services.

PART 1611—ELIGIBILITY

1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of part 1611 is revised to read as follows:

APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION POVERTY GUIDELINES*

Size of family	All States but Alaska and Hawaii [1]	Alaska [2]	Hawaii [3]
1	$8513	10625	9788
2	11488	14350	13213
3	14463	18075	16638
4	17438	21800	20063
5	20413	25525	23488
6	23388	29250	26913
7	26363	32975	30338
8	29338	36700	33763

* The figures in this table represent 125% of the poverty income level by family size as determined by the Department of Health and Human Services.

[1] For family units with more than eight members, add $2975 for each additional member in a family.

[2] For family units with more than eight members, add $3725 for each additional member in a family.

[3] For family units with more than eight members, add $3425 for each additional member in a family.

Dated: March 3, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92-5605 Filed 3-10-92; 8:45 am]

BILLING CODE 7950-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1 and 43

[CC Docket No. 91-22; FCC 91-424]

International Common Carriers' Annual Traffic and Revenue Reports

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule making process revises the annual traffic and revenue information international carriers file. The section of the Rules providing for these reports is revised. Some requirements are eliminated and others are reduced. Service with three international points is added to the reports. A filing manual will be issued describing the detailed reporting requirements.

This document modernizes, simplifies and streamlines reporting requirements and eliminates obsolete requirements.

EFFECTIVE DATE: May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Stanley, Industry Analysis Division, Common Carrier Bureau, (202) 632-0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 91-424, adopted December 24, 1991, and released February 12, 1992.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of the Report and Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21 Street, NW., Washington, DC 20036.

Paperwork Reduction

Public reporting burden for the collection of information is estimated to average 12.1 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information and Records Management Branch, room 416, Paperwork Reduction Project, Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project, (3060-0106), Washington, DC 20503.

Summary of Report and Order

1. The Report and Order revises § 43.61 of the Commission's Rules and Regulations that contain requirements for international common carriers' annual traffic and revenue reports. It restates the existing detailed reporting requirements in generic terms so that the requirements can be more easily adapted to changes in the international communications industry. It directs the Chief of the Common Carrier Bureau to issue a filing manual, to be adopted after a notice and comment period, containing the detailed reporting instructions. The manual will eliminate information that is no longer necessary and services that are obsolete.

2. The Report and Order expands the scope of Section 43.61 to include information on service that is not currently submitted by carriers. The points are Canada, Mexico, and St. Pierre-Miquelon.

3. The Report and Order substantially reduces the information that pure resellers include in their reports. In order to reduce the reporting burden on resellers but still collect relevant information on their international service, pure resellers will be required to file summary data of their international service rather than the detailed data submitted by other carriers.

4. Finally, the Report and Order adds two reporting categories for private line service to reduce confusion over the information currently submitted. It also includes a definition of minutes of telephone service to be used by all carriers to compile their reports. This insures uniformity of the reported data.

Ordering Clauses

According, *it is ordered* that pursuant to authority contained in sections 4(i), 4(j), 219, 220(a), 303(r), 403 and 404 of the Communications Act of 1934, as amended, 47 U.S.C., 154(i), 154(j), 219, 220(a), 303(r), 403 and 404, that parts 0, 1 and 43 are amended as set forth below.

It is further ordered that the Chief, Common Carrier Bureau is delegated authority to issue and subsequently revise a filing manual for the annual international communications service traffic and revenue reports.

It is further ordered that this *Report and Order* will be effective May 1, 1992.

It is further ordered that this proceeding *is terminated.*

List of Subjects

47 CFR Part 0

Reporting and recordkeeping requirements.

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

Telegraph and telephone carriers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Parts 0, 1 and 43 of title 47 of the Code of Federal Regulations are amended as follows:

PART 0—[AMENDED]

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1098, as amended; 47 U.S.C. 155.

2. Part 0.291(h) is revised to read as follows:

§ 0.291 Authority delegated.

* * * * *

(h) Authority concerning Rule Making and investigatory proceedings. The Chief, Common Carrier Bureau shall not have authority to issue notices of Proposed Rulemaking, notices of inquiry or to issue reports or orders arising from either of the foregoing, except that the Chief, Common Carrier Bureau shall have authority to issue and revise a manual on the details of the reporting requirements for international common carriers set forth in § 43.61(d) of this chapter.

* * * * *

PART 1—[AMENDED]

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, implement 5 U.S.C. 552 unless otherwise noted.

4. Section 1.790 is revised to read as follows:

§ 1.790 Reports relating to traffic by international carriers.

Carriers shall file periodic reports regarding international point-to-point

traffic as required by part 43 of this chapter.

PART 43—[AMENDED]

5. The authority citation for part 43 continues to read as follows:

Authority: Secs. 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

6. Section 43.61 is revised to read as follows:

§ 43.61 Reports of international telecommunications traffic.

(a) Each common carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and off-shore U.S. points and any country or point outside that area shall file a report with the Commission not later than July 31 of each year for service actually provided in the preceding calendar year.

(b) The information contained in the reports shall include actual traffic and revenue data for each and every service provided by a common carrier, divided among service billed in the United States, service billed outside the United States, and service transiting the United States.

(c) Each common carrier shall submit a revised report by October 31 identifying and correcting any inaccuracies included in the annual report exceeding five percent of the reported figure.

(d) The information required under this section shall be furnished in conformance with the instructions and reporting requirements prepared under the direction of the Chief, Common Carrier Bureau, prepared and published as a manual.

[FR Doc. 92-5583 Filed 3-10-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-264; RM-6933, RM-6812, RM-6741]

Radio Broadcasting Services; Chariton, Bloomfield and Melcher, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C3 for Channel 292A at Bloomfield, Iowa and modifies the license of Station KXOF-FM, Bloomfield, Iowa, to specify operation of Channel 292C3. This document also substitutes Channel 287C2 for Channel 288A at Chariton, Iowa, and modifies the license of Station KELR-FM, Chariton, Iowa, to specify operation on Channel 287C2. See 54 FR 28077, published July 7, 1989. Finally, this document dismisses a petition for rule making for a Channel 291A allotment for Melcher, Iowa. The reference coordinates for the Channel 292C3 allotment at Bloomfield, Iowa, are 40-44-40 and 92-22-19. The reference coordinates for the Channel 287C2 allotment at Chariton, Iowa, are 41-00-50 and 93-17-23. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 20, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-264, adopted February 27, 1992, and released March 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 288A and adding Channel 287C2 at Chariton, and removing Channel 292A and adding Channel 292C3 at Bloomfield.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 92-5725 Filed 3-10-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-555; RM-7453]

Radio Broadcasting Services; Mineral Wells and Winters, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jerry Snyder and Associates, Inc., substitutes Channel 240C1 for Channel 240C3 at Mineral Wells, Texas, and modifies the license of Station KYXS-FM to specify operation on the higher powered channel. To accommodate the allotment of Channel 240C1 to Mineral Wells, the Commission also substitutes Channel 241A for Channel 240A at Winters, Texas. See 55 FR 49098, November 26, 1990. Both channels can be allotted in compliance with the Commission's minimum distance separation requirements. Channel 240C1 at Mineral Wells has a site restriction of 14.2 kilometers (8.8 miles) south to accommodate petitioner's desired site. The coordinates for Channel 240C1 are 32-41-06 and 98-09-32. Channel 241A can be allotted to Winters at the city reference coordinates. The coordinates for Channel 241A are 31-57-36 and 99-57-54. Mexican concurrence has been obtained for the allotment of Channel 241A at Winters, Texas. With this station, this proceeding is terminated.

EFFECTIVE DATE: April 20, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-555, adopted February 25, 1992, and released March 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 240C3 and adding Channel 240C1 at Mineral Wells, and by removing Channel 240A and adding Channel 241A at Winters.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-5722 Filed 3-10-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-323; RM-7850]

Radio Broadcasting Services; Clarksville, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Clarksville Broadcasting Company, Inc., licensee of Station WLCQ-FM, Channel 252A, Clarksville, Virginia, substitutes Channel 252C3 for Channel 252A at Clarksville, and modifies Station WLCQ-FM's license to specify operation on the higher powered channel. See 56 FR 58864, November 12, 1991. Channel 252C3 can be allotted to Clarksville in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.3 kilometers (11.4 miles) northwest to accommodate Clarksville Broadcasting's desired site. The coordinates for Channel 252C3 are 36-42-30 and 78-44-00. With this section, this proceeding is terminated.

EFFECTIVE DATE: April 20, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is synopsis of the Commission's Report and Order, MM Docket No. 91-323, adopted February 26, 1992, and released March 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 252A and adding 252C3 at Clarksville.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-5721 Filed 3-10-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Ost Docket No. 1; Amdt. 1-248]

Delegations of Authority to the Commandant, U.S. Coast Guard; the Maritime Administrator; and the Research and Special Programs Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard; Administrator, Maritime Administration; and Administrator, Research and Special Programs Administration, the authority vested in him by the Oil Pollution Act of 1999 (OPA 90) and additional authority vested in the President by OPA 90 and delegated to him by Executive Order No. 12777. The purpose of this rulemaking is to revise, remove and amend sections of 49 CFR part 1 to reflect these delegations.

EFFECTIVE DATE: March 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Sullivan, G-MS-1, (202) 267-6404, Oil Pollution Act (OPA 90) Staff, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

Mr. Steven Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C-50 (202) 366-9306, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In response to several major oil spills, Congress passed OPA 90 (Pub. L. 101-380, August 18, 1990, 104 Stat. 484) in order to prevent, respond to, and pay for oil and hazardous substance spills. Prevention includes containment. OPA 90 increases the liability of ship operators and owners for oil spill clean up and damage costs, sets up an oil spill trust fund for additional spill costs, mandates double hulls for oil tankers and barges, and strengthens federal authority to direct cleanups of oil spills. The Secretary receives increased authority under OPA 90 and Executive Order 12777 to promulgate regulations to protect the environment from oil and hazardous substance spills during transportation by vessels, motor vehicle, railway or pipeline. With two exceptions, the authority given directly under OPA 90 or in E.O. 12777 is delegated to the Commandant, United States Coast Guard; Administrator, Maritime Administration; and Administrator, Research and Special Programs Administration. Those exceptions are: (1) The authority under E.O. 12777 to require, review, and approve response plans for pipelines, motor carriers, and railways; and (2) the authority under OPA 90 to adjust liability limits for vessels, deepwater ports, pipelines, motor carriers, and railways. Both will be delegated at a later date.

Because this rulemaking, which makes changes that are necessary to reflect the delegations under OPA 90 and E.O. 12777, relates to Departmental management, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**. Therefore, this final rule was effective March 3, 1992, the date the delegations were signed.

The revisions, removals and additions to the regulations in 49 CFR part 1 are organized in the following manner:

Subsections 1.44(o)(6) and 1.44(p) are removed because they refer to authority under Executive Orders that are repealed by Executive Order 12777.

Section 1.46(1) is revised by removing references to repealed sections of the Federal Water Pollution Control Act (33 U.S.C. 1321) and by making reference to the sections added by the Oil Pollution Act of 1990 (104 Stat. 484).

Section 1.46(m) is revised because it contained authority under repealed Executive Orders. The revised section 1.46(m) delegates authority given to the Secretary by the President in Executive Order 12777.

Section 1.46(z) is revised by removing references to sections of the Outer Continental Shelf Lands Act that have been repealed by OPA 90.

Section 1.46(ll) is revised because it contained authority under a repealed Executive Order. The revised paragraph reflects the delegation of authority given to the Secretary by OPA 90.

Sections 1.53(k) and 1.66(y) are added to reflect new authority under Executive Order 12777 and OPA 90.

In accordance with the Secretary's authority, the following changes are made.

List of Subjects in 49 CFR Part 1

Authority delegations, (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

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

Authority: 49 U.S.C. 322.

§ 1.44 [Amended]

2. Section 1.44 is amended by removing and reserving paragraphs (o)(6) and (p).

3. Section 1.46 is amended by revising paragraphs (l), (m), (z), and (ll) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(l) Carry out the functions vested in the Secretary by sections 104(i), 104(j), 311(b), 311(j) (2) and (3), 311(m)(2), 312, and 402(b)(6) of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by the Oil Pollution Act of 1990 (August 18, 1990; Pub L. 101–380; 104 Stat. 484), and sections 4202(b) (2) and (3) of the Oil Pollution Act of 1990.

(m) Carry out the functions assigned to the Secretary by Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757) in sections 1(b), 2(a), 2(b)(2), 2(c), 2(d)(2), 2(e)(2), 2(f), 2(g)(2), 3, 5(a)(2), 5(b)(1), 5(b)(3), 6, 7(a) (1) and (3), 7(b), 7(c), 7(d), 8(d), 8(f), 8(g), 8(h), 9, and 10(c), excepting that portion of section 2(b)(2) relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from pipelines, motor carriers, and railways; and further excepting that portion of 2(d)(2) relating to response plans concerning discharges from pipelines, motor carriers, and railways.

* * * * *

(z) Carry out the functions vested in the Secretary by the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et. seq.*), as amended, title VI of the Outer Continental Shelf Lands Act Amendments of 1978 (September 18, 1978; Pub. L. 95–372; 92 Stat. 629), except as delegated by § 1.53(a)(6).

* * * * *

(ll) Carry out the functions vested in the Secretary by sections 1015(b), 1016, 4107(b), 4109, 4110, 4111, 4114(a), 4115(b), 4115(e), 4116(c), 4118, 4203, 5002(c)(4), 5002(i), 5002(k), 5003, 5004, 5005(a)(5), 7001(a), 7001(b)(2) and 7001(c) (6) and (11) of the Oil Pollution Act of 1990 (August 18, 1990; Pub. L. 101–380; 104 Stat. 484). (See 49 CFR 1.53 and 1.66).

* * * * *

4. Section 1.53 is amended by adding a new paragraph (k) to read as follows:

§ 1.53 Delegations to the Administrator of the Research and Special Programs Administration.

* * * * *

(k) Carry out the functions and exercise the authority delegated to the Secretary in Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757) in sections 2(b)(2) relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges from, and to contain oil and hazardous substances in, pipelines, motor carriers, and railways. (See 49 CFR part 1.46 and 1.66)

5. Section 1.66 is amended by adding new paragraph (y) to read as follows:

§ 1.66 Delegations to the Administrator of the Maritime Administration

* * * * *

(y) Carry out the functions vested in the Secretary by the Oil Pollution Act of 1990 (August 18, 1990; Pub. L. 101–380; 104 Stat. 484) in sections 4115(f) relating to vessel financing and 4117 relating to a feasibility study of an oil pollution prevention program. (See 49 CFR 1.46 and 1.53).

Issued on: March 3, 1992.

Andrew H. Card, Jr.,

Secretary.

[FR Doc. 92–5378 Filed 3–10–92; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 920357–2057]

Summer Flounder Fishery

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

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule that contains several provisions to enhance conservation of summer flounder and protect threatened and endangered sea turtles is in effect through March 5, 1992. The emergency interim rule provides for minimum net mesh-size restrictions for the trawl fishery, exemptions to the minimum mesh-size restriction, and framework management for the conservation of sea turtles taken incidentally in the summer flounder fishery. The Secretary of Commerce (Secretary) extends the emergency interim rule for an additional 90 days from March 6, through June 3, 1992, because conditions warranting the emergency still exist.

EFFECTIVE DATE: The interim regulations amending part 625 published on December 5, 1991 (56 FR 63685, as corrected at 56 FR 66603, December 24, 1991; revised at 57 FR 213, January 3, 1992; and corrected at 57 FR 4248, February 4, 1992) are extended from March 6, 1992 through June 3, 1992.

ADDRESSES: Copies of the environmental assessment may be obtained from Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–3799.

FOR FURTHER INFORMATION CONTACT: Richard G. Seamans, Jr., Senior Resource Policy Analyst, 508–281–9244, or Phil Williams, NMFS National Sea Turtle Coordinator, 301–713–2322.

SUPPLEMENTARY INFORMATION: Under section 305 (c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule (56 FR 63685; December 5, 1991) that implemented (1) A minimum mesh size restriction for nets in the trawl fishery for summer flounder, (2) several exemptions from the minimum mesh size restriction, and (3) framework measures to protect sea turtles that sometimes occur as bycatch or may be affected by the summer flounder trawl fishery. The emergency rule was effective from December 2, 1991, through March 5, 1992. Since then, a correction to the rule (56 FR 66603, December 24, 1991), a notice to revise tow-time requirements (57 FR 213; January 3, 1992) and a correction to that notice (57 FR 4248; February 4, 1992) have also been published in the **Federal Register**. With the agreement of the Mid-Atlantic Fishery Management Council, the Secretary extends the emergency interim rule for another 90 days under section 305(c)(3)(B) of the Magnuson Act, because conditions warranting the emergency still exist. The emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. This rule was reported to the Director of the Office of Management and Budget with an explanation of why following

procedures of that order was not possible.

List of Subjects in 50 CFR Part 625

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: March 5, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-5645 Filed 3-5-92; 5:09 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: NMFS has established a directed fishing allowance and is prohibiting directed fishing for Pacific ocean perch in the Central and Western Regulatory areas of the Gulf of Alaska (GOA). This action is necessary to prevent the total allowable catch (TAC) for Pacific ocean perch in the Central and Western Regulatory areas from being exceeded. The intent of this action is to promote optimum use of groundfish while conserving Pacific ocean perch stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), March 6, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by the Secretary of Commerce under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery is TAC, as defined at § 672.20(a)(2). Under the final notice of specifications (57 FR 2844, January 24, 1992), the amount apportioned to Pacific ocean perch for the Western Regulatory area was 1,470 metric tons (mt) and for the Central Regulatory area was 1,561 mt.

Under § 672.20(c)(2), the Director, Alaska Region, NMFS (Regional Director), has determined that the amount of Pacific ocean perch apportioned to both the Central and the Western Regulatory areas will soon be reached. The Regional Director has established a directed fishing allowance of 1,400 mt for the Central Regulatory area and 1,400 mt for the Western Regulatory area. The Regional Director is setting aside the remaining 70 mt in the Western Regulatory area and the remaining 161 mt in the Central Regulatory area of the current apportionment as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishery soon will catch its allowance. Consequently, under § 672.20(c)(2), NMFS is prohibiting directed fishing for Pacific ocean perch in the Central and Western Regulatory areas, effective from 12 noon, A.l.t., March 6, 1992, through 12 midnight, A.l.t., December 31, 1992.

After this closure, in accordance with § 672.20(g)(3), amounts of Pacific ocean perch retained on board a vessel in the Central or Western Regulatory area may not equal or exceed 20 percent of the amount of all other fish species retained at the same time by the vessel during the same trip, as measured in round weight equivalents.

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: March 6, 1992.

David S. Crestin,

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

[FR Doc. 92-5707 Filed 3-6-92; 1:48 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Rescission of closure to directed fishing.

SUMMARY: NMFS is rescinding a prohibition of directed fishing. This action is necessary to ensure optimum use of the first seasonal allowance of Pacific halibut to the domestic annual processing "other fishery." It is intended to accomplish the goals and objectives of the North Pacific Fishery Management Council.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 7, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands (BSAI) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations set forth at 50 CFR 611.93 and 50 CFR part 675.

Regulations appearing at § 675.21(a)(5), establish the secondary prohibited species catch (PSC) limit of Pacific halibut caught while conducting any domestic annual harvest trawl fishery for groundfish in the BSAI during any fishing year as an amount of Pacific halibut equivalent to 5,333 metric tons (mt). Further, § 675.21(b) provides that the PSC limit of Pacific halibut may be apportioned to fishery categories on a seasonal basis. Under § 675.21(b)(4), one such category is the domestic annual processing "other fishery." The final notice of initial specifications of BSAI groundfish for 1992 (57 FR 3952, February 3, 1992) established the 1992 first quarter Pacific halibut bycatch allowance in the DAP "other fishery" as 1,774 mt. Previously, under § 675.21(c)(2)(iv), the Regional Director determined that U.S. fishing vessels using trawl gear caught the 1992 first seasonal PSC allowance of Pacific halibut in the BSAI while participating in the DAP "other fishery" (57 FR 6203, February 21, 1992). Directed fishing was prohibited for the following species and gear: (A) Pollock by trawl vessels using other than pelagic trawl gear, and (B) Pacific cod by vessels using trawl gear. Current estimations of the prohibited species bycatch of Pacific halibut in the DAP "other fishery" category are less than the 1,774 mt first season allowance. Therefore, NMFS is rescinding the action published on February 21, 1992 (57 FR 6203). This action rescinds the prohibition to directed fishing for: (A) Pollock by trawl vessels using other than pelagic trawl gear, and (B) Pacific cod by vessels using trawl gear. This

recision is effective as of 12 noon A.l.t. March 7, 1992.

Classification

This action is taken under §§ 675.20(a)(9) and 675.20(c) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

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

Dated: March 6, 1992.

David S. Crestin,

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

[FR Doc. 92-5706 Filed 3-6-92; 1:48 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Closure of directed fishing.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the Bering Sea subarea (BS). This action is necessary to prevent the first allowance of the total allowable catch (TAC) for pollock in the BS subarea from being exceeded. The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), March 6, 1992, through 12 noon, A.l.t., June 1, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone in the Bering Sea and Aleutian Islands Area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and part 675.

The amount of a species or species group apportioned to a fishery is defined as TAC, as stated in § 675.20(a)(2). Under the final notice of initial specifications (57 FR 3952, February 3, 1992), the TAC of pollock for the BS was established as 1,300,000 metric tons (mt). Under § 675.20(a)(3), 15 percent of the TAC (195,000 mt) was apportioned to a non-specific reserve, leaving an initial TAC of 1,105,000 mt. The initial TAC was allocated between the roe and non-roe seasons. The roe season received 442,000 mt and the non-roe season received 663,000 mt.

In accordance with § 675.20(a)(8), the Director of the Alaska Region, NMFS, has determined that the first allowance of pollock in the BS has been taken and NMFS is prohibiting directed fishing for pollock in that area, effective from 12 noon, Alaska local time (A.l.t.), March 6, 1992, through 12 noon, A.l.t., June 1, 1992.

After this closure, in accordance with § 675.20(h), vessels may not retain at any time during a trip an amount of pollock equal to or greater than 20 percent of the aggregate catch of the other fish retained at the same time during the same trip as measured in round weight equivalents.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: March 5, 1992.

David S. Crestin,

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

[FR Doc. 92-5627 Filed 3-5-92; 4:37 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 48
Wednesday, March 11, 1992

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-06-AD]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would supersede AD 91-23-04, which currently requires a one-time modification of the engine power lever flight idle detent arms and cover assembly on certain Fairchild Aircraft SA226 and SA227 series airplanes. SA226 series airplane service information that is required to accomplish AD 91-23-04 has been updated, and the Federal Aviation Administration (FAA) has determined that this revised service information should be incorporated. The proposed action would retain the requirements of AD 91-23-04, and would incorporate the revised service information for the SA226 series airplanes. The actions specified by the proposed AD are intended to prevent improper operation of the engine power lever flight idle detent arms, which could result in loss of control of the airplane.

DATES: Comments must be received on or before June 1, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-06-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Ms. Alma Ramirez-Hodge, Aerospace Engineer, Fort Worth Airplane Certification Office, FAA, Fort Worth Texas 76193-0150; Telephone (817) 624-5147.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered 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 that summarizes 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 postcard on which the following statement is made: "Comments to Docket 92-CE-06-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-06-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive (AD) 91-23-04, Amendment 39-8073 (56 FR 57236, November 8, 1991), currently requires a one-time modification of the engine power lever flight idle detent arms and cover assembly on certain Fairchild Aircraft SA226 and SA227 series airplanes. The action is accomplished in accordance with the instructions in Fairchild Service Bulletin (SB) No. 226-76-008 or Fairchild SB No. 227-76-002, both issued January 15, 1991, revised May 9, 1991. AD 91-23-04 was issued because of an accident involving a Fairchild Model SA226-T(B) airplane in which the pilot lost control of the airplane during initial climb after takeoff. The subsequent investigation revealed significant wear on each power lever reverse gate detent arm. The wear was located on the portion of the arm that contacts the flight idle stop, which is designed to prevent inadvertent travel of the power lever into the beta and reverse ranges. In addition, FAA service difficulty records indicate several reports of worn power lever flight idle detent arms over the last five years. Service records also show that a significant number of detent arms on the affected airplanes have been replaced because of excessive wear.

Since AD 91-23-04 has become effective, the manufacturer has revised Fairchild SB No. 226-76-008. This revision incorporates early style detent arm configurations that were not previously included in this bulletin.

After examining the circumstances, the FAA has determined that AD action should be taken to incorporate the revised service information and continue to prevent improper operation of the engine power lever flight idle detent arms, which could result in loss of control of the airplane.

Since the condition described is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, the proposed AD would supersede AD 91-23-04 with a new AD that would (1) retain the modification of the engine power lever flight idle detent arms and cover assembly required by AD 91-23-04; and (2) incorporate Fairchild SB No. 226-76-008, issued January 15, 1991, revised December 17, 1991.

The FAA estimates that 770 airplanes in the U.S. registry would be affected by

the proposed AD, that it would take approximately 8 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $214 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $503,580. AD 90-13-12, which would be superseded by the proposed action, required the same actions as is proposed, except for a revision in the service of information. Therefore, there would be no additional cost impact of the proposed AD on U.S. operators than that which is already required by AD 90-13-12.

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 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) 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 regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

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—AIRWORTHINESS DIRECTIVES

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); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91-23-04, Amendment 39-8073 (56 FR 57236, November 8, 1991), and adding the following new AD:

Fairchild Aircraft (formerly Swearingen Aircraft Corporation): Docket No. 92-CE-06-AD. Supersedes AD 91-23-04, Amendment 39-8073

Applicability: The following model and serial numbered airplanes, certificated in any category:

Model	Serial numbers
SA226-T	T201 through T275, and T277 through T291.
SA226-T(B)	T(B)276, and T(B)292 through T(B)417.
SA226-AT	AT001 through AT074.
SA226-TC	TC201 through TC419.
SA227-TT	TT421 through TT541.
SA227-AT	AT423 through AT695.
SA227-AC	AC406, AC415, AC416, and AC420 through AC777.
SA227-BC	BC762, BC764, BC766, and BC777.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane because of improper operation of the power lever flight idle detent arms, accomplish the following:

(a) Modify the power level detent arms and cover assembly in accordance with the instructions in Fairchild Service Bulletin (SB) No. 226-76-008, issued January 15, 1991, revised December 17, 1991; or Fairchild SB No. 227-76-002, issued January 15, 1991, revised May 9, 1991, whichever is applicable.

(b) If the modification required by paragraph (a) of this AD has been accomplished in accordance with either Fairchild SB No. 226-76-008 or Fairchild SB No. 227-76-002, both issued January 15, 1991, revised May 9, 1991, whichever is applicable, then no further action is required by this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, FAA, Fort Worth, Texas 76193-0150. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth, Airplane Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 91-23-04, Amendment 39-8073.

Issued in Kansas City, Missouri, on March 5, 1992.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-5697 Filed 3-10-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 357

[Docket No. 79N-0379]

RIN 0905-AA06

Discussion of Appropriate Testing Procedures for Exocrine Pancreatic Insufficiency Drug Products; Workshop and Reopening of the Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Workshop and reopening of the administrative record.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record and announcing that a workshop will be held to discuss testing procedures that will be required as part of new drug applications for all exocrine pancreatic insufficiency drug products. FDA is holding this workshop after considering public comments on the agency's notice of proposed rulemaking for over-the-counter (OTC) exocrine pancreatic insufficiency drug products that was published in the **Federal Register** of July 15, 1991 (56 FR 32282). The meeting will be structured to discuss the specific topics and to seek answers to the specific questions listed in this notice.

DATES: The meeting will be held on April 23, 1992, at 8:30 a.m. The meeting will last 1 day. Relevant data and notice of participation by April 10, 1992. Administrative record to remain open until July 23, 1992. Comments regarding matters raised at the meeting by July 23, 1992.

ADDRESSES: Relevant data, notice of participation, and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Meeting to be held in Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen Cothran, or Diana Hernandez, Center for Drug Evaluation and Research (HFD-210), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8888.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 21, 1979 (44 FR 75666), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC exocrine pancreatic insufficiency drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 21, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by May 21, 1980.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on display in the Dockets Management Branch (address above) after deletion of a small amount of trade secret information. Only five comments were submitted in response to the publication of the advance notice of proposed rulemaking.

In the Federal Register of November 8, 1985 (50 FR 46594), the agency published a notice of proposed rulemaking to establish a monograph for OTC exocrine pancreatic insufficiency drug products based on the Panel's recommendations and the agency's response to comments submitted following publication of the advance notice of proposed rulemaking. In that document, the agency accepted the Panel's recommendation that exocrine pancreatic insufficiency drug products be available as OTC drug products and proposed the conditions under which these drug products would be generally recognized as safe and effective and not misbranded. In response to this publication, 2 drug manufacturers, 2 foundations, 39 health care professionals, 2 health departments, 2 Congressmen, 2 advocacy groups, and 147 individuals submitted comments. Copies of the comments received and any additional information that has come to the agency's attention since publication of the tentative final monograph are on public display in the Dockets Management Branch.

New information submitted in response to the tentative final monograph caused the agency to reconsider the approach proposed in that document. In the Federal Register of July 15, 1991 (56 FR 32282), FDA proposed that OTC drug products used to treat exocrine pancreatic insufficiency are not generally recognized as safe and effective, are misbranded, and are new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 321(p)). The proposed rule would amend part 310 (21 CFR part 310), subpart E by adding new § 310.543 (21 CFR 310.543). Accordingly, the proposed monograph published in the Federal Register of November 8, 1985 (50 FR 46594), which would have amended part 357 (21 CFR part 357) by adding new Subpart E, was withdrawn on July 15, 1991.

The information submitted in response to the 1985 tentative final monograph and other available information prompted the agency to propose in the July 15, 1991, document that all exocrine pancreatic insufficiency drug products, whether currently marketed on a prescription or OTC basis, be considered new drugs requiring an approved application for continued marketing. No exocrine pancreatic insufficiency drug products currently have an approved application. The agency is very concerned about the effects that a pancreatic extract drug product's formulation and manufacturing process will have on the drug's safe and effective use. The bioavailability of the enzymes present in these products is dependent on the process used to manufacture the drug products. The agency has determined that this process could not be adequately addressed under the OTC drug monograph system. However, under an approved application, formulation and manufacturing issues can be resolved prior to marketing. The 1991 document also proposes that all exocrine pancreatic insufficiency drug products be marketed by prescription.

Interested persons were invited to file by November 12, 1991, written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs, as well as comments on the agency's economic impact determination. In response to this proposal, two foundations, five drug manufacturers, and three individuals submitted comments. Copies of these comments are on public display in the Dockets Management Branch.

The Cystic Fibrosis Foundation requested a meeting with agency representatives to discuss certain aspects of the proposed rule (Refs. 1, 2, and 3). A meeting was held on November 26, 1991, and the following topics were discussed: (1) Development of criteria for new drug application approval of exocrine pancreatic insufficiency drug products, (2) the clinical information that would be necessary to support efficacy claims, and (3) what manufacturing standards should be required (Ref. 4). At that meeting, FDA representatives stated that the active ingredients used in currently marketed exocrine pancreatic insufficiency drug products may be considered safe and effective, but that FDA must have data to show that the drugs provide and deliver the enzyme content that is declared on the container labeling and that the stated activity is released in the intestine to show that the drug will have bioactivity. FDA representatives stated that the important parameters are: (1) Manufacturing controls, (2) dissolution rates of the drug products, (3) in vivo release of the drug in the gut, and (4) correlation of the drug's release with its dissolution. It was agreed that a workshop would be beneficial to discuss what types of information should be provided to the agency. Accordingly, the agency is inviting all interested manufacturers of exocrine pancreatic insufficiency drug products, health professionals, and the general public to a workshop to discuss the issues related to the testing of these drug products. The following topics and questions will be considered at the workshop:

1. *Study design.* What types of studies should be conducted on exocrine pancreatic insufficiency drug products to show that the drugs provide and deliver the enzyme content that is declared on the container labeling and that the stated activity is released in the intestine to show that the drug will have bioactivity?

2. *Endpoints of study.* Comments submitted to the agency have suggested the following endpoints: (1) Average daily stool weight, (2) percent of dietary fat and protein absorbed, (3) energy lost in the stool, and (4) serum uric acid and 24 hour urinary excretion of uric acid (Ref. 5).

3. *Study population.* What populations should be studied? Do cystic fibrosis patients have to be used in the studies, or can the needed information be obtained using normal volunteers? Should data be obtained from both of these groups? Is it possible to use patients with other pancreatic insufficiency problems?

4. *Enzyme measurement.* Lipase, protease, and amylase concentrations can all be measured by in vitro assays in the manufactured product. Is the vivo measurement of each enzyme feasible, reliable, and pertinent, or should in vivo measurement of the percent of dietary fat and protein absorbed be relied upon?

5. *Manufacturing controls.* What manufacturing controls are necessary?

6. *Reference standards.* What reference products and/or reference standards are necessary and available? The United States Pharmacopeial (U.S.P.) Convention is in the process of setting new standards for exocrine pancreatic insufficiency drug products, and a U.S.P. reference standard is not currently available. What criteria are needed to establish an appropriate U.S.P. reference standard?

7. *Enzyme content and labeling.* What is the best way to assure consistency of actual enzyme content per dosage unit versus the amount declared in the product labeling? What product limits (not less than and not more than) should be allowed?

8. *Dissolution rates.* How can dissolution rates and in vivo bioavailability of the drug in the gut be measured? What is the correlation of the drug's release and activity with its dissolution profile?

In view of the many questions associated with exocrine pancreatic insufficiency drug products, the agency has concluded, under 21 CFR 10.65, that it would be in the public interest to hold a workshop to discuss these issues.

The agency requests information on the above questions from any interested person. Any individual or group wishing to submit data relevant to the questions above prior to the workshop should send them on or before April 10, 1992 to Docket No. 79N-0379, Dockets Management Branch (address above). Any individual or group wishing to make a presentation at the workshop should contact Helen Cothran or Diana Hernandez, Division of OTC Drug Evaluation (HFD-210), Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8888. Interested persons who wish to participate must also send a notice of participation on or before April 10, 1992 to the Dockets Management Branch (address above). All notices submitted should be identified with the docket number found in brackets in the heading of this document and should contain the following information: Name; address; telephone number; business affiliation, if any, of the person desiring to make a presentation; and the subject and approximate amount of time requested for the presentation.

Groups having similar interests are requested to consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. After reviewing the notices of participation, FDA will notify each participant of the schedule and time allotted to each person.

The administrative record for the rulemaking for OTC exocrine pancreatic insufficiency drug products is being reopened to include all comments and data submitted since the record previously closed on November 12, 1991, and the proceedings of this workshop. The administrative record will remain open until July 23, 1992, to allow comments on matters raised at the workshop.

References

(1) Letter from R. Beall, Cystic Fibrosis Foundation, to S. Fredd, FDA, August 15, 1991, Comment No. C213, Docket No. 79N-0379, Dockets Management Branch.

(2) Letter from R. Beall, Cystic Fibrosis Foundation, to S. Fredd, FDA, September 16, 1991, Comment No. C213, Docket No. 79N-0379, Dockets Management Branch.

(3) Letter from R. Beall, Cystic Fibrosis Foundation, to Dockets Management Branch, October 21, 1991, Comment No. C203, Docket No. 79N-0379, Dockets Management Branch.

(4) Memorandum of meeting between Cystic Fibrosis Foundation and FDA, November 26, 1991, coded MM 1, Docket No. 79N-0379, Dockets Management Branch.

(5) Letter from R. Beall, Cystic Fibrosis Foundation, to S. Fredd, FDA, January 13, 1992, Comment No. Docket No. 79N-0379, Dockets Management Branch.

Dated: March 4, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-5691 Filed 3-10-92; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

42 CFR Part 411

[BPD-674-P]

RIN 0938-AF40

Medicare Program; Physician Ownership of, and Referrals to, Health Care Entities that Furnish Clinical Laboratory Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: The proposed rule would incorporate into regulations the provisions of section 6204 of the Omnibus Budget Reconciliation Act of 1989, as amended by section 4207(e) of the Omnibus Budget Reconciliation Act of 1990, which provide that, if a physician or a member of a physician's immediate family has a financial relationship with an entity, the physician may not make referrals to the entity for the furnishing of clinical laboratory services under the Medicare program, except under specified circumstances.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 11, 1992.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-674-P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept audio or video comments or facsimile (FAX) copies of comments. In commenting, please refer to file code BPD-674-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone : (202) 245-7890).

If you wish to submit comments on the information collection requirements contained in this proposed rule, you may submit comments to: Allison Herron, HCFA Desk Officer, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503.

Copies: To order copies of the **Federal Register** containing this document, send your request to the Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 512-2250. The cost for each copy (in paper or microfiche form) is $1.50. In addition, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register.** The order desk operator will be able to tell you the

location of the U.S. Government Depository Library nearest to you.

FOR FURTHER INFORMATION CONTACT: Betty Burrier, (410) 966–4649.

SUPPLEMENTARY INFORMATION:

I. Background

A. Related Laws

1. Clinical laboratory services

Once a patient decides to seek medical care, his or her physician has a major role in determining utilization of services furnished by other health care providers and suppliers. The physician evaluates the patient, orders diagnostic laboratory tests, and decides upon the appropriate medical care, and any needed therapy for the patient.

Medicare and other insurers reinforce the role of the physician in procuring laboratory services by paying only for those tests that the physician has determined to be medically necessary and, as such, are ordered by the physician. Medicare and most other insurers generally do not pay for patient initiated tests, routine testing, and tests not medically indicated. (With respect to Medicare, two exceptions to the general exclusion of coverage of routine testing are screening mammographies and screening pap tests.) In a recent rule implementing parts of the Clinical Laboratory Improvement act of 1988 (CLIA '88) (Pub. L. 100–578) (55 FR 9538, March 14, 1990), we stated that laboratories seeking or receiving Medicare payment may only perform tests that are ordered by a "physician," as that term is defined by the Medicare law.

The market for laboratory services can be characterized by intense competition for a finite number of patients. Laboratories need a certain minimum volume of tests to be profitable. To achieve this goal, a laboratory needs a predictable volume of patient referrals. Since laboratory tests are most often ordered by physicians, laboratories have in the past offered financial incentives to physicians for their laboratory business. Some laboratories have offered volume discounts while others have offered customized packages of tests for specific physician specialties.

Having a financial interest in a laboratory that performs tests can affect a physician's decision to order tests. A recent report from the Office of Inspector General (OIG) to Congress established that at least 25 percent of the nearly 4500 independent clinical laboratories (ICLs) are owned in whole or in part by referring physicians. The same report found that Medicare "patients of referring physicians who on or invest in ICLs received 45 percent more clinical laboratory services than all Medicare patients * * *" (Financial Arrangements Between Physicians and Health Care Businesses, page 18 (May 1989)).

2. Program Integrity

During recent years, Congress has enacted into law several provisions governing financial relationships between health care providers and those health care professionals who are owners of the providers or who refer patients to the providers. In particular, criminal penalties are provided for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration to induce the furnishing of items or services covered by Medicare or State health care programs (including Medicaid, and any State program receiving funds under titles V or XX of the Act). Offenses are classified as felonies and are punishable by fines of up to $25,000 or imprisonment for up to 5 years, or both. (See section 1128B(b)) of the Act, 42 U.S.C. 1320a–7b(c), as recodified by section 4(d) of the Medicare and Medicaid Patient Program Protection Act of 1987 (Pub. L. 100–93, enacted August 18, 1987).)

For purposes of section 1128B(b) of the Act, remuneration includes kickbacks, bribes, rebates and any other payment made directly or indirectly, overtly or covertly, in cash or in kind. Prohibited conduct includes not only remuneration to induce referrals or patients, but also remuneration to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid by the Medicare or a State health care program.

B. Physician Ownership of, and Referral to, Health Care Entities

Section 6204 of the omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239, enacted on December 19, 1989) added section 1877, "Limitations on Certain Physician Referrals," to the Act. In addition, section 4207(e) of the omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, enacted on November 5, 1990) amended certain provisions of section 1877 of the Act. Therefore, in the following presentation, we discuss provisions of section 1877 of the Act as they have been amended by Public Law 101–508. Because of the complicated nature of various provisions of this law and to provide readers of this proposed rule with complete information, we are first describing the requirements of section 1877 of the Act in detail. We then describe, in section II of this preamble, how we propose to incorporate section 1877 into regulations and discuss in detail our interpretation of various provisions. (Unless otherwise indicated, all references below to various sections of the law are references to the Social Security Act.)

1. General Prohibition

With certain exceptions, section 1877(a)(1)(A) prohibits a physician from making a referral to an entity for the furnishing of clinical laboratory services, for which Medicare would otherwise pay, if the physician (or a member of the physician's immediate family) has a financial relationship with that entity, as described in section 1877(a)(2). Further, section 1877(a)(1)(B) prohibits an entity from presenting or causing to be presented a Medicare claim or bill to any individual, third party payor, or other entity, for clinical laboratory services furnished under a prohibited referral. These provisions are effective January 1, 1992.

For purposes of this general prohibition, section 1877(h)(7) defines "referral" as follow:

- The request by a physician for an item or service for which payment may be made under Medicare Part B, including a request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician).
- The request or establishment of a plan of care by a physician when the plan includes furnishing clinical laboratory services.

Section 1877(h)(7)(C), however, provides an exception to this definition for a request by a pathologist for clinical diagnostic laboratory test and pathological examination services if the services are furnished by (or under the supervision of) the pathologist under a consultation requested by another physician. (As discussed in more detail below, Congress provided for exceptions to the prohibition on referrals for specified ownership and investment interests, as well as for certain compensation arrangements.)

2. Financial Relationships

Section 1877(a)(2) describes a financial relationship between a physician (or an immediate family member of a physician) and an entity as being an ownership or investment interest in the entity, or a compensation arrangement (as defined in section 1877(h)(1)(A)) between the physician (or immediate family member) and the entity. The statute provides that an

ownership or investment interest may be established "through equity, debt, or other means."

For purposes of section 1877(a)(2), section 1877(h)(1)(A) defines a "compensation arrangement" as any arrangement involving any remuneration between a physician (or an immediate family member) and an entity. Section 1877(h)(1)(B) defines "remuneration" to include any remuneration, direct or indirect, overt or covert, in cash or in kind.

A person with a financial relationship with an entity is an "investor." Section 1877(h)(5) defines an "interested investor" as a physician who is in a position to make or influence referrals or business to the entity (or who is a member of such a physician's immediate family) and who is also an investor in the entity. A "disinterested investor" is defined as an investor other than an "interested investor."

3. Exceptions to the Prohibition on Physician Referrals

Section 1877(b) provides for exceptions to the general prohibition on referrals for clinical laboratory services to be furnished by an entity with which the referring physician has a financial relationship. First, the prohibition does not apply to services furnished on a referral basis if the services are physicians' services as defined in section 1861(q) that are furnished personally by (or under the personal supervision of) another physician in the same group practice as the referring physician.

Second, the prohibition does not apply to referrals for certain "in-office ancillary services." To qualify, the services must meet any requirements the Secretary deems necessary and sets forth in regulations to protect against program or patient abuse. Additionally, the ancillary services must meet two sets of statutory requirements.

- The services must be furnished personally by the referring physician, a physician who is a member of the same group practice as the referring physician, or individuals who are employees of the physician or the group practice and who are personally supervised by the referring physician or by another physician in the group practice. Also, these ancillary services must be furnished in either—
  - —A building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of clinical laboratory services; or
  - —Another building that is used by a group practice for centrally furnishing the group's clinical laboratory services, if the referring physician is a member of the group practice.
- The ancillary services must be billed by one of the following:
  - —The physician who performed or supervised the services,
  - —The group practice of which the referring physician is a member, or
  - —An entity that is wholly owned by the physician or the physician's group practice.

"Group practice" is defined in section 1877(h)(4) as a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or a similar association. To be considered a "group practice" for purposes of section 1877, the association must meet the following specific requirements:

- Each physician who is a member of the group must provide "* * * substantially the full range of services which the physician routinely provides (including medical care, consultation, diagnosis, or treatment) through the joint use of shared office space, facilities, equipment, and personnel * * *."
- "Substantially all of the services" of the group's physicians must be furnished through the group and be billed in the name of the group. Amounts received from these billings must be treated as receipts of the group.
- The practice expenses and income of the group must be distributed "in accordance with methods previously determined" by group members.
- The group practice must comply with all other standards established by the Secretary in regulations.

However, in the case of a faculty practice plan associated with a hospital that has an approved medical residency program in which physician members of the faculty practice plan furnished a variety of different specialty services and professional services both within and outside the faculty practice plan (as well as perform other tasks such as research), the requirements listed above would apply only with respect to the services furnished within the faculty practice plan.

Additionally, for purposes of the in-office ancillary services exception, section 1877(h)(2) defines "employee" to mean any individual who would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationships, as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986.

The third exception to the general prohibition on physician referrals is for services furnished by certain prepaid health plans. To qualify for the exception, the services must be furnished by a prepaid health care organization to an individual enrolled in the organization under a contract or agreement with us under one of the following statutory authorities:

- Section 1876, which authorizes us to enter into contracts with health maintenance organizations and competitive medical plans to furnish covered items and services on a risk-sharing or reasonable cost reimbursement basis.
- Section 1833(a)(1)(A), which authorizes payment for Part B services to prepaid health plan on a reasonable cost basis.
- Section 402(a) of the Social Security Amendments of 1967 or section 222(a) of the Social Security Amendments of 1972, which authorize us to conduct demonstration projects.

The fourth exception to the general prohibition on physician referrals is described in section 1877(b)(4). The prohibition does not apply to a referral to a hospital for the furnishing of clinical laboratory services if the referring physicians' (or immediate family member's) financial relationship with the hospital does not relate to the furnishing of clinical laboratory services.

Finally, section 1877(b)(5) authorizes the Secretary to provide in regulations for additional exceptions for financial relationships, beyond those specified in the statute, he determines that they do not pose a risk of program or patient abuse.

4. Exceptions Applicable Only to Financial Relationships Consisting of Ownership or Investment Interests

The statute also provides that cetain ownership or investment interests do not constitute a "financial relationship" for purposes of the section 1877 prohibition on referrals. Under section 1877(c), the prohibition on referrals does not apply in the case of ownership by a physician (or an immediate family member of the physician) of investment securities (including shares or bonds, debentures, notes or other debt instruments) that were purchased on terms generally available to the public and are in a corporation that meets the following two requirements:

- The corporation is listed for trading on the New York Stock Exchange, or on the American Stock Exchange, or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers.

• At the end of the corporation's most recent fiscal year, its total assets exceeded $100,000,000.

Section 1877(d) provides additional exceptions to the prohibition on physician referrals for an ownership or investment interest by a physician (or an immediate family member) in three types of facilities furnishing clinical laboratory services:

• A hospital located in Puerto Rico.

• A laboratory located in a rural area (as defined in section 1886(d)(2)(D)). (Section 1886(d)(2)(D) defines a rural area as an area outside of a "Metropolitan Statistical Area" as that term is defined by the Office of Management and Budget.)

• A hospital located outside of Puerto Rico if the referring physician is authorized to furnish services at the hospital, and the referring physician's ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

5. Exceptions Applicable only to Financial Relationships Consisting of Certain Compensation Arrangments

Section 1877(e) provides that certain compensation arrangements will not be considered a "financial relationship" for purposes of triggering the prohibitions on physician referrals. The first exception applies to the rental or lease of office space that meets all of the following conditions:

• A written agreement must be signed by the parties for the rental or lease of the space. This agreement must—

—Specify the space covered by the agreement and dedicated for the use of the lessee;

—Provide for a term of rental or lease of at least 1 year;

—Provide for payment on a periodic basis of an amount that is consistent with the fair market value (as defined in section 1877(h)(3)) of the leased space;

—Provide for an amount of aggregate payments that does not vary (directly or indirectly) based on the volume or value of any referrals of business between the parties; and

—Be considered to be commerically reasonable even though no referrals are made between the parties.

• If a physician who is an interested investor (or a physician's immediate family member who is an interested investor) has an ownership or investment interest in the leased or rented office space, the office space must be in the same building as the building in which the physician (or group practice of the physician) has a practice.

• The arrangement must meet all other requirements that the Secretary may impose by regulation as needed to protect against program or patient abuse.

"Fair market value" is defined by section 1877(h)(3) as the value, in arm's-length transactions, consistent with the general market value. With respect to rentals or leases, it means the value of rental property for general commercial purposes (not taking into account its intended use) and not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor when the lessor is a potential source of patient referrals to the lessee.

Under section 1877(e)(2), an arrangement between a hospital and a physician (or a member of the physician's immediate family) for the employment of the physician (or the immediate family member) or for the provision of administrative services would not trigger the section 1877 prohibition on referrals by the physician to the hospital for clinical laboratory services if the following conditions exist:

• The arrangement is for identifiable services.

• The amount of the remuneration under the arrangement is consistent with the fair market value of the services and is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician.

• The remuneration is provided under an agreement that would be commercially reasonable even if no referrals were made to the hospital.

• The arrangement meets all other requirements that the Secretary may imposed by regulation as needed to protect against program or patient abuse.

Section 1877(e)(3) provides that remuneration from employment and service arrangements with entities (other than hospitals) that meet all of the following conditions will not be considered to be compensation arrangements for purposes of the prohibition on physician referrals:

• The arrangement is for one of four types of services:

—Specific, indentifiable services furnished by a physician as the medical director or as a member of the entity's medical advisory board in order to enable the entity to comply with a Medicare statuory requirement.

—Specific, identifiable physicians' services furnished to an individual receiving hospice care for which payment may only be made under Medicare as hospice care.

—Specific physicians' services furnished to a nonprofit blood center.

—Specific, identifiable, administrative services (other than direct patient care services), but only under exceptional circumstances specified by the Secretary in regulations.

• The amount of the remuneration under the arrangement is—

—Consistent with the fair market value of the services;

—Not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician; and

—Provided under an agreement that would be commercially reasonable even though no referrals were made.

• The arrangement meets all other requirements that the Secretary may impose by regulation as needed to protect against program or patient abuse.

Section 1877(e)(4) provides that physician recruitment activity by a hospital to induce a physician to relocate to the geographic area served by the hospital to become a member of the hospital's medical staff will not be considered a compensation arrangement for purposes of section 1877(a)(2)(B) if the following conditions are met:

• The physician is not required to refer patients to the hospital.

• The amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician.

• The arrangement meets all other requirements that the Secretary may impose by regulation as needed to protect against program or patient abuse.

Section 1877(e)(5) provides that isolated financial transactions, such as a one-time sale of property, that meet the following conditions will not be considered compensation arrangements:

• The amount of the remuneration under the transaction is consistent with the fair market value of the items or services and is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician.

• The remuneration is provided under an agreement that would be commercially reasonable even though no referrals were made.

• The arrangement meets all other requirements that the Secretary may impose by regulation as needed to protect against program or patient abuse.

Finally, under section 1877(e)(6), a compensation arrangement involving payment by a group practice of the salary of a physician member of the group practice does not subject the physician to the prohibition on referrals.

C. Other Requirements Relating to Financial Arrangements

1. Reporting Requirements for Ownership Arrangements.

Section 1877(f) of the Act sets forth certain reporting requirements for ownership arrangements. Unless the Secretary waives the requirements with respect to an entity or class of entities, each entity that furnishes covered items or services for which payment may be made under title XVIII of the Act must provide the Secretary with information concerning the entity's ownership arrangements. The requirements of this subsection do not apply to covered items and services furnished outside the United States or to entities that the Secretary determines furnish services for which payment may be made under title XVIII very frequently.

The Secretary may waive the requirements of section 1877(f) of the Act (and the information collection requirements of chapter 35 of title 44, United States Code, that would otherwise pertain to the data required to be provided under section 1877(f)) with respect to reporting entities in a State (except for entities furnishing clinical laboratory services), so long as the reporting occurs in at least ten States. The Secretary may also waive the section 1877(f) provisions with respect to providers in a State in which the requirements are not generally waived, so long as the requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease (ESRD) facilities, suppliers of ambulance services, hospitals, entities furnishing physical therapy services, and entities furnishing diagnostic imaging services of any type in those States.

Each entity that is required to report ownership information must provide the information in the form, manner, and the times specified by the Secretary. Under the statute, the information provided must include at least the following:

- The covered items and services furnished by the entity.
- The names and unique physician identification numbers (UPINs) of all physicians who have an ownership or investment interest in the entity (as described in section 1882 (a)(2)(A)) or who have immediate relatives with an ownership or investment interest in the entity.

Further discussion of the Secretary's decisions as to which entities (other than clinical laboratories) within which States would receive waivers appears separately in a final rule with comment period, "Reporting Requirements for Financial Relationships between Physicians and Health Care Entities that Furnish Selected Items and Services", that was published in the **Federal Register** on December 3, 1991 (56 FR 61374). In addition, all entities furnishing clinical laboratory services (more than very infrequently), regardless of where they are located, were required to submit ownership information under section 1877(f) of the Act. We conducted a survey and completed survey forms were submitted to Medicare contractors (intermediaries or carriers depending on the type of facility completing the form). For example, hospitals submitted forms to intermediaries, and independent clinical laboratories sent them to carriers. This data collection effort was completed on November 1, 1991, and the information obtained, as is required by section 1877(g)(1) of the Act, is being used as the basis for denying claims that involve referrals that are prohibited under section 1877(a)(1), effective January 1, 1992.

2. Statistical Profile

Also, section 6204(f) of Public Law 101-239, as amended by section 4207(e)(4) of Public Law 101-508, requires us to submit a statistical profile to Congress by June 30, 1992. This statistical profile will compare utilization of items and services by Medicare beneficiaries served by entities in which the referring physician has a direct or indirect financial interest and by Medicare beneficiaries served by other entities, for the States and entities specified in section 1877(f) (other than entities furnishing clinical laboratory services). Further discussion of this profile was included in the December 3, 1991 final rule mentioned above.

D. Sanctions

Section 1877(g) of the Act sets forth the following sanctions that may be imposed if the requirements of section 1877 are not met:

- Under section 1877(g)(1), Medicare payment may not be made for a clinical laboratory service that is furnished in violation of the prohibition against improper physician referrals under section 1877(a)(1).
- Under section 1877(g)(2), if a person collects any amounts that were billed in violation of section 1877(a)(1), the person will be liable to the individual from whom the amounts were collected and must refund on a timely basis any amounts collected.
- Section 1877(g)(3) specifies that any person who presents or causes to be presented a bill or claim for a service that the person knows, or should know, is for a service for which payment may not be made under section 1877(a)(1), or for which a refund has not been made in accordance with section 1877(g)(2), will be subject to a civil money penalty of not more than $15,000 for each service. The statute specifies that certain civil money penalty provisions of section 1128A will apply to these penalty requirements.
- Under section 1877(g)(4), any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement), the principal purpose of which the physician or entity knows, or should know, is to assure referrals by the physician to a particular entity that, if they were made directly by the physician, would be in violation of the prohibition on referrals, will be subject to a civil money penalty of not more than $100,000 for each arrangement or scheme. The statute specifies that certain civil money penalty provisions of section 1128A will apply to these penalty situations.
- Any person who is required, but fails, to meet the reporting requirements described in section 1877(f) for ownership arrangements is subject, under section 1877(g)(5), to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made.

E. Other Amendments to the Act

Section 6204(b) of Public Law 101-239 added a new subsection (g) to section 1833. For referrals made after December 31, 1991, section 1833(q) provides that each request for payment, or bill submitted, for an item or service furnished by an entity for which payment may be made under Medicare Part B and for which the entity knows or has reason to believe there has been a referral by a referring physician (within the meaning of section 1877 of the Act) must include the name and provider number of the referring physician and indicate whether or not the referring physician is an interested investor (within the meaning of section 1877(h)(5)). Additionally, under section 4164(c) of Public Law 101-508, we have published a Directory of Unique Physician Identification Numbers (UPINs) for all physicians who furnish Medicare Part B services. The Directory includes the names, provider numbers, and billing addresses of all listed physicians and should facilitate

compliance with section 1833(q). We have issued revised instructions to the Medicare carriers concerning completion of the HCFA-1500 (the Health Insurance Claim form used by physicians and other suppliers to request payment for medical services) to include an entry for the referring or ordering physcian's name and UPIN.

Under new section 1833(q)(2)(A), if the information required to be provided under section 1833(q)(1) is not included on a bill for a Part B item or service that is submitted on an assignment-related basis, payment for the item or service may be denied.

Under section 1833(q)(2)(B), if the information is not included on a claim submitted on a non-assignment-related basis, a civil money penalty or exclusion from the program may be imposed. If the entity billing on a non-assignment related basis knowingly and willfully fails to provide the information promptly upon request by the Secretary or a carrier, the entity may be subject to a civil money penalty in an amount not to exceed $2,000. (In this case, certain provisions of section 1128A will apply to this civil money penalty). If the entity knowingly and willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements, to provide the information, the entity may be subject to exclusion from participation in the Medicare and Medicaid programs. The exclusion may be for a period not to exceed 5 years, in accordance with the procedures of paragraphs (c), (f), and (g) of section 1128.

II. Provisions of the Proposed Regulations

Section 1877, as described above, is very specific. For example, the definitions set forth in section 1877(h) are detailed and therefore do not require extensive elaboration in regulations. Accordingly, we would adopt some of the statutory definitions, as well as some other provisions of section 1877, virtually unchanged. To codify these rules, we would establish a new subpart J under 42 CFR part 411 and make conforming changes to subpart A of part 411 as discussed below.

A. Scope

We would revise § 411.1 to cite section 1877 as the statutory authority for adding subpart J. In proposed § 411.350, we describe the statutory authority contained in section 1877. Further, we state that the regulations would have no application outside the context of the section 1877 referral prohibitions. They would not provide the basis for immunity from civil or criminal prosecution or from other sanctions under Federal or State laws. For example, it is possible that a particular financial arrangement that would not prohibit a particular physician referral for clinical laboratory services many nevertheless be in violation of other Federal statutory provisions or regulations administered by us, the OIG or other DHHS components, the Federal Trade Commission, the Securities and Exchange Commission, the Internal Revenue Service (IRS), or any other Federal agency. In addition, there could be a State law that prohibits or limits particular financial relationships. These regulations would have no effect on the application of these other statutory provisions or regulations.

B. Definitions

We plan to use the definition of "physicians' services" contained in § 410.20 for all aspects of section 1877. In 42 CFR § 410.20(b), the following professionals are defined as "physicians" when they are legally authorized to practice by the State in which they perform their professional functions or actions and when they are acting within the scope of their licenses.

- A doctor of medicine or osteopathy, including an osteopathic practitioner recognized in section 1101(a)(7) of the Act.
- A doctor of dental surgery or dental medicine.
- A doctor of podiatric medicine.
- A doctor of optometry.
- A chiropractor who meets the qualifications specified in § 410.22.

In § 411.351, we propose to establish definitions, based on terms defined in the law. In addition, we would add certain other definitions necessary to implement the statute.

- As defined in section 1877(h)(1)(A), a "compensation arrangement" would mean any arrangement involving any remuneration between a physician (or a member of a physician's immediate family) and an entity.
- As specified in section 1877(h)(2), we would define "employee" to mean any individual who, under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986), is considered to be employed by, or an employee of an entity. Section 3121 includes definitions that apply to the imposition of employer and employee taxes for old-age, survivors and disability insurance, and for hospital insurance. Under section 3121(d)(2) of title 26, an employee includes "any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee, * * *." This language is also included in the definition of "employee" contained in section 210 of the Act. The IRS regulations elaborating on this common law test are located at 26 CFR 31.3121(d)-1(c). The Social Security Administration (SSA) has implemented the "common law control test" in 20 CFR 404.1007. Briefly, this general rule states that an employer-employee relationship is considered to be established when the person considered to be the employer has the right to control and direct the person considered to be the employee who will perform the service, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what will be done, but how it will be done. The person or entity considered to be the employer does not necessarily have to give any orders to the employee, but has the right to do so. Both the IRS and the SSA regulations describe factors that are generally characteristic of an employer-employee relationship (for example, the employer generally furnishes the tools and the place to work, and sets the employee's working hours). However, the regulations note that a determination of whether an employer-employee relationship exists under the usual common law rules is not always clear and would be determined upon an examination of the particular facts of each case.
- We propose to define "entity" to mean "a sole proprietorship, trust, corporation, partnership, foundation, not-for-profit corporation, or unincorporated association."

Although section 1877 does not define the term "entity," we believe it is necessary to define the term in regulations to assure that it is consistently used by the Medicare contractors. Furthermore, we believe that Congress did not intend to limit this term to independent clinical laboratories; thus, the proposed definition encompasses all suppliers of clinical laboratory services.

- We propose to define "fair market value" as specified in section 1877(h)(3). We believe Congress intended that, when a physician leases space to an entity for the furnishing of clinical laboratory services, the rental value the space would otherwise have commanded may not be adjusted; that is, the amount payable by the clinical laboratory-lessee may not be adjusted

to reflect the additional value the prospective lessee or lessor would attribute to the property as a result of its proximity or convenience to a lessor if the lessor is a potential source of patient referrals to the lessee. Typically, abusive arrangements that involve rental payments are those that are either substantially in excess of or below the fair market value of the rental space. For example, a physician rents space to a health care entity at a rate above what the market would ordinarily bear, and the entity agrees to the high rent because of an understanding that the physician will refer his or her patients to that entity.

• As described in section 1877(a)(2), we would define a "financial relationship" to be a relationship between a physician (or a member of a physician's immediate family) and an entity in which the physician or family member has an ownership or investment interest that exists through equity, debt, or other means; or a compensation arrangement.

• We propose to incorporate the definition of "group practice" contained in section 1877(h)(4), which stipulates requirements concerning the range of services, billing practices, and treatment of practice expenses. Specifically, a "group practice" is defined as a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan or similar legal entity, in which (1) each physician group member furnishes substantially the full range of his or her services through the joint use of shared office space, facilities, equipment, and personnel; (2) substantially all of the services of the physician group members are furnished through the group and billed in the name of the group, with billing receipts treated as receipts of the group; (3) the practice cost expenses and income generated by group members are distributed in accordance with pre-determined methodologies; and (4) all other standards imposed by the Secretary by regulation are satisfied.

We reiterate that section 1877(h)(4) of the Act states specifically that each physician member of a group practice must furnish "substantially the full range of services which the physician routinely provides" on an individual basis (section 1877(h)(4)(A)) and that a group practice is an association "for which substantially all of the services" of group member physicians are furnished through the group "and are billed in the name of the group" (section 1877(h)(4)(B)). The word "substantial" generally means a considerable amount. Thus, in the context of the definition of "group practice," we believe the "substantially all" criterion can be met, in the aggregate, if the group practice as a whole devotes at least 85 percent of the group's practice time to patients of that group.

The first requirement would be satisfied if each member of the group individually furnishes substantially the full range of services he or she routinely furnishes (including medical care, consultation, diagnosis, and treatment) through the group practice. We propose that the second requirement would be met if the group practice attests in writing to its Medicare carrier that at least 85 percent of the aggregate services furnished by all physician members of the group practice are furnished and billed by the group practice. We believe this requirement would be flexible enough to allow a physician to be an active member of a physician group and still permit him or her to engage in patient care activities outside of the group. It also would permit a group practice to contract with physician specialists on an intermittent basis for patients of the group practice and bill for the services of these physicians in the name of the group. Furthermore, this approach would allow a group practice to contract with temporary replacement physicians as long as, on the whole, the physicians in the group meet these standards.

In the case of a group practice styled as a faculty practice plan that is affiliated with a hospital with an approved medical residency training program in which physician members of the plan may furnish a variety of different specialty services and also furnish professional services both within and outside the faculty practice plan (as well as perform other tasks such as research), these requirements would apply only to those services furnished to patients within the faculty practice plan. That is, the requirements would not apply to services furnished outside the plan either as part of the teaching responsibilities of the physician, duties performed in connection with a research program, or as part of the physician's private practice.

• We propose to define an "immediate family member or a member of a physician's immediate family" as a husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; spouse of a grandparent or grandchild.

This definition is used in § 411.12 for purposes of implementing section 1862(a)(11), which excludes from Medicare coverage services furnished by an immediate relative of a Medicare beneficiary. While the statute did not define an "immediate family member" for purposes of the section 1877 provisions, we believe the definition in proposed § 411.351 encompasses the range of relatives who could be in a sufficiently close relationship to a referring physician to influence the pattern of his or her referrals if the relative has a financial relationship with the entity furnishing the services.

• As defined by section 1877(h)(5), an "interested investor" would mean a physician who is in a position to make or to influence referrals of business to the entity (or who is a member of the physician's immediate family) and who is also an investor in the entity.

• We would define "investor" to mean a person with a financial relationship, as that term is described in section 1877(a)(2), with an entity.

• We propose to incorporate the definition of "referral" contained in section 1877(h)(7). This would include, as specified in the statute, a request by a physician for, or ordering of, any item or service that is covered by Medicare Part B including the request for a consultation with another physician and any test or procedure ordered by, or to be performed by (or under the supervision of) that physician. (The definition of "referral" that was originally included in section 1877, as added by Pub. L. 101-239, was limited to requests for clinical laboratory services. The definition was broadened in Pub. L. 101-508 to include requests for any item or service for which payment may be made under Medicare Part B.) In addition, the request or establishment of a plan of care by a physician when the plan includes the performance of clinical laboratory services is considered to be a referral.

However, under section 1877(h)(7)(C), if a pathologist furnishes or supervises the furnishing of clinical diagnostic laboratory tests and pathological examination services as a result of a consultation requested by another physician, the services are not considered to have been furnished on a referral basis.

• We propose to add a definition of "referring physician" to mean a physician (or group practice) who makes a "referral" as defined above.

• Based on the definition contained in section 1877(h)(1)(B), we propose to define "remuneration" as any payment, discount, forgiveness of debt, or other

benefit made directly or indirectly, overtly or covertly, in cash or in kind.

C. General Prohibition on Referrals.

In § 411.353(a), we propose that, unless otherwise permitted under an exception, a physician who has a financial relationship with an entity (or who has an immediate family member who has a financial arrangement with an entity) may not make a referral to that entity for the furnishing of clinical laboratory services under Medicare beginning January 1, 1992.

The revised Federal requirements for laboratories and laboratory services located at 42 CFR part 493 were published as a final rule on March 14, 1990 (55 FR 9538), and became effective September 10, 1990 (except with respect to participation in proficiency testing, which became effective January 1, 1991). Section 493.2 of the March 1990 regulations defines a "laboratory" as "a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or implement of, or the assessment of the health of, human beings. These examinations also include screening procedures to determine the presence or absence of various substances or organisms in the body." Thus, a referral to an "entity furnishing clinical laboratory services" would, for purposes of section 1877, be a referral to an entity furnishing the services described in § 493.2.

This definition includes furnishing anatomic laboratory services. However, it would not include non-invasive tests, such as electroencephalograms (EEGs) or electrocardiograms (EKGs), nor would it include x-rays or diagnostic imaging services, such as mammograms and computerized axial tomography (CAT) scans.

A financial relationship may be through ownership, investment, or a compensation arrangement between the entity and the physician or physician group or an immediate family member of the physician. Furthermore, an ownership or investment interest may be through equity, debt, or other means.

We emphasize several points concerning this general prohibition. First, while some of the terms used in section 1877 (for example, "fair market value") are similar to those contained in the final rule published by the OIG on July 29, 1991 (56 FR 35952) to implement section 1128B(b) (the anti-kickback statute), the two sets of rules are independent of each other and have different ramifications.

Section 1128B(b) contains criminal penalties applicable to individuals or entities that solicit or receive remuneration in return for referring individuals for covered services, and for offering or paying remuneration to induce persons to make referrals for covered services. The regulations of the OIG (codified at 42 CFR 1001.952) describe various payment practices that, although falling within the statutory language of section 1128B(b), would be protected from prosecution. The practices described in the OIG rule are referred to as "safe harbors." Section 1877 does not prohibit any financial relationship; instead, it prohibits referrals and payment for clinical laboratory services when certain relationships exist. This proposed rule is independent of the OIG final rule, and providers and physicians will need to examine ownership, compensation, and practice arrangements within the scope and objectives of each separate rule.

Second, the general prohibition on referrals would apply only to referrals for clinical laboratory services that would otherwise be covered by the Medicare program. Therefore, referrals for clinical laboratory services to be furnished for a physician's non-Medicare patients are not affected by section 1877 or this proposed rule.

Third, a physician who has no financial relationship with a clinical laboratory (other than his own office laboratory) would not be affected by this proposed rule unless he or she is ordering clinical laboratory services under a consultation request from another physician who has a financial relationship with the laboratory, or he or she is participating in a "contravention scheme" as described in section 1877(g)(4).

For purposes of Medicare coverage, a "consultation" is a professional service furnished to a patient by a physician (the consultant) at the request of the patient's attending physician. A consultation includes the history and examination of the patient as well as a written report that is transmitted to the attending physician for inclusion in the patient's permanent record. If, in the course of that consultation, the consulting physician deems it necessary to order clinical laboratory services, those services may not be ordered from a laboratory in which the referring physician has a financial interest. Therefore, when a physician refers a patient for a consultation, it would be prudent for the referring physician to provide to the consultant a list of laboratories from which the consulting physician should not order services.

Other referrals, such as sending a patient to a specialist who assumes responsibility for furnishing the appropriate treatment, or providing a list of referrals for a second opinion, are not "consultations" or "referrals" that would trigger the laboratory services use prohibition. However, if two or more physicians enter into an agreement described in section 1877(g)(4) as a "circumvention scheme" to indirectly avoid the prohibition on referrals, they would be subject to a civil money penalty of up to $100,000.

For purposes of identifying financial relationships that may trigger the statutory prohibition on referrals under Medicare, we propose to adopt the description of ownership, investment, and compensation arrangements contained in sections 1877(a)(2) and (h)(1) of the Act. These provisions state that financial relationships include ownership and investment interest, which may be through equity, debt or other similar means, as well as compensation arrangements, which are any arrangements involving remuneration between the parties. If a financial relationship exists, the physician may not make referrals to the entity for otherwise covered clinical laboratory services, and the entity may not bill the Medicare program or any other person for services furnished under a referral, unless the relationship falls within one of the statutory exceptions.

We propose to include indirect financial relationships in the statutory prohibition on referrals under Medicare. A physician would be considered to have an indirect financial relationship with a laboratory entity if he or she had an ownership interest in an entity, which in turn has an ownership interest in the laboratory entity.

We do not intend to exempt a financial relationship that is entered into in order to comply with section 1877 if it would not qualify under one of the statutory exceptions. For example, assume that a laboratory has been owned by a group of physicians for 15 years and the physicians enter into an agreement with a third party to sell the laboratory before the January 1, 1992 effective date of the referral prohibition, for a fixed price, with installment payments being made to the physicians through 1996. Unless one of the exceptions listed in section 1877 applies (for example, the laboratory is in a rural area), the physicians would be precluded under section 1877(a) (and proposed § 411.353) from making

referrals to the laboratory for clinical laboratory services that would otherwise be covered by Medicare, effective January 1, 1992.

Thus, a sales agreement that predates the January 1, 1992 effective date of the referral prohibition but provides for a continuing financial relationship through installment payment would operate to preclude the physician from making referrals to the entity for Medicare clinical laboratory services until all payments are completed. Physicians who are receiving installment payments from the sale of their laboratory would retain an incentive to refer business to the laboratory to maintain the financial viability of the laboratory. A "debt" relationship does not expire with the signing of an instrument that establishes the debt; it expires when the debt has been fully paid. Nor does a mere change in the form of the debt, such as changing an open account to a promissory note, extinguish the debt. We believe a loan from a physician to an entity, or from an entity to a physician, would raise the possibility that referrals would be for the purpose of ensuring returns on the investment, and these referrals would be prohibited unless one of the statutory exceptions applies.

Similarly, a financial relationship between a physician and an organization related to the entity that furnishes clinical laboratory services (for example, a parent or subsidiary corporation of the entity) would also be covered by these regulations as an indirect financial relationship with the entity. Therefore, entering into an agreement under which an organization related to an entity agrees to pay the entity's debt to a physician would not end the financial relationship between the entity and the physician for purposes of the proposed regulations. The physician would continue to have a financial relationship with the entity through the related organization until the debt were paid. Also, if a physician were to sell his or her interest in a laboratory to an organization related to the laboratory, and that related organization agrees to pay the physician over an extended period of time for the laboratory interest, the physician's financial relationship with the entity is continuing, and he or she may not make referrals to the laboratory for Medicare-covered services until the debt is fully paid. Moveover, the fact that a debt is nonrecourse or unsecured would not alter this conclusion.

Finally, section 1877(b)(5) defines permissible exceptions other than those specified in section 1877 as any "financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse." We solicit comments delineating financial relationships that would comply with this statutory definition.

In § 411.353(b), we state that an entity that furnishes clinical laboratory services under a prohibited referral could not present or cause to be presented a claim or bill to the Medicare program or to any individual, third party payor, or other entity for the clinical laboratory services performed under that referral. For example, there are certain circumstances where Medicare benefits are secondary to benefits payable by another third party payor, such as an employer group health plan for employed individuals or the spouses of employed individuals. Under section 1877(a)(1)(B) and proposed $411.353(b), an entity that furnishes clinical laboratory services under a prohibited referral may not bill the employer group health plan for the services.

In accordance with section 1877(g), proposed § 411.353(c) provides that Medicare payment would not be made for a clinical laboratory service that is furnished under a prohibited referral.

Proposed § 411.353(d) would require an entity that collects payment for a laboratory service that was performed under a prohibited referred to refund all amounts collected on a timely basis.

The following sections discuss the specific exceptions. While certain ownership or investment interests would not trigger the section 1877 prohibition on referrals, physicians who have these interests may also have compensation arrangements with the entity that may operate to preclude referrals by the physician to the entity for clinical laboratory services under other provisions of section 1877.

D. Exceptions that Apply to Specific Services

In accordance with section 1877(b), the prohibition on clinical laboratory referrals would not apply if the following conditions are met:

1. Physicians' Services in Group Practice

In § 411.355(a), we propose that a referral for physicians' services furnished personally by (or under the direct personal supervision of) a physician who is in the same group practice as the referring physician is not a prohibited referral. Under this exception, the referring physician and the consulting or diagnosing physician must be in a group practice that meets the requirements of section 1877(h)(4) and proposed § 411.350. Under this exception, the clinical laboratory services that are treated as physicians' services for payment purposes would be allowed if they are furnished directly by the consulting physician and performed in the group's laboratory.

The following clinical diagnostic laboratory services are treated as physician services for payment purposes and could be the subject of referrals under this exception:

CPT Code	Description
80500-80502	Clinical pathology consultation.
85095-85109	Codes dealing with bone marrow smears and biopsies.
86077-86079	Blood bank services.
88000-88125	Certain cytopathology services.
88160-88199	Certain cytopathology services.
88300-88399	Surgical pathology services.

These services are listed in the Current Procedural Terminology, 4th Edition, (copyrighted by the American Medical Association (1991)) and listed in section 5114.1.B. of the Medicare Carriers Manual (HCFA Pub. 14-3).

Since the law requires the services to be performed personally by a group practice physician, the service would be required to be performed in the group practice's office. On the other hand, the consulting physician could not refer the laboratory work to another entity with which the group has a financial relationship unless the group practice physician personally furnished the physician services performed at the other entity.

In this context we recognize that practical relationships may exist among physicians that involve shared office space and shared laboratory facilities and services that are not accommodated by the in-office ancillary services exception under section 19877(b)(2). For example, two (or more) physicians may share a suite including a laboratory used only to furnish services for their patients, but the physician's financial arrangement may not meet the strict definition of a "group practice" (section 1877(h)(4)). Unless an exception is developed, referrals by these physicians to the shared laboratory (that is, an in-office laboratory in which the individually practicing physicians all have ownership interest or for which each physician shares in the operating costs) would be prohibited.

We are not certain of the extent to which these arrangements exist, or whether any arrangements warrant the promulgation of an additional exception under section 1877. Therefore, we invite public comments about these issues and solicit suggestions about whether (and if so, how) to formulate an additional

exception to address business or practice arrangements involving shared office space that would not pose a risk of program or patient abuse.

2. In-office Ancillary Services

In § 411.355(b), we propose that a referral for in-office laboratory services would not be considered a prohibited referral under the following conditions:

• Performance Requirements.

The laboratory services must be performed personally by one of the following: (1) The referring physician; (2) a physician who is a member of the same group practice as the referring physician; or (3) a non-physician employee of the referring physician or group practice. When a laboratory service is performed by a non-physician employee, it must be performed under the direct supervision of the employing physician or a physician in the group practice.

• Location Requirements.

The in-office laboratory services must either be furnished in a building where the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of clinical laboratory services; or a building that is used by the group practice for centrally furnishing the group's clinical laboratory services (if the referring physician is a member of the group practice).

• Billing Requirements.

The in-office laboratory services must be billed by the physician who performed or supervised the laboratory services, or by the group practice in which the physician is a member, or an entity that is wholly owned by the physician or physician's group practice.

In contrast, a laboratory that is shared by several physicians who are independent practitioners and who are not members of a group, as defined in section 1877(h)(4), would not qualify for this exception. For example, physicians who are not engaged in the group practice of medicine may have entered into a partnership for furnishing laboratory services to their individual practices. The partnership entity is furnishing the services. Under section 1833(h)(5), the partnership must submit Medicare claims and receive Medicare payment in its name for the laboratory services. Thus, the partnership laboratory would have to obtain a provider number for this purpose. A referral by one of the physician partners in these circumstances would be considered a prohibited referral under section 1877.

3. Services Furnished to Prepaid Health Plan Enrollees

In § 411.355(c), we propose that referrals for services within certain prepaid health plans would not be prohibited referrals. Section 1877(b)(3) specifies that the services must be furnished by one of the following organizations to an individual who is enrolled in the organization:

• A health maintenance organization or a competitive medical plan in accordance with a contract with us under section 1876.

• A health care prepayment plan in accordance with an agreement with us to furnish the services to Medicare beneficiaries under section 1833(a)(1)(A).

• An organization that is receiving payments on a prepaid basis for the enrollees under a demonstration project under section 402(a) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1) or under section 222(a) of the Social Security Amendments of 1972 (42 U.S.C. 1395b–1 note).

This exception would apply only with respect to services that are furnished by the organization to individuals who are enrolled in the prepaid health plan in accordance with the organization's Medicare contract or agreement under one of the specified statutory authorities. Services that these organizations may provide to members or non-members outside the context of the Medicare contract or agreement would not be covered under this exception.

E. Exceptions for Certain Ownership or Investment Interests

1. Publicly Traded Securities

We propose in § 411.357(a) that the prohibition on referrals by interested investors would not apply if the financial relationship results from the ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) that are purchased on terms generally available to the public and are in a corporation that—

• Is listed for trading on the New York Stock Exchange, the American Stock Exchange, or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers; and

• Had, at the end of the corporation's most recent fiscal year, total assets exceeding $100,000,000.

In this proposal, the first prerequisite to qualify for protection is that the stocks must be purchased on terms generally available to the public, as specified in section 1877(c). This means that the general public must have the same opportunity to buy and sell the stock as the physician investors. For example, the following scenario would not qualify for this exception. A joint venture laboratory merges into a new corporation, the existing partners swap partnership shares for stock, the stock then starts to be traded publicly and the corporation reaches the $100 million asset level. On face value, the investment interest appears to qualify for the exception because the corporation has $100 million in assets. However, because the ex-partners bought their shares through a transaction before the stock was offered to the general public, the pre-requisite that the stocks be purchased on terms generally available to the public would not be met.

Under the statute and the proposed regulations, the $100 million in assets requirement applies only to the corporate entity that furnishes the clinical laboratory services. That is, the assets of a related corporation (for example, a parent, subsidiary, or sister corporation) could not be considered for purposes of qualifying the laboratory entity under the $100 million asset test. Furthermore, we are proposing that a corporation's total assets would not include assets obtained primarily for the purpose of meeting the $100 million asset test of this exception. For example, an entity may have a number of purposes in acquiring assets, but a violation may be proved by showing that no other purpose is more significant than the desire to qualify for this exception. We are proposing this criterion because we do not believe Congress intended to protect entities with $100 million in assets when those assets are not obtained in the normal course of business but are acquired primarily for the purpose of qualifying for this exception. We are proposing this additional element concerning the acquisition of assets under the Secretary's general authority of section 1102(a), which states that the Secretary may promulgate regulations for the efficient administration of the program. We believe this element is necessary for the efficient administration of the Medicare program because it attempts to block those arrangements that would clearly be a circumvention of the law through "sham" transactions.

We are specifically interested in receiving suggestions from the public about these proposals and other effective ways of protecting against program and patient abuse in this area.

2. Specific Providers

In § 411.357(b), we propose that the prohibition on referrals by interested investors would not apply if the financial relationship reuslts from ownership or investment in the following providers:

A laboratory that is located in a rural area (that is, a laboratory that is not located in an urban area, as that term is defined in § 412.62(f)(1)(ii)) and that meets the following conditions:

—The laboratory testing that is referred by a physician owner or investor must either—

—Be performed on the premises of the rural laboratory; or

—If not performed on the premises, the laboratory performing the testing must bill the Medicare program directly for the testing.

—The majority of tests referred to the rural laboratory must be referred by physicians who have office practices located in a rural area. "Urban area" means—

—A Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Office of Management and Budget; or

—The following New England counties, which are deemed to be parts of urban areas under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21, 42 U.S.C. 139ww (note)): Litchfield County, Connecticut; Sagadahoc County, Maine; York County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island.

As noted, to supplement the statutory provision concerning services furnished in a "rural laboratory", we are proposing two requirement intended to address possibility that this exception would be misused. We believe, in enacting this exception, Congress intended to benefit Medicare beneficiaries who live in rural areas where laboratories may not otherwise be available wthout the financial support of local physicians. We are concerned, however, about the possibility that physicians who have an ownership interest in an urban laboratory (and are precluded from making Medicare referrals to it) may set up a storefront or "shell" laboratory with a rural address in order to gain the benefit of this exception. In this scenario, the urban physician owner would make referrals to the rural laboratory, which would in turn refer the tests to the urban laboratory in which the physician also has an ownership interest. Alternatively, urban laboratories with physician owners could set up laboratories in rural areas for the purpose of performing tests referred by the physician owners for their urban patients.

To prevent these possible abuses and help assure that the rural laboratory exception benefits rural beneficiaries, we are proposing to require, when physician owners or investors make referrals to a laboratory located in a rural area, that the tests be performed directly by the laboratory on its premises, or if referral to another laboratory is necessary, that tests be billed by the laboratory that performs the test. Because an urban laboratory may not bill for services referred by a physician owner (unless another exception applies), these additional criteria should discourage the circumvention schemes described above.

Secondly, we propose to add the requirement that majority (at least 51 percent) of the tests referred to the rural laboratory are referred by physicians who have office practices in a rural area. (For purposes of this provision, we would apply the definition of "practice" set forth in proposed new § 411.351, as described below in the discussion of rental and leasing of office space.) This requirement should help to assure that the laboratory is in fact serving rural beneficiaries, and is not simply located in the rural area for the purpose of furnishing services referred by urban owners for their urban patients. In addressing this potential problem, we considered the alternative of requiring that at least 85 percent of the tests performed by the rural laboratory be for beneficiaries who reside in rural areas. However, based on our concern that compliance with this requirement could be administratively difficult and overly burdensome for rural laboratories, we opted against proposing this criterion. Nonetheless, we are speifically interested in receiving suggestions from the public about this matter, about our proposed requirements, and about other effective ways of protecting against program or patient abuse in application of the rural provider exception set forth in section 1877(d)(2).

Since the Secretary has the authority to promulgate regulations for the efficient administration of the program, we believe it is appropriate to require that a rural laboratory operate as a full service laboratory, not a shell laboratory, that is available to furnish laboratory services to patients residing in the rural area. Finally, we believe the additional proposed requirements are consistent with the legislative intent of section 1877 and are necessary to preclude circumvention of the statute.

In addition, the prohibition on referrals by interested investors would not apply if the ownership or investment interest is in the following providers:

A hospital located in Puerto Rico.

A hospital located outside of Puerto Rico if one of the following conditions is met:

—The referring physician is authorized to perform patient care services at the hospital and the physican's ownership or investment interest is in the entire hospital and not merely in a distinct part or department of the hospital, such as the laboratory (as provided in section 1877(d)(3)).

—The referring physician's financial relationship with a hospital does not relate to the furnishing of clinical laboratory services (as provided in section 1877(b)(4)).

Examples of the section 1877(b)(4) exception to the prohibition on referrals would include the following:

A group of physicians contracting with a hospital to furnish emergency room services and receiving payment from the hospital under a guaranteed free arrangement.

• A group of physicians owning and operating a free-standing mobile CAT scanner, which a hospital utilizes for its patients and pays the group for the use of the equipment.

F. Exceptions for Certain Compensation Arrangements

We propose to add § 411.359 to specify that, for purposes of the referral prohibition, a compensation arrangement (as defined in proposed § 411.351) would not include the following arrangements:

1. Rental or Lease of Space

In § 411.359(a), we would exempt the rental or lease of space by a lessee to a lessor if a written agreement is signed by the parties, which sets forth a term of at least 1 year, identifies the premises covered by the lease or rental agreement and specifies the space dedicated for use by the lessee, and provides for payment on a periodic basis of an amount that is consistent with the fair market value of the rented or leased premises in arm's-length transactions. If the agreement is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the full term of the agreement, we would require that the agreement specify exactly the schedule of the intervals, their precise length, and the exact rent for the intervals. The agreement would have to provide for aggregate payments that do not vary (directly or indirectly) based on the

volume or value of any referrals generated between the parties for clinical laboratory services. Finally, the lease agreement would have to be considered to be commercially reasonable even if no referrals are made between the lessee and the lessor.

If a laboratory entity rents or leases office space in which an interested investor (either a physician or immediate family member) has an ownership or investment interest, an additional condition must be met to qualify for an exception. In § 411.359(a)(2), we propose that in addition to meeting the requirements described in proposed § 411.359(a)(1), the rented or leased office space must be in the same building as the building in which the physician (or the physician's group practice) has a practice. When one party is in a position to make referrals to another party, even if there is no explicit or implicit understanding regarding referrals, certain rental payments could be construed to induce referrals. Typically, these arrangements would involve rental payments either substantially in excess of or below the fair market value of the rental space. Accordingly, one fundamental principle underlying these exceptions is that the payment must be based on the fair market value, regardless of whether the payment is for space rental, personal services, or management contracts.

The condition concerning maintenance of a practice is specified in the statute at section 1877(e)(1)(B). By use of the phrase "a practice", we believe Congress did not intend, on the one hand, that this standard could be met by an insignificant portion of the physician's professional performance occurring in the building. On the other hand, we realize that many physicians conduct their professional services in different locations; that is, a physician might have two offices in which he or she diagnoses and treats patients and where records are kept and office staff furnish patient services and perform overall administrative matters. Accordingly, we are proposing to include in § 411.351 a definition of "practice" to mean an office in which the physician, as a matter of routine, regularly sees patients for purposes of diagnosis and treatment and where patient records are kept. Comments about the scope of this definition are requested.

Also, in addition to the statutory requirements that set forth certain standards and safeguards for rental and lease arrangements, we are proposing a requirement concerning use of space for periodic intervals. We believe it is necessary to require that the periodic intervals be established in advance and be specified in the lease or rental agreement, rather than allowing the intervals to vary week-to-week on the basis of the number of referred patients to be serviced at the premises.

We are proposing these two additional standards under the Secretary's authority, as specified in section 1877(e)(1)(C), to identify additional safeguards to protect against program or patient abuse.

2. Certain Employment and Service Arrangements With Hospitals

We propose in § 411.359(b) that an arrangement between a hospital and a physician (or an immediate family member) for the employment of either the physician or family member or for the provision of administrative services will not be considered a compensation arrangement for purposes of the referral prohibition under the following conditions:

- The arrangement is in writing and specifies the day-to-day services to be furnished by the physician or immediate family member and is signed by the parties.
- The amount or value of the remuneration to the physician or immediate family member is consistent with the fair market value of services in arm's-length transactions, and is not determined in a manner that varies (directly or indirectly) based on the volume or value of any referrals of business otherwise generated by the physician.
- Finally, all terms of the arrangement must be considered commercially reasonable even if no referrals are made to the hospital.

3. Physician Recruitment

We propose in § 411.359(d) that, for purposes of the referral prohibition, remuneration provided by a hospital to a physician that is intended to induce the physician to relocate to the geographic area served by the hospital to become a member of the hospital medical staff would not be considered a compensation arrangement under the following conditions:

- The arrangement and its terms are in writing and signed by both parties.
- The hospital does not condition the agreement on the physician's referral of patients to the hospital.
- The hospital does not vary (directly or indirectly) the amount or value of the remuneration based on volume or value of any referrals the physician generates for the hospital.
- The hospital does not restrict the physician from establishing staff privileges at another hospital or referring business to another entity.

While these requirements for the most part follow the statute, we have used the discretion authorized by section 1877(e)(4)(C) to propose additional requirements. For the reasons stated earlier, we believe it is appropriate to require physician recruitment arrangements to be set out in writing and signed by the parties. Also, we believe it is appropriate to assure that the arrangement permits a physician to establish staff privileges at hospitals other than the one with which an arrangement has been made.

4. Isolated Transactions

We propose in § 411.359(e) that an isolated financial transaction, such as a one-time sale of property, would not be considered a compensation arrangement for purposes of section 1877 if it meets the following conditions:

- The transaction is in writing and signed by the parties.
- There is no financial relationship between the entity and the physician of 1 year before and 1 year after the transaction.
- The amount or value of remuneration for the transaction is—
  - —Consistent with the fair market value of services in arms-length transactions; and
  - —Not determined in a manner that varies (directly or indirectly) based on the volume or value of any referrals of business that may be generated by the physician or the immediate family member.
- The remuneration is provided under an arrangement that would be considered commercially reasonable even if no referrals were made.

We are proposing the additional element concerning the 1-year period under the authority of section 1877(e)(5)(B), which states that the transaction meets all other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse. We believe this element is necessary to assure that both the transaction as well as the existing relationship are isolated.

5. Service Arrangements With Entities Other Than Hospitals

We propose in § 411.359(c) that the following arrangements between a physician and an entity other than a hospital would not be considered a compensation arrangement for purposes of the referral prohibition:

• An arrangement for a physician to perform specific identifiable services as the medical director or a member of a medical advisory board of the entity in order to enable the entity to comply with the Medicare statute.

• An arrangement for identifiable physician's services furnished to an individual receiving hospice care for which Medicare payment may be made only as hospice care.

• An arrangement for identifiable physician's services to a nonprofit blood center.

We would require that the amount or value of the remuneration under any one of these arrangements be consistent with the fair market value of the services in arm's-length transactions, and that it may not be determined in a manner that varies (directly or indirectly) on the basis of the volume or value of any referrals of business generated by the physician or immediate family member. Additionally, we would require that the remuneration be provided under an arrangement that would be considered commercially reasonable even if no referrals are made to the entity.

Section 1877(e)(3) authorizes an additional exception for remuneration to a physician or immediate family member from a non-hospital entity under an arrangement for furnishing specific identifiable administrative services (other than direct patient care services), but only under exceptional circumstances specified by the Secretary in regulations. At this time, we are unaware of any exceptional circumstances for which any additional exception would be justified; therefore, we have included this exception in the proposed regulations. Nevertheless, we invite comments on this issue.

In establishing these employment and service arrangements, we are proposing the following requirements in addition to the statutory requirements:

• We believe it is necessary to set out the arrangement in writing (that is, identify the services to be furnished, the time periods for which the services are to be furnished, and the location of the services) and to require the parties to sign the written document. These requirements were established in the statute for rental arrangements, and we believe they are equally appropriate to employment and service arrangements.

• We believe it is necessary to expand the requirement regarding the amount of remuneration to include the amount "or value" of remuneration. The "amount" of remuneration indicates the total quantity of remuneration; for example, number of total dollars or items offered. However, remuneration may also include indirect compensation or other benefits that have value.

6. Salaried Physicians in a Group Practice

In § 411.359(f), a compensation arrangement involving payment by a group practice of the salary of a physician member of the group would not be considered a compensation arrangement for purposes of section 1877.

7. Other Arrangements With Hospitals

In § 411.359(g), a compensation arrangement other than one described above between a hospital and a physician or a physician's immediate relative would not trigger the section 1877 prohibition on referrals if the arrangement does not relate to furnishing clinical laboratory services.

III. OIG Regulations

The OIG is developing a proposed rule to codify in regulations the penalty provisions contained in sections 1877(g)(3) and (4). Section 1877(g)(3) authorizes the imposition of a civil money penalty when any person who presents or causes to be presented a bill or claim for a service that the person knows or should know was furnished under a prohibited referral (in contravention of section 1877(a)(1)), or who has not refunded amounts inappropriately collected for a prohibited referral. Section 1877(g)(4) authorizes the imposition of civil money penalties, assessments, and an exclusion if a physician or other entity enters into an arrangement or scheme, a principal purpose of which the physician or entity knows or should know is to assure referrals that, if they were made directly, would violate the prohibition on referrals described in section 1877(a)(1).

We are requesting that the OIG treat as a circumvention scheme any effort by an entity to obtain $100 million principally for the purposes of meeting the exception found in section 1877(c), which relates to entities having $100,000,000 in total assets.

IV. Collection of Information Requirements

Regulations at § 411.351 contain information collection or recordkeeping requirements or both that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements concern those group practices meeting the definition found in section 1877(h)(4) and require them to attest that, in the aggregate, at least 75 percent of the services furnished by all physician members are furnished to group practice patients. Public reporting burden for this collection of information is estimated to be 1 hour per response. A notice will be published in the Federal Register after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the **ADDRESS** section of this preamble.

V. Responses to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and we will respond to the comments in the preamble to that final rule.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

• An annual effect on the economy of $100 million or more;

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

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

The provisions of this proposed rule implement section 6204 of Public Law 101-239 and section 4207(e) of Public Law 101-508, which amend the Act by adding a new section 1877, "Limitation on Certain Physician Referrals." This proposed rule, by prohibiting physician referrals for clinical laboratory services by physicians who have an ownership, investment, or compensation arrangement with the entity furnishing the service is meant to eliminate incentives for physicians to order unnecessary and costly laboratory tests.

According to the OIG report cited in section I.A.1 of this preamble, at least 25 percent of the nearly 4,500 independent clinical laboratories are owned in whole or in part by referring physicians. The same OIG report found that Medicare

patients of referring physicians who own or invest in these laboratories received 45 percent more clinical laboratory services than all Medicare patients. The OIG estimated in its report that the "increased utilization of clinical laboratory services by patients of physician-owners cost the Medicare program $28 million nationally in 1987."

We believe the majority of physicians and clinical laboratories do not currently make referrals that would be prohibited buy this rule. In addition, we believe that, based solely on the statutory provisions, physicians and laboratories would take necessary steps, before January 1, 1992, to ensure that their investment and employment activities do not restrict their ability to make referrals. Therefore, any estimate of the aggregate economic impact of this rule would be purely speculative. We believe the status itself will have a continuing deterrent effect on physicians' aberrant referral patterns and investment interests. Changes to these physicians' practices would be the result of Congressional action in enacting section 1877 of the Act, not the result of these proposed regulations.

This proposed rule does not meet the $100 million criterion, nor do we believe that it meets the other E.O. 12291 criteria. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (REA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals, physicians, and clinical laboratories to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We do not have data at this time to assist us in estimating the number of physicians, hospitals, or independent laboratories that would be affected by this proposed rule; however, we expect that some entities may be affected to varying degrees. Relative to the potential impact on these entities, the following discussion is provided.

1. Impact on Physicians and Physician Groups

Physicians reportedly find it inefficient and inconvenient to split their laboratory referral business among multiple laboratories, the physician who uses one laboratory for private-pay patients is likely to use that same laboratory for all patients. Therefore, it is conceivable that, absent this rule, a physician would seek an ownership or investment interest in a laboratory, or a compensation arrangement between the physician and a laboratory, in order for the physician to share in the profits of the laboratory to which the physician makes referrals. In these cases, the prohibition on referrals might apply, which would require the physician to either dispose of his or her interest or stop referring Medicare patients to that entity.

Some physicians who have independent practices maintain a physician office laboratory in shared premises, with shared equipment, shared employees, a shared administrator who has the power to hire and terminate employees on behalf of the physicians, and shared overhead costs. We understand that these shared laboratories are used to furnish tests to the patients of the physicians sharing the laboratory and that each individual physician bills for the laboratory services furnished to his or her patients as a physician's office laboratory. The particulars of these arrangements may vary. Sometimes, the shared office laboratory is located on premises separate from each physician's office. In this case, each physician sees patients in his or her office practice but has the laboratory work performed in the shared laboratory. In some arrangements, the physician's individual practice offices are in the same building as the physicians' office laboratory. In other instances, the physicians have incorporated the laboratory, which can be centrally located between the offices of the individual physicians. For the most part, these shared office space arrangements are not eligible for the in-office ancillary exception found in section 1877(b)(2) of the Act and, therefore, the prohibition on referrals might apply. This would require the physicians to either form a group practice meeting the definition of section 1877(h)(4) of the Act, to dispose of their interest in the shared laboratory facility, or stop referring Medicare patients to that laboratory facility.

Some group practices have affiliated property companies that are owned by members of the group practice and that lease facilities and equipment to the group practices. The lease of equipment by the property company to the group practice company that operates a clinical laboratory is an arrangement for which an exception is not provided under these regulations. In these cases, the prohibition on referrals would apply, which would require the group physicians to either purchase the equipment from the property company or divest their interest in the laboratory.

2. Impact on Laboratories

As mentioned above, the report from the OIG to Congress established that at least 25 percent of the nearly 4500 independent clinical laboratories are owned in whole or in part by referring physicians. The same report found that Medicare "patients of referring physicians who own or invest in these laboratories received 45 percent more clinical laboratory services than all Medicare patients * * *." We are unable to determine how many of the existing physician laboratory owners would be affected by this rule, and how the utilization of laboratory services would change. It is clear, as mentioned above, that certain arrangements between physicians, physician groups, and other entities would be prohibited by this regulation. We are unable to determine, however, at this time the prevalence of these arrangements.

Section 1833(q) requires that each request for payment, or bill submitted, for an item or service furnished by an entity for which payment may be made under Medicare Part B and for which the entity knows or has reason to believe there has been a referral by a referring physician, must include the name and UPIN of the referring physician and indicate whether or not the referring physician is an interested investor. A request for payment on an assignment-related basis may be denied if the required information is not included. Civil money penalties may be imposed if an entity that submits Part B claims that are not assignment-related knowingly and willfully fails to provide the required information upon request. Furthermore, under section 1877(g)(3), should any entity present a bill or claim for an item or service that the entity knows or should have known was furnished under a prohibited referral, or has not refunded amounts collected for the referral, the entity is subject to civil money penalties.

Because of the reporting requirements and the associated penalties under sections 1833(q) and 1877, we believe there would be few prohibited referrals and services under these proposed

regulations, resulting in minimal effects on only a few clinical laboratories.

3. Impact on Hospitals

Sections 1877(b)(4) and 1877(d) of the Act include exceptions related to the prohibition on referrals for ownership or investment interests in certain hospitals. Clinical laboratory services furnished by a hospital in Puerto Rico are exempted, as are services furnished by other hospitals, if the referring physician is authorized to perform services at the hospital and the ownership or investment interest of the physician is in the hospital itself and not merely in a subdivision of the hospital. Additionally, if a physician's financial relationship with a hospital does not relate to furnishing clinical laboratory services, the referral prohibition would not apply. Because we believe that most of the financial relationships between physicians and hospitals are covered by these exceptions, we do not believe hospitals would be significantly affected by this rule.

We encourage comments and submission of applicable data concerning the number of small entities that may be affected by this proposed rule as well as the magnitude of any impact on small entities.

For the reasons stated above, we have determined, and the Secretary certifies, that this proposed rule would not result in a significant economic impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals. We are, therefore, not preparing analyses for either the RFA or section 1102(b) of the Act.

List of Subjects in 42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR part 411 would be amended as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

1. The authority citation for part 411 is revised to read as follows:

Authority: Secs. 1102, 1834, 1842(1), 1861, 1862, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(1), 1395x, 1395y, 1395hh, 1395nn, and 1395pp).

Subpart A—General Exclusions and Exclusion of Particular Services

2. § 411.1, paragraph (a) is revised to read as follows:

§ 411.1 Basis and scope.

(a) *Statutory basis.* Section 1814(c), 1835(d), and 1862 of the Act exclude from Medicare payment certain specified services. The Act provides special rules for payment of services furnished by Federal providers or agencies (sections 1814(c) and 1835(d)), by hospitals and physicians outside the United States (sections 1814(f) and 1862(a)(4)), and by hospitals and SNFs of the Indian Health Service (section 1880). Section 1877 sets forth limitations on referrals and payment for clinical laboratory services furnished by entities with which the referring physician has a financial relationship.

* * * * *

Subpart J—Physician Ownership of, and Referral of Patients or Laboratory Specimens to, Entities Furnishing Clinical Laboratory or Other Health Services

3. Section 411.350 is revised to read as follows:

§ 411.350 Scope of subpart.

(a) This subpart implements section 1877 of the Act, which generally prohibits a physician from making a referral under Medicare for clinical laboratory services to an entity with which the physician or a member of the physician's immediate family has a financial relationship.

(b) This subpart does not provide for exceptions or immunity from civil or criminal prosecution or other sanctions applicable under any Federal law other than section 1877 of the Act, or State laws. For example, although a particular arrangement involving a physician's financial relationship with an entity may not prohibit the physician from making referrals to the entity under this subpart, the arrangement may nevertheless violate another provision of the Act or other laws administered by DHHS, the Federal Trade Commission, the Securities and Exchange Commission, the Internal Revenue Service, or any other Federal or State agency.

(c) This subpart requires, with some exceptions, that entities furnishing covered services under Part A or Part B report information concerning their ownership arrangements in the form, manner, and at the times specified by HCFA.

4. New §§ 411.351, 411.353, 411.355, 411.357, and 411.359 are added to subpart J to read as follows:

§ 411.351 Definitions.

As used in this subpart, unless the context indicates otherwise:

Compensation arrangement means any arrangement involving any remuneration between a physician (or a member of a physician's immediate family) and an entity.

Employee means any individual who, under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986), is considered to be employed by, or an employee of an entity. (Application of these common law rules is discussed at 20 CFR 404.1007 and 26 CFR 31.3121(d)-1(c).)

Entity means a sole proprietorship, trust, corporation, partnership, foundation, not-for-profit corporation, or unincorporated association.

Fair market value means the value in arm's-length transactions, consistent with the general market value. With respect to rentals or leases, "fair market value" means the value of rental property for general commercial purposes (not taking into account its intended use). In the case of a lease of space, this value may not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience of the lessor when the lessor is a potential source of patient referrals to the lessee.

Financial relationship refer to a direct or indirect relationship between a physician (or a member of a physician's immediate family) and an entity in which the physician or family member has—

(1) An ownership or investment interest that exists through equity, debt, or other similar means; or

(2) A compensation arrangement.

Group practice means a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association that meet the following conditions:

(1) Each physician who is a member of the group furnishes substantially the full range of patient care services that the physician routinely furnishes including medical care, consultation, diagnosis, and treatment through the joint use of shared office space, facilities, equipment, and personnel.

(2) Substantially all of the patient care services of the physicians who are members of the group (that is, at least 85 percent of the aggregate services furnished by all physician members of the group practice) are furnished through the group and are billed in the name of the group and the amounts received are treated as receipts of the group. The group practice must attest in

writing that it meets this 85 percent requirement.

(3) The practice expenses and income are distributed in accordance with methods previously determined by members of the group.

In the case of faculty practice plans associated with hospitals that have approved medical residency programs for which faculty practice plan physicians perform specialty and professional services, both within and outside the faculty practice, this definition applies only to those services that are furnished to patients of the faculty practice plan.

Immediate family member of member of a physician's immediate family means husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

Interested investor means an investor in an entity who is either a physician in a position to make or to influence referrals of business to the entity, or who is a member of the physician's immediate family.

Investor means a person with a financial relationship, as defined in this section, with an entity.

Practice means an office in which the physician, as a matter of routine, sees patients for purposes of diagnosis and treatment and where patient records are kept.

Referral means either of the following:

(1) The request by a physician for, or ordering of, any item or service for which payment may be made under Medicare Part B including a request for a consultation with another physician other than a pathologist, and any test or procedure ordered by, or to be performed by (or under the supervision of) that physician.

(2) If a plan of care includes the performance of clinical laboratory testing, the request of establishment of the plan of care by a physician.

When a pathologist in responding to another physician's request for a consultation, furnishes or supervises the furnishing of clinical diagnostic laboratory tests and pathological examination services, the services are not considered to have been furnished on a referral basis.

Referring physician means a physician (or group practice) who makes a referral as defined in this section.

Remuneration means any payment, discount, forgiveness of debt, or other benefit made directly or indirectly, overtly or covertly, in cash or in kind.

§ 411.353 Prohibition on certain referrals by physicians and limitations on billing.

(a) *Prohibition on referrals.* Beginning January 1, 1992, except as provided in §§ 411.355, 411.357, and 411.359, a physician who has a financial relationship with an entity, or who has an immediate family member who has a financial relationship with the entity, may not make a referral to that entity for the furnishing of clinical laboratory services as described in § 493.2 of this chapter, for which payment otherwise may be made under Medicare.

(b) *Limitations on billing.* An entity that furnishes clinical laboratory services under a referral that is prohibited by paragraph (a) of this section may not present or cause to be presented a claim or bill to the Medicare program or to any individual, third party payor, or other entity for the clinical laboratory services performed under that referral.

(c) *Denial of payment.* No Medicare payment may be made for a clinical laboratory service that is furnished under a prohibited referral.

(d) *Refunds.* An entity that collects payment for a laboratory service that was performed under a prohibited referral must refund all amounts collected on a timely basis.

§ 411.355 General exceptions to referral prohibitions related to ownership and compensation.

The prohibition on referrals set forth in § 411.353 does not apply to the following types of services:

(a) *Physicians' services,* as defined in § 411.20(a), that are furnished personally by (or under the direct personal supervision of) another physician in the same group practice as the referring physician.

(b) *In-office ancillary services* if they meet all of the following conditions:

(1) They are furnished personally by one of the following individuals:

(i) The referring physician.

(ii) A physician who is a member of the same group practice as the referring physician.

(iii) Non-physician employees of the referring physician or group practice, who are personally supervised by the referring physician or by another physician in the group practice.

(2) They are furnished in one of the following locations:

(i) A building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of clinical laboratory services.

(ii) A building that is used by the group practice for centrally furnishing the group's clinical laboratory services (if the referring physician is a member of the group practice).

(3) They are billed by one of the following:

(i) The physician performing or supervising the service.

(ii) The group practice in which the physician is a member.

(iii) An entity that is wholly owned by the physician or the physician's group practice.

(c) *Services furnished to prepaid health plan enrollees* by one of the following organizations:

(1) A health maintenance organization or a competitive medical plan in accordance with a contract with HCFA under section 1876 of the Act and part 417, subpart C, of this chapter.

(2) A health care prepayment plan in accordance with an agreement with HCFA under section 1833(a)(1)(A) of the Act and part 417, subpart D.

(3) An organization that is receiving payments on a prepaid basis for the enrollees through a demonstration project under section 402(a) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1) or under section 222(a) of the Social Security Amendments of 1972 (42 U.S.C. 1395b–1 note).

§ 411.357 Exceptions to referral prohibitions related to ownership or investment interests.

For purposes of § 411.353, the following ownership or investment interests do not constitute a financial relationship:

(a) *Publicly-traded securities.* Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) that are purchased on terms generally available to the public and are in a corporation that—

(1) Is listed for trading on the New York Stock Exchange, the American Stock Exchange, or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers; and

(2) Had, at the end of the corporation's most recent fiscal year, total assets exceeding $100,000,000. These assets must have been obtained in the normal course of business and not for the primary purpose of qualifying for this exception.

(b) *Specific providers.* Ownership or investment interest in the following entities:

(1) A laboratory that is located in a rural area (that is, a laboratory that is not located in an urban area as defined

in § 412.62(f)(1)(ii) of this chapter) and that meets the following criteria:

(i) The laboratory testing that is referred by a physician who has an ownership or investment interest in the rural laboratory must either—

(A) Be performed on the premises of the rural laboratory; or

(B) If not performed on the premises, the laboratory performing the testing must bill the Medicare program directly for the testing.

(ii) The majority of the tests referred to the rural laboratory are referred by physicians who have office practices located in a rural area.

(2) A hospital that is located in Puerto Rico.

(3) A hospital that is located outside of Puerto Rico if one of the following conditions are met:

(i) The referring physician is authorized to perform patient care services at the hospital, and the physician's ownership or investment interest is in the entire hospital and not merely in a distinct part or department of the hospital.

(ii) The referring physician's ownership or investment interest does not relate (directly or indirectly) to the furnishing of clinical laboratory services.

§ 411.359 Exceptions to referral prohibitions related to compensation arrangements.

For purposes of § 411.353, the following compensation arrangements do not constitute a financial relationship:

(a) *Rental of office space.* Payments made by a lessee to a lessor under the following conditions:

(1) There is a rental or lease agreement that meets the following requirements:

(i) The agreement is set out in writing, and is signed by the parties.

(ii) The agreement identifies the premises covered by the agreement and specifies the space dedicated for the use of the lessee.

(iii) The term of the agreement is at least 1 year.

(iv) If the agreement is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of the intervals, their precise length, and the exact rent for the intervals.

(v) The agreement provides for payment on a periodic basis of an amount that is consistent with the fair market value of the rented or leased premises in arm's-length transactions.

(vi) The agreement provides for an amount of aggregate payments that does not vary (directly or indirectly) on the basis of the volume or value of any referrals generated between the parties.

(vii) The terms of the agreement would be considered to be commercially reasonable even if no referrals were made between the lessee and the lessor.

(2) If an interested investor (either a physician or immediate family member) has an ownership or investment interest in the rented or leased office space, the arrangement meets the following conditions:

(i) The rented or leased office space is in the same building in which the physician's practice or the physician's group practice is located.

(ii) The requirements described in paragraphs (a)(1)(i) through (a)(1)(vii) of this section are met.

(b) *Employment and service arrangements with hospitals.* An arrangement between a hospital and a physician (or immediate family member) for employment or for the provision of administrative services if the following conditions are met:

(1) The arrangement is set out in writing and signed by the parties.

(2) The arrangement specifies the day-to-day services to be furnished by the physician or immediate family member.

(3) The amount or value of the remuneration is—

(i) Consistent with the fair market value of the services in arm's-length transactions; and

(ii) Not determined in a manner that varies (directly or indirectly) on the basis of the volume or value of any referrals of business otherwise generated by the physician.

(4) The remuneration is provided under an arrangement that would be considered commercially reasonable even if no referrals were made to the hospital.

(c) *Physician recruitment.* Renumeration provided by a hospital to recruit a physician, which is intended to induce the physician to relocate to the geographic area served by the hospital and become a member of the hospital's medical staff if all of the following conditions are met:

(1) The arrangement and its terms are in writing and signed by both parties.

(2) The arrangement is not conditioned on the physician's referral of patients to the hospital.

(3) The hospital does not vary (directly or indirectly) the amount or value of the remuneration to the physician based on volume or value of any referrals the physician generates for the hospital.

(4) The physician is not precluded from establishing staff privileges at another hospital or referring business to another entity.

(d) *Isolated transactions.* Isolated financial transactions, such as a one-time sale of property, if all of the conditions set forth in paragraphs (b)(1), (3), and (4) of this section are met and there is no other financial relationship between the entity and the physician for 1 year before and 1 year after the transaction.

(e) *Service arrangements with non-hospital entities.* An arrangement for specific identifiable services furnished by a physican to an entity other than a hospital if the following conditions are met:

(1) The services are furnished—

(i) By the physician acting as the medical director or as a member of a medical advisory board of the entity in accordance with a Medicare requirement;

(ii) As a physician's service to an individual receiving hospice care for which Medicare payment may only be made as hospice care; or

(iii) As a physician's service to a nonprofit blood center.

(2) The arrangement satisfies the requirements described in paragraphs (b)(3) and (4) of this section.

(f) *Salaried physicians in a group practice.* A compensation arrangement involving payment by a group practice of the salary of a physician member of the group.

(g) *Other arrangements with hospitals.* A compensation arrangement other than those described in parargraphs (a) through (d) of this section between a hospital and a physician or a member of a physician's immediate family, if the arrangement does not relate to furnishing clinical laboratory services.

(Catalog of Federal Domestic Assistance Program No. 93.774, Supplementary Medical Insurance)

Dated: June 1, 1991.

Gail Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 7, 1991.

Louis W. Sullivan,

Secretary.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

RIN 1004-AC00

[WO-610-02-4110-24 1A]

Promotion of Development, Reduction of Royalty on Stripper Wells

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this proposed rule to amend 43 CFR 3103.4-1 relating to waiver, suspension, or reduction of rental, royalty, or minimum royalty. This amendment establishes the conditions under which an operator or an owner of a stripper oil well property can obtain a reduction in the royalty rate. This action is taken in order to encourage the operators of Federal stripper oil properties to place marginal or uneconomical shut-in oil wells back in production and to provide the economic incentive to increase production by reworking such wells and/or by implementing enhanced oil recovery projects. This would delay the abandonment of stripper and shut-in oil wells until the maximum amount of economically recoverable oil has been obtained from the reservoir. This amendment should result in an increase in the cumulative amount of domestic oil production from existing wells, and an increase in the percentage of oil recovery from presently developed reservoirs. It would also minimize the necessity of drilling new wells with the accompanying additional environmental impacts, assist in reducing the national balance of trade deficit, and help promote stability relating to jobs and services in the domestic oil industry.

DATES: Comments should be submitted by April 10, 1992. Comments received or postmarked after this date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 653-2127.

SUPPLEMENTARY INFORMATION: Section 39 of the Mineral Leasing Act (30 U.S.C. 209) and the existing regulations at 43 CFR 3103.4-1 provide that, in order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary of the Interior (the Secretary), upon a determination that it is necessary to promote development or that the lease cannot be successfully operated under the terms provided therein, may reduce the royalty on an entire leasehold or any portion thereof. The existing regulations also require the filing of a lengthy application for royalty reduction, including a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any production, and all facts tending to show whether the wells can be successfully operated at the fixed lease royalty rate. Further, existing BLM policy only allows for a royalty reduction sufficient for the lease income to equal expenses; that is, such reduction does not provide for the working interest owner to receive a profit from the production operations. Under these conditions, very few applications for royalty reduction have been filed and even fewer granted.

Based on the following findings, the Secretary has determined under section 39 of the Mineral Leasing Act that, for all oil wells qualifying as stripper wells, i.e., wells producing less than 15 barrels per day, royalty rate reduction is necessary to promote development, and that many stripper oil well properties cannot be successfully operated at the current royalty rate.

As of September 30, 1991, there were approximately 20,000 producing oil and gas leases on Federal lands. About 14,000 of these leases had wells actually producing thereon and about 6,000 were allocated production by virtue of being committed to unit or communitization agreements or by the payment of compensatory royalty. The majority of the total producing leases, about 15,000, were in the States of Colorado, New Mexico, and Wyoming.

On those leases, there were about 23,000 producing oil wells, 6,000 shut-in oil wells, and an estimated additional 3,000 temporarily abandoned oil wells on Federal lands as of September 30, 1991. The majority of the shut-in oil wells, about 4,800, were in the States of Wyoming, New Mexico, and California.

About 15,500 of the 23,000 producing oil wells were stripper oil wells. Total oil production from Federal lands during the period June 1990 through May 1991 was about 121 million barrels of which about 22.8 million barrels were produced from stripper oil wells. Since domestic oil production has been declining in the last 5 years, production from stripper wells is vital to avoiding increased dependence on foreign sources of crude oil.

Stripper wells are those whose production level is so low that they are only marginally economical to keep in production at current royalty rates, under the current and foreseeable oil industry economics. In fact, many are not currently producing and about 6,000 are in a shut-in status awaiting abandonment or better economics to resume production. A recent internal BLM review indicates that over 80 percent of the shut-in oil wells on Federal lands have some future beneficial use (potential to return to use as a production or service well), depending on economics. About 20 percent of the shut-in wells may have potential for use in enhanced oil recovery projects. During the past year, over 600 wells were plugged and abandoned on Federal lands, an average rate of 50 wells per month. Abandonment of stripper wells under the current economic situation in many cases will preclude the ultimate recovery of petroleum that physically could be produced from existing wells, but which would not justify redrilling of plugged wells or the drilling of new wells under more favorable economic circumstances after existing wells are plugged. Unless production resumes in the near future, BLM regulations for the protection of the environment will require these wells to be permanently plugged.

Given an appropriate economic incentive such as royalty rate reduction, wells currently shut-in or awaiting abandonment could be brought back into production, thereby reducing the current abandonment rate for marginally economic and shut-in wells and maximizing the ultimate recovery of energy resources on Federal lands. It would be in the public interest to reduce the abandonment rate, because any stripper well that is abandoned because of current economics reduces the potential for added and future domestic oil production. Money that is currently spent by operators in abandoning wells can instead be turned to use in resuming or increasing production. Operators of the producing stripper properties would be able to invest the gain from the royalty rate reduction to increase the production rate of stripper wells through reworking or enhanced recovery projects. Therefore, the Secretary has determined that the royalty rate reduction is the most appropriate method to encourage the greatest ultimate recovery of oil.

The proposed rule would define stripper oil property as a property that

produces an average of less than 15 barrels of oil per eligible well per day. Property is defined as a lease or a portion thereof, a communitization agreement, or a participating area of a unit agreement, operated by the same operator, which produces an average of less than 15 barrels of oil per well per day. An eligible well is defined as an oil well that produces, or an injection well that injects, for any period of time during the qualifying or subsequent 12-month period. An oil well is defined in the "PAAS Onshore Oil and Gas Reporter Handbook," which comprises the instructions for the Minerals Management Service (MMS) Form MMS-3160, Monthly Report of Operations. Injection well is defined as a well that injects a fluid for secondary or enhanced oil recovery.

The proposed rule would allow a royalty rate reduction to the operator or owner of a stripper oil well property after a determination that the property qualifies as a stripper oil well property, based on the section 39 determination made in this rule, without a separate section 39 determination for the particular property. The benefit of the reduction is intended for working interest owners to reinvest the gain in enhancing oil production.

This stripper oil well property royalty rate reduction program will remain in effect for 5 years as an economic test of the effect that this type of royalty rate reduction will have on encouraging the return of shut-in stripper oil wells to production, giving an economic incentive to obtain additional incremental oil production by reworking such wells or by implementing enhanced oil recovery projects, and on ultimately recovering the maximum amount of oil from stripper oil wells on Federal lands. If the oil price indexed for inflation remains, on average, above $28 per barrel based on the 1991 West Texas Intermediate crude average posted price for a period of 6 consecutive months, the stripper well property royalty rate reduction may be terminated upon 6 months' notice.

A qualifying production rate (average per well per day production) for stripper oil well properties will be calculated by each operator operating such a property, and a royalty rate will be established with a graduated schedule using an established formula, depending on the production rate. Total oil production from the eligible wells on the property is totaled and then divided by the total number of well days, both producing and injection days, as reported on Form MMS-3160 for the eligible wells, to calculate the property average daily production rate. The royalty rate calculated for the qualifying period will be the property oil royalty rate for all oil production for the first 12-month period and the maximum royalty rate for the life of the program. At the end of each 12-month period, the royalty rate will be recalculated, using the formula, for the next 12-month period and the lower of that rate or the qualifying rate will be used. The producer thus can invest in enhanced recovery with certainty as to his/her royalty costs. In this way, the economic life of these wells will be extended and abandonment of stripper and shut-in oil wells will be delayed until the maximum amount of recoverable oil has been obtained from the reservoir.

Using the above definitions and computation, the operator determines whether its property is a stripper oil property. If the property qualifies as a stripper oil property, the operator, using the property average production rate and the formula established by the BLM, calculates the applicable royalty rate for each 12-month period. The MMS will monitor and verify the operator's determinations of the reduced royalty rate. Irregularities will be investigated and resolved in cooperation with the BLM.

If the lease royalty rate is lower than the benefits provided by this rule, the lease rate prevails. In addition, the minimum royalty provisions of 43 CFR 3103.3-2 still apply to leases granted a royalty rate reduction under this rule.

The principal authors of this proposed rule are Sie Ling Chiang, Douglas Koza, and Rudy Baier of the Division of Fluid Mineral Lease and Reservoir Management, assisted by the staff of the Division of Legislation and Regulatory Management, BLM, and the MMS.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusion" means a category of actions which do not individually or cumulatively have significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Some of the information collection requirement(s) contained in § 3103.4-1 have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* and assigned clearance number 1004-0145. Other information collection requirement(s) contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501, *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

List of Subjects for 43 CFR Part 3100

Land Management Bureau, Public Lands—Mineral resources, Oil and gas production, Mineral royalties.

For the reasons stated in the Preamble, and under the authorities cited below, part 3100, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 3100—ONSHORE OIL AND GAS LEASING; GENERAL

1. The authority citation for part 3100 is revised to read as follows:

Authority: 30 U.S.C. 181, *et seq.*, 30 U.S.C. 351–359.

Subpart 3100—Oil and Gas Leasing: General

2. Section 3100.0–9 is added to read as follows:

§ 3100.0–9 Information collection.

(a)(1) The collections of information contained in § 3103.4–1(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and are among the collections assigned clearance number 1004–0145. The information will be used to determine whether an oil and gas operator or owner may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with 30 U.S.C. 181, *et seq.*, and 30 U.S.C. 351–359.

(2) Public reporting burden for the information collections assigned clearance number 1004–0145 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 the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0145, Washington, DC 20503.

(b)(1) The collections of information contained in § 3103.4–1 (c) and (d) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number _____. The information will be used to determine whether the oil and gas lessee may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with 30 U.S.C. 181, *et seq.*, and 30 U.S.C. 351–359.

(2) Public reporting burden for this information is estimated to average ½ 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 the burden, to the Information Collection Clearance Officer, Minerals Management Service (Mail Stop 2300), 381 Elden Street, Herndon, VA 22070–4817, and the Office of Management and Budget, Paperwork Reduction Project, _____, Washington, DC 20503.

Subpart 3103—Fees, Rentals and Royalty

3. Section 3103.4–1 is amended by redesignating paragraphs (c) and (d) as (b)(3) and (e) respectively, revising paragraph (b)(1), and adding new paragraphs (c) and (d) to read as follows:

§ 3103.4–1 Waiver, suspension, or reduction of rental, royalty, or minimum royalty.

* * * * *

(b)(1) An application for the above benefits on other than stripper oil well properties shall be filed in the proper BLM office. It shall contain the serial numbers of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

* * * * *

(c)(1) A stripper well property is defined as a lease or portion thereof segregated for royalty purposes, a communitization agreement, or a participating area of a unit agreement, operated by the same operator, that produces an average of less than 15 barrels of oil per eligible well per day for the qualifying period.

(2) An eligible well is an oil well that produces or an injection well that injects for any period of time during the qualifying or subsequent 12-month period.

(3) An oil well is defined in the "PAAS Onshore Oil and Gas Report Handbook," which comprises the instructions for the Minerals Management Service (MMS) Form MMS–3160, Monthly Report of Operations.

(4) An injection well is a well that injects a fluid for secondary or enhanced oil recovery.

(d) Stripper oil well property royalty rate reduction shall be administered according to the following requirements and procedures.

(1) An application for the benefits under (a) of this section for stripper oil well properties is not required.

(2) Total oil production for the subject period from the eligible wells on the property is totaled and then divided by the total number of well days, both producing and injection days, as reported on Form MMS–3160 for the eligible wells to determine the property average daily production rate. For those properties in communitization agreements and participating areas of unit agreements that have allocated (not actual) production, the production rate for all eligible well(s) in that specific communitization agreement or participating area is determined and shall be assigned to that allocated property in that communitization agreement or participating area.

(3) Procedures to be used by operator:

(i) Qualifying determination.

(A) Calculate an average daily production rate for the property in order to verify that the property qualifies as a stripper property.

(B) The initial qualifying period for producing properties is the period August 1, 1990, through July 31, 1991. For the properties that were shut-in for 12 consecutive months or longer, the qualifying period is the 12-month production period immediately prior to the shut-in. If the property does not qualify during the initial qualifying period, it may later qualify due to production decline. In those cases, the 12-month qualifying period will be the latest 12-month period before the property qualifies (i.e., a 12-month rolling average).

(ii) Qualifying royalty rate calculation. If the property qualifies, use the production rate rounded down to the next whole number (e.g., 6.7 becomes 6) for the qualifying period, and apply the following formula to determine the maximum royalty rate for oil production for the life of the program. If the production rate is 15 barrels or greater, the royalty rate will be the rate in the lease terms.

$$\text{Royalty Rate (\%)} = 0.5\% + (0.8\% \times \text{the average daily production rate})$$

The formula-calculated royalty rate shall apply to all oil (but not gas) well production from the property for the first 12 months. The rate shall be effective the first day of the month after the Minerals Management Service (MMS) receives notification.

(iii) Outyears royalty rate calculations.

(A) At the end of each 12-month period, the property average daily production rate shall be determined for that period. A royalty rate shall then be calculated using the formula in paragraph (ii).

(B) The new calculated royalty rate shall be compared to the qualifying period royalty rate. The lower of the two

rates shall be used for the current period provided that the operator notifies the MMS of the new royalty rate. The new royalty rate shall not become effective until the first day of the month after the MMS receives notification. If the operator does not notify the MMS of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the property shall revert back to the royalty rate established as the qualifying period royalty rate, effective at the beginning of the current 12-month period.

(C) The royalty rate shall never exceed the calculated qualifying royalty rate for the life of this program.

(iv) Prohibition. For the qualifying period and any subsequent 12-month period, the production rate shall be the result of routine operational and economic factors for that period and for that property and not the result of production manipulation for the purpose of obtaining a lower royalty rate. A production rate that is determined to have resulted from production manipulation will not receive the benefit of a royalty rate reduction.

(v) Certification. The applicable royalty rate shall be used by the operator/payor when submitting the required royalty reports/payments to MMS. By submitting royalty reports/payments using the royalty rate reduction benefits of this program, the operator certifies that the production rate for the qualifying and subsequent 12-month period was not subject to manipulation for the purpose of obtaining the benefit of a royalty rate reduction, and the royalty rate was calculated in accordance with the instructions and procedures in these regulations.

(vi) Agency action. If a royalty rate is improperly calculated, the MMS will calculate the correct rate and inform the operator/payors. Any additional royalties due are payable immediately upon notification. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102 (1991). The BLM may terminate a royalty rate reduction if it is determined that the production rate was manipulated by the operator for the purpose of receiving a royalty rate reduction. Terminations of royalty rate reductions will be effective on the effective date of the royalty rate reduction resulting from the manipulated production rate (i.e., the termination will be retroactive to the effective date of the improper reduction). The operator/payor shall pay the difference in royalty resulting from the retroactive application of the unmanipulated rate. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102 (1991).

(4) The royalty rate reduction provision fro stripper well properties shall be effective as of (the first day of the month after publication in the **Federal Register** of a final rule). If the oil price, adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year, remains on average above $28 per barrel, based on West Texas Intermediate crude average posted price for a period of 6 consecutive months, the benefits of the royalty rate reduction under this section may be terminated upon 6 months' notice.

(5) The stripper well property royalty rate reduction benefits shall apply to all oil produced from the property.

(6) The royalty for gas production (including condensate) from oil wells shall be calculated separately using the lease royalty rate.

(7) If the lease royalty rate is lower than the benefits provided in this stripper oil property royalty rate reduction program, the lease rate prevails.

(8) The minimum royalty provisions of § 3103.3–2 apply.

(9) Examples.

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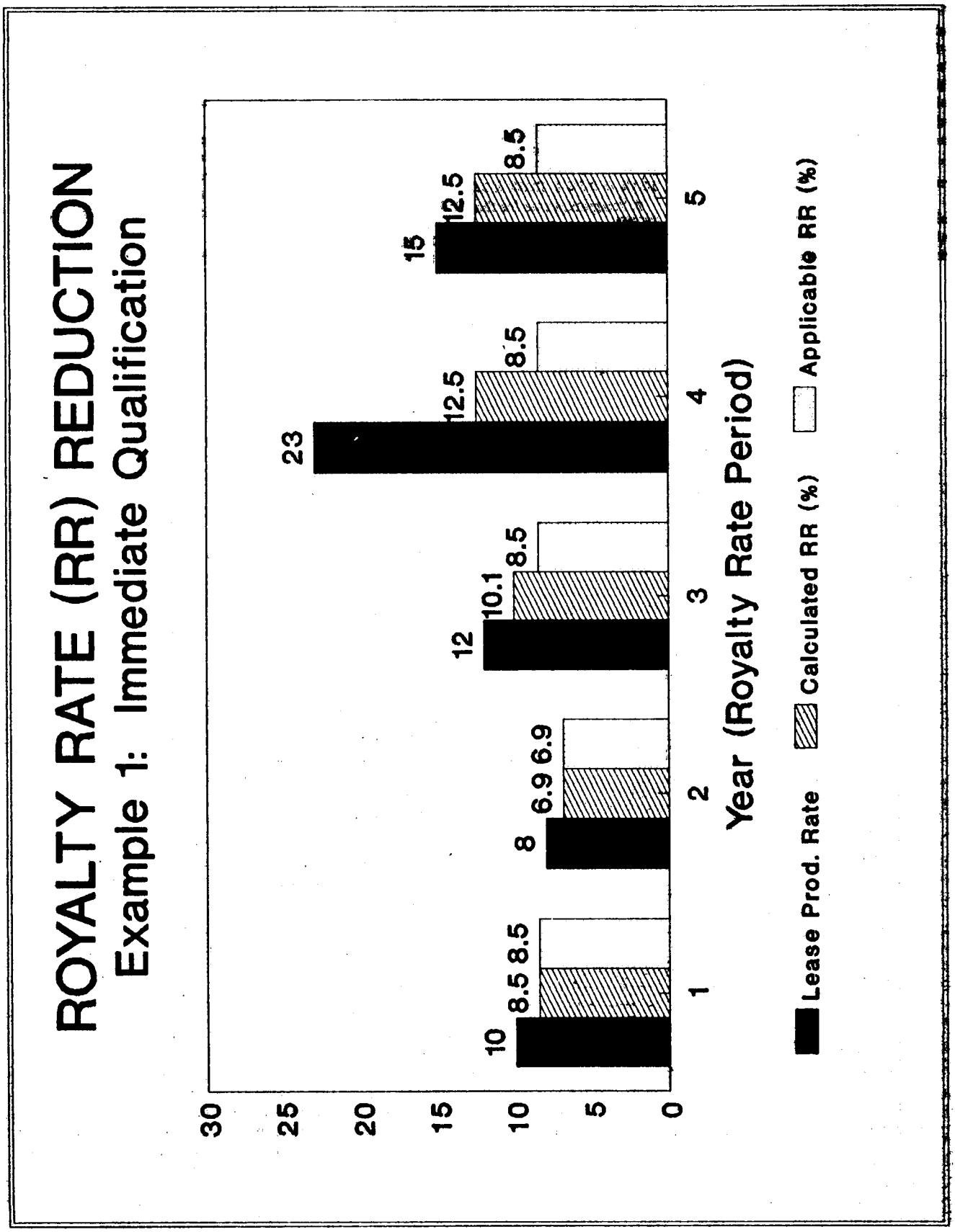

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Explanation, Example 1

1. Property production rate per well for qualifying period (August 1, 1990–July 31, 1991) is 10 barrels of oil per day (BOPD).

2. Using the formula, the royalty rate for the first year is calculated to be 8.5 percent. This rate is also the maximum royalty rate for the life of the program.

$8.5\% = 0.5\% + (0.8\% \times 10)$

3. Production rate for the first year is 8 BOPD.

4. Using the formula, the royalty rate is calculated at 6.9 percent. Since 6.9 percent is less than the first year rate of 8.5 percent, 6.9 percent is the applicable royalty rate for the second year.

$6.9\% = 0.5\% + (0.8\% \times 8)$

5. Production rate for the second year is 12 BOPD.

6. Using the formula, the royalty rate is calculated at 10.1 percent. Since the 8.5 percent first year royalty rate is less than 10.1 percent, the applicable royalty rate for third year is 8.5 percent.

$10.1\% = 0.5\% + (0.8\% \times 12)$

7. Production rate for the third year is 23 BOPD.

8. Since the production rate of 23 BOPD is greater than 15 BOPD threshold for the program, the calculated royalty rate would be the property royalty rate. However, since the 8.5 percent first year royalty rate is less than the property rate, the royalty rate for the fourth year is 8.5 percent.

9. Production rate for the fourth year is 15 BOPD.

10. Since the production is at the 15 BOPD threshold, the royalty rate would be the property royalty rate. However, since the 8.5 percent first year royalty rate is less than the lease rate, the royalty rate for the fifth year is 8.5 percent.

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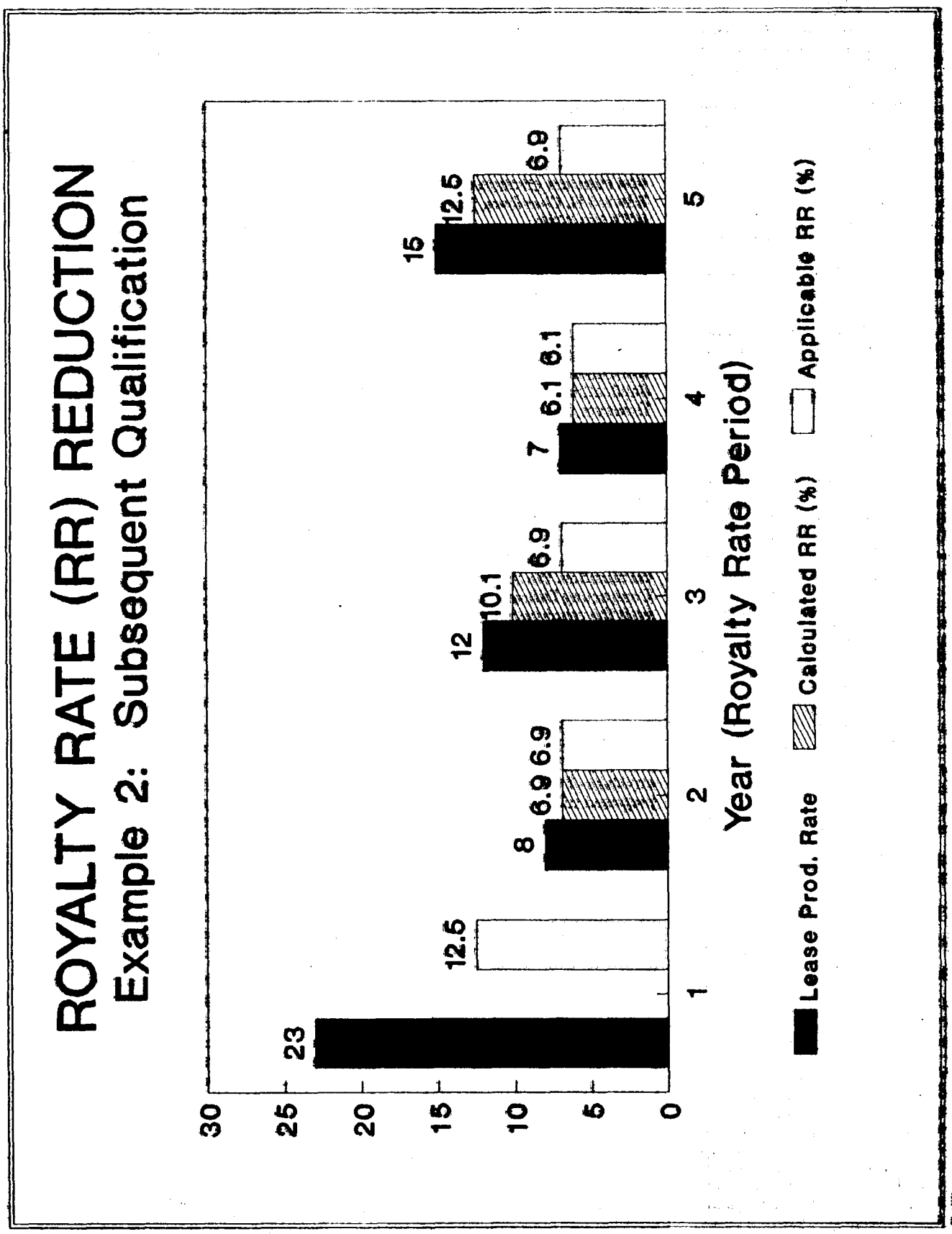

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Explanation, Example 2

1. Property production rate of 23 BOPD per well (for the August 1, 1990–July 31, 1991, qualifying period prior to the effective date of the program) is greater than the 15 BOPD which qualifies a property for a royalty rate reduction. Therefore, the property is not entitled to a royalty rate reduction for the first year of the program.

2. Property royalty rate for the first year is the rate as stated in the lease.

3. Production rate for the first year is 8 BOPD.

4. Using the formula, the royalty rate is calculated to be 6.9 percent for the second year. This rate is also the maximum royalty rate for the life of the program.

$6.9\% = 0.5\% + (0.8\% \times 8)$

5. Production rate for the second year is 12 BOPD.

6. Using the formula, the royalty rate is calculated at 10.1 percent. Since the 6.9 percent second year royalty rate is less than 10.1 percent, the applicable royalty rate for third year is 6.9 percent.

$10.1\% = 0.5\% + (0.8\% \times 12)$

7. Production rate third year is 7 BOPD.

8. Using the formula, the royalty rate is calculated at 6.1 percent. Since the 6.1 percent third year royalty rate is less than the qualifying (maximum) rate of 6.9 percent, the royalty rate for the fourth year is 6.1 percent.

$6.1\% = 0.5\% + (0.8\% \times 7)$

9. Production rate for the fourth year is 15 BOPD.

10. Since the production is at the 15 BOPD threshold, the royalty rate would be the lease royalty rate. However, since the 6.9 percent second year royalty rate is less than the lease rate, the royalty rate for the fifth year is 6.9 percent.

* * * * *

Dated: Nov. 14, 1991.

Richard Roldan,

Acting Assistant Secretary of the Interior.

[FR Doc. 92–5598 Filed 3–10–92; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1512, 1516, and 1552

[FRL-4113-1]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Environmental Protection Agency Acquisition Regulation (EPAAR) to require contractors to certify that work ordered by the Agency does not duplicate or is not similar to work previously performed or currently being performed for the Agency. The intended effect of this action is to prevent actual or apparent duplication of effort by contractors.

DATES: Written comments on this proposed rule must be received on or before May 11, 1992.

ADDRESSES: Comments should be addressed to the Environmental Protection Agency, Procuremnt and Contracts Management Division (PM–214), 401 M Street, SW., Washington, DC 20460, Attn: Edward N. Chambers.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers, (202) 260–6028 (FTS 260–6028).

SUPPLEMENTARY INFORMATION:

A. Background

The Environmental Protection Agency is frequently asked by its Inspector General and members of Congress about the possible occurrence of duplication of work under EPA contracts. No actual duplication of work has been found. However, EPA proposes to amend its acquisition regulation to request information from contractors to prevent any actual duplication of work from occurring and to avoid the appearance of duplication of work.

Because requests for work on occasion are urgent and may not allow the delay incident to completing the certification, the rule permits Contracting Officers the discretion to omit the requirement for the certification.

The rule in part amends section 1552.212–7 by adding alternate clause I. However, the EPA has already published an alternate clause I in the **Federal Register** of April 26, 1990, in a proposed rule on conflict of interest. This may affect the numbering and structure of the alternate clause in this proposed rule when it becomes final.

B. Executive Order 12291

OMB Bulletin No. 85–7, dated December 14, 1984, established the requirements for the Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information Collection Request document has been prepared by EPA (ICR No.1567.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW., (PM–223Y); Washington, DC 20460 or by calling (202) 260–2740.

Public reporting for this collection of information is estimated to average two hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SE. (PM–223Y); Washington, DC 20460; and to the Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Therefore, an Initial Regulatory Analysis was performed.

Initial Regulatory Flexibility Analysis Duplication of Work

1. Purpose

The EPA proposes to amend its acquisition regulation to require information from contractors to prevent any actual duplication of work from occurring and to avoid the appearance of duplication of work.

2. Affected Small Entities

Small entities awarded EPA contracts for advisory and assistance services or technical support services will need to maintain records of previous work accomplished under EPA contracts. Presently, approximately sixty small entities are performing such contracts for EPA. It is impossible to estimate the number of small businesses that ultimately will receive contract awards for advisory and assistance services or technical support services and thereby be affected by this rule.

3. Description of Project Reporting and Record Keeping Requirements

It is estimated that almost all businesses maintain data on the work they have previously accomplished under Government contracts. For entities that routinely maintain that kind of data, only the additional costs associated with accessing the data and reporting to EPA (i.e. completing a certificate) would be incurred. For entities that do not routinely maintain such data, the rule will require establishment of a records system from which data on previous EPA work may be retrieved. However, EPA does not

anticipate any need for entities to hire additional employees nor to incur costs for outside consultants in order to comply with the rule. EPA does anticipate that any cost increases experienced by these entities may be chargeable to EPA contracts under the provisions of FAR part 31.

4. Federal Rules Which may Duplicate, Overlap, or Conflict With the Proposed Rule

EPA reviewed the Office of Federal Procurement Policy (OFPP) Letter on Consultants and Conflicts of Interest as implemented in Federal Acquisition Circular 90-1 to determine whether or not this rule duplicates, overlaps, or conflicts with the proposed contractor certification requirements in the OFPP Policy Letter.

The OFPP Policy Letter requires agencies, before award of a contract, to determine whether a conflict of interest exists with regard to those providing advisory and assistance services to the Government. The Policy Letter requires the apparent successful offeror on such a contract to provide certified information describing the nature and extent of any similar services rendered to the Government or any other client within the previous twelve months. The Policy Letter does not provide for any certification after contact award.

The proposed EPA certification will be required under cost-reimbursable level of effort and fixed-rate indefinite delivery/indefinite quantity contracts for advisory and assistance services and for technical support services. These contracts generally have broad statements of work with definitive work assignments or delivery orders issued during performance. The EPA certification will be required with the contractor's acknowledgment of receipt of work assignments or delivery orders. This will ensure that duplicate work is not performed by the contractor during the contract period.

EPA, therefore, determines that the proposed rule does not duplicate, overlap, or conflict with the OFPP Policy Letter.

EPA has not identified any other federal rules which duplicate, overlap, or conflict with the proposed rule.

5. Alternatives to the Proposed Rule

EPA considered alternatives to the proposed rule such as establishing different compliance or reporting requirements or simplifying the requirements for small entities. EPA also considered exempting small entities from all or part of the proposed rule. EPA concluded that the stated objective cannot be met under the alternatives. EPA believes the proposed rule, along with other established internal controls within the Agency, will prevent any inadvertent expenditure of scarce resources.

List of Subjects in 48 CFR Parts 1512, 1516 and 1552

Contract delivery or performance, Government procurement, Service contracting, Solicitation provisions and Contract clauses, Types of contracts.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1512, 1516, and 1552 continues to read as follows:

Authority: Section 205(c) 63 Stat. 390, as amended, 50 U.S.C. 486(c).

PART 1512—CONTRACT DELIVERY OR PERFORMANCE

2. Section 1512.104 is amended to revise paragraph (b) to read as follows:

1512.104 Contract clauses.

* * * * *

(b)(1) The Contracting Officer shall insert the clause at 1552.212-71, Work Assignments, in solicitations and contracts when a cost-reimbursement term form contract with work assignments is to be used. The Contracting Officer shall use Alternate I in solicitations and contracts for technical or advisory and assistance services.

(2) In paragraph (c) of 1552.212-71 Work Assignments, Alternate I, the Contracting Officer may indicate that the certification otherwise required by the clause is not necessary. Before issuing such a work assignment the Contracting Officer shall make a written determination that the urgency of the requested work shall not permit the delay incident to completing the certification.

PART 1516—TYPES OF CONTRACTS

3. Section 1516.505 is amended to revise paragraph (a) to read as follows:

1516.505 Contract clauses.

(a)(1) The Contracting Officer shall insert the clause at 1552.216-72, Ordering—By Designated Ordering Officers, in indefinite delivery/indefinite quantity type solications and contracts. The Contracting Officer shall use Alternate I in solicitations and contracts for technical support or advisory and assistance services.

(2) In paragraph (c) of 1552.216-72 Ordering—By Designated Ordering Officers, Alternate I the Contracting Officer may indicate that the certification otherwise required by the clause is not necessary. Before issuing such a delivery order the Contracting Officer shall make a written determination that the urgency of the requested work will not permit the delay incident to completing the certification.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1552.212-71 is amended by revising the introductory paragraph and adding an Alternate I to read as follows:

1552.212-71 Work assignments.

As prescribed in 1512.104(b), insert the following clause or its Alternate I:

* * * * *

Work Assignments, Alternate I (xxx 1991)

(a) The Contractor shall perform work under this contract as specified in written work assignments issued by the Contracting Officer.

(b) Each work assignment will include (1) a numerical designation, (2) the estimate of required labor hours, (3) the period of performance and schedule of deliverables, and (4) the description of the work.

(c) The Contractor shall acknowledge receipt of each work assignment or revision to a work assignment by returning to the Contracting Officer a signed copy of the work assignment or revisions, including the following certification, unless the work assignment indicates that the certification is not necessary, within * * * [The contracting Officer shall insert the number of days which normally shall be 10 or more calendar days after receipt of the work assignment]. However, if the work assignment or revision requires the Contractor to perform work which duplicates or is similar to work the Contractor has previously performed or is performing for the Agency, the Contractor shall return the work assignment, unsigned, and the completed certificate to the Contracting Officer within the same time period. For the purpose of certification, follow-on work which is in addition to previously ordered work and work which involves similar or identical procedures but requires different outputs, are not considered to be duplicative or similar.

Contractor Certification

(a) The Contractor certifies that to the best of its knowledge and belief this work assignment ( ) does; ( ) does not (check applicable box) require work which duplicates or is similar to work that it has performed, or is performing, for the Environmental Protection Agency.

(b) If the Contractor checked "does" in paragraph (a), it has listed below the contract number(s) and work assignment or delivery order numbers under which duplicate or similar work was or is being performed, (If work is not duplicative or similar, insert "NONE"),

Contract number	Date	Delivery order No./work assignment No.	Title	Date

Signature of Contractor's Authorized Representative

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Title 18, United States Code, Section 1001.

(End of Certification)

(d) If the work assignment does not duplicate or is not similar to work previously performed or being performed by the Contractor, or is reissued under paragraph (e), the Contractor shall begin work immediately and shall comply with paragraph (f) of the clause.

(e) Notwithstanding the Contractor's certification that requested work duplicates or is similar to work the Contractor has previously performed or is performing for the Agency, the Contracting Officer may direct the Contractor to perform the requested work by reissuing the work assignment. Such work assignments shall not include the contractor certification.

(f) Within * * * [The Contracting Officer shall insert the number of days] calendar days after receipt of a work assignment, the Contractor shall submit * * * [The Contracting Officer shall insert the number of copies] copies to the Contracting Officer. The work plan shall include a detailed technical and staffing plan and a detailed cost estimate. Within * * * [The Contracting Officer shall insert the number of days] calendar days after receipt of the work plan, the Contracting Officer will provide written approval or disapproval of the work plan to the Contractor. If the Contractor has not received approval of a work plan within * * * [The Contracting Officer shall insert the number of days] calendar days after its submission, or the Contracting Officer disapproves a work plan, the Contractor shall stop work until the problem causing the disapproval is resolved. In either case, the Contractor shall resume work only when the Contracting Officer finally approves the work plan.

(g) Whenever a revised work plan is required by the Government due to a change in the work being performed, the Contractor shall complete the certification required by paragraph (c) of this clause and submit it to the Contracting Officer with its revised work plan.

(h) This clause does not change the requirements of the "Level of Effort" clause, nor the notification requirements of either the "Limitation of Cost" or "Limitation of Funds" clauses.

(i) Work assignments shall not allow for any change in the terms or conditions of the contract. Where any language in the work assignment may suggest a change to the terms or conditions of the contract, the Contractor shall immediately notify the Contracting Officer.

(End of clause)

5. Section 1552.216-72 is amended by revising the introductory paragraph and adding an Alternate I to read as follows:

1552.216-72 Ordering—By Designated Ordering Officers.

As prescribed in 1516.505(a), insert the following clause or its Alternate I.

* * * * *

Ordering—By Designated Ordering Officers, Alternate I (xxx 1991)

(a) The Government will order any supplies and services to be furnished under this contract by issuing delivery orders on Optional Form 347, or any Agency prescribed form, from * * * [The Contracting Officer shall insert the beginning date of performance] through * * * [The Contracting Officer shall insert the ending date or performance]. In addition to the Contracting Officer, the following individuals are authorized to place orders under this contract: [The Contracting Officer shall insert the names of authorized ordering officers].

(b) A Standard Form 30 will be used to amend delivery orders, if amendment is required.

(c) The Contractor shall acknowledge receipt of each delivery order by returning to the Contracting Officer a signed copy of the delivery order, including the following certification, unless the delivery order indicates that the certification is not necessary, within * * * [The Contracting Officer shall insert the number of days which normally shall be 10 or more days] calendar days after receipt of the delivery order. However, if the delivery order requires the Contractor to perform work which duplicated or is similar to work the Contractor has previously performed or is performing for the Agency, the Contractor shall not begin work but shall return the delivery order, unsigned, and the complete certificate to the Contracting Officer. For the purpose of certification, follow-on work which is in addition to previously ordered work and work which involves similar or identical procedures but requires different outputs, are not considered to be duplicative or similar.

Contractor Certification

(a) The Contractor certifies that to the best of its knowledge and belief this delivery order ( ) does; ( ) does not (check applicable box) require duplicate work or similar work that it has performed, or is performing, for the Environmental Protection Agency.

(b) If the Contractor checked "does" in paragraph (a) above, it has listed below the contract number(s) and work assignment or delivery order number(s) under which duplicate or similar work was or is being performed. (If work is not duplicative or similar, insert "NONE").

Contract No.	Date	Delivery order No./work assignment No.	Title	Date

Signature of Contractor's Authorized Representative

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Title 18, United States Code, Section 1001.

(End of Certification)

(d) If the delivery order does not require a duplication of work previously performed or being performed by the Contractor, or is reissued under paragraph (e), the Contractor shall prepare and forward to the Ordering Officer within ten (10) calendar days the proposed staffing plan for accomplishing the assigned work within the period specified in the delivery order.

(e) Notwithstanding the Contractor's certification that requested work duplicates or is similar to work the Contractor has previously performed or is performing for the

Agency, the Contracting Officer may direct the Contractor to perform the requested work by reissuing the delivery order. Such delivery order shall not include the contractor certification.

(f) If the Contractor considers the estimated labor hours or specified work completion date to be unreasonable, the Contractor shall promptly notify the Ordering Officer in writing within ten (10) calendar days, stating why the estimated labor hours or specified completion date is considered unreasonable.

(g) Each delivery order will have a ceiling price which the Contractor may not exceed. If the Contractor has reason to believe that the labor costs and support costs to be incurred within the next thirty (30) days will bring the total incurred cost to over 85 percent of the ceiling price specified in the order, the Contractor shall notify the Ordering Officer.

(h) Paragraphs (c), (d), (e), (f), and (g) of this clause apply only to delivery orders for services.

(End of Clause)

6. Section 1552.237–71 is amended by revising paragraph (b) of the clause to read as follows:

1552.237–71 Technical Direction

* * * * *

(b) Technical direction must fall within the contract Statement of Work. The Project Officer does not have the authority to issue technical direction which (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the period of performance; (5) requires duplication of work previously performed or being performed for the Agency; or (6) changes any of the other express terms and conditions of the contract.

* * * * *

William Finister,

Acting Director, Office of Administration.

[FR Doc. 92–5414 Filed 3–10–92; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 57, No. 48
Wednesday, March 11, 1992

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Agency Information Collection Under Office of Management and Budget (OMB) Review

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Expedited information collection request.

SUMMARY: Agricultural Stabilization and Conservation Service (ASCS) has requested the Office of Management and Budget (OMB) to approve the information collections of Form AD-1026U, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Update (see Attachment 1), and Form AD-1026C, Landlord or Landowner Exemption Request (see Attachment 2), on an expedited basis by March 16, 1992. Due to ASCS's request for an expedited review, ASCS is publishing the supporting statement for these information collections in this notice.

DATES: Comments must be submitted on or before March 12, 1992.

ADDRESSES: Comments must be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3201, Washington, DC 20503; or to the USDA, Office of Information Resources Management, room 408W, Administration Building, Washington, DC 20250; Attention: Don Hulcher.

FOR FURTHER INFORMATION CONTACT: Mr. Don Hulcher, address as above, (202) 720-6746.

SUPPLEMENTARY INFORMATION: ASCS has requested that OMB approve the information collection for Form AD-1026U and Form AD-1026C on an expedited basis in order to have the forms available to potential participants of ASCS farm and commodity programs during the annual signup period for participation in the price support and production adjustment programs which began February 10, 1992. The intent of these forms is to simplify the information collection process and reduce the reporting burden on the public in administering requirements of the current regulations at 7 CFR part 12, Highly Erodible Land Conservation and Wetland Conservation Certification.

Form AD-1026U was created in response to the Secretary's "EASY ACCESS" initiatives, of which paperwork reduction and simplification is a goal. Form AD-1026U is a simplified version of Form AD-1026 which is currently being used to meet requirements of 7 CFR part 12 for highly erodible land and wetland conservation certification. Form AD-1026U is intended to be used instead of Form AD-1026 by those program participants whose farming operation or practices have not changed since the prior year's completion of AD-1026. Form AD-1026U does not request answers to questions, rather than respondent is required to certify to the conditions necessary for compliance with HELC and WC provisions, and certify that there has not been a change in his/her farming operation or farming practices on any land that would change the AD-1026 filed for the previous year. The burden for the AD-1026U is estimated to take 5 minutes, as compared to 15 minutes required to complete AD-1026.

The AD-1026C is a request/certification form used by landlords or landowners to obtain an exemption to program ineligibility determinations because of HELC or WC violations on their farm by tenants or sharecroppers. The landlord or landowner certifies that he/she did not require through agreement with the tenant/sharecropper the production of a commodity on land determined highly erodible or converted wetland and certifies that neither did he/she acquiesce or knowingly consent that the tenant or sharecropper violate the highly erodible land or wetland conservation provisions. The AD-1026C is estimated to take 5 minutes to complete, including any time the landowner or landlord may require to provide evidence to the COC to substantiate his/her position.

The supporting statement for the information collection associated with Form AD-1026U and AD-1026C is as follows:

A. Justification

1. Circumstances Making the Collection of Information Necessary

The Food Security Act of 1985 provides that any person who produces an agricultural commodity on a field that is predominantly highly erodible, or on wetland converted after December 23, 1985, shall be ineligible for certain program benefits. These provisions are an attempt to preserve the nation's wetlands and to reduce the rate at which the conversion of highly erodible land occurs, which adds to the national erosion problem, and the problem of commodity surpluses that affect farm income.

Applicants interested in receiving USDA loans or other program benefits subject to highly erodible land conservation (HELC) and wetland conservation (WC) provisions must certify annually to HELC and WC compliance using form AD-1026 (currently approved by OMB under control number 0560-0004 through June 6, 1994) or form AD-1026U (7 CFR part 12). Form AD-1026U is a simplified version of the AD-1026 and is used to certify compliance when an applicant completed AD-1026 for a previous year and the farming operation and farming practices have remained the same.

The AD-1026U was created in response to the Secretary's EASY ACCESS initiatives, of which paperwork reduction and simplification is a goal. Since the AD-1026U simply updates information reported in a previous year without providing answers to the same questions, it reduces paperwork burden on the public. The initiatives of EASY ACCESS are:

- To reduce the paperwork burden placed upon producers and others who participate in USDA programs
- To improve the dissemination of information to individuals concerning their participation in USDA programs
- To reduce the number of forms, the amount of information on forms, and duplication of information collected by the USDA agencies.

2. How, by Whom and for What Purpose Is the Information Used?

Use of Form AD-1026. The information on AD-1026U is used by

ASCS, Federal Crop Insurance Corporation (FCIC), Farmer's Home Administration (FmHA), and Soil Conservation Service (SCS) to make determinations regarding an applicant's eligibility, based upon compliance with the highly erodible land conservation and wetland conservation requirements of the Food Security Act of 1985 and the regulations at 7 CFR part 12, to receive certain benefits provided by the U.S. Department of Agriculture.

Use of Form AD-1026C. If a violation has occurred on a farm by a tenant or sharecropper, a landowner or landlord may request exemption from the violation by completing form AD-1026C (7 CFR part 12.8). In order to maintain program eligibility, producers should provide evidence that they did not acquiesce or consent to tenant activities that violated the provisions. The AD-1026C is used by the County ASC Committee to determine if an exemption to a violation is warranted. The County Committee documents on the AD-1026C reasons for the determination and the landlord/landowner is notified. This process is preformed to meet the requirements of 7 CFR part 12 and 12.8, as follows:

(a) "* * * the ineligibility of a tenant or sharecropper, for benefits . . . shall not cause a landlord to be ineligible for benefits for which the landlord would otherwise be eligible with respect to commodities produced on lands other than those in which the tenant or sharecropper has an interest.

(b) Paragraph (a) of this section shall not be applicable to a landlord if the production of an agricultural commodity on highly erodible land or converted wetland by the landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper and such agreement was entered into after December 23, 1985 or if the landlord has acquiesced in such activities by the tenant or sharecropper."

3. Use of Improved Information Technology

Forms AD-1026U and AD-1026C are manually completed. The content of the forms is textual and any information provided by the respondent would be narrative rather than copies from a preexisting document or data base.

4. Efforts To Identify Duplication

The certifications on AD-1026U are currently on the AD-1026. However, the AD-1026U does not contain any questions soliciting information or requiring a Yes or No response; the respondent will complete either AD-1026 or AD-1026U as applicable to his/her situation. The information on AD-1026C is not duplicated on any other form.

5. Why Available Information Cannot Be Used or Modified

For the purposes of AD-1026U, available information is used. The respondent is certifying to the accuracy of information reported in a previous year, but is not duplicating the responses to the information.

6. Methods To Minimize Burden Small Business or Entities

Respondents who are considered small businesses can also complete the AD-1026U instead of AD-1026. There are no additional reporting requirements created specifically for small businesses to meet requirements of the Act.

7. Consequence if the Information Were Less Frequent

The AD-1026U and AD-1026C are completed once annually. The requirements of the Food Security Act of 1985 make annual reporting and certification and compliance mandatory before any USDA farm, land, and commodity program payment subject to the provisions of HELC and WC can be issued.

8. Inconsistency With Guidelines in 5 CFR 1320.6

The information collections are consistent with the guidelines in 5 CFR 1320.6.

9. Consultations With Persons Outside the Agency

The AD-1026U was developed as a direct result of numerous complaints from program participants and County ASCS Office employees regarding the burdensome requirement to annually report information that has not changed from previous years' reports. EASY ACCESS Initiatives are the Secretary's actions to make changes that uphold the requirements of the law, yet reduce public burden.

10. Confidentially Provided to Respondents

Information collected for the purposes of HELC and WC compliance is handled according to established ASCS procedures implementing the Privacy Act, Freedom of Information Act, and OMB Circular 108, "Responsibilities for the Maintenance of Records About Individuals by Federal Agencies".

11. Questions of a Sensitive Nature

No information of a sensitive nature is requested.

12. Annual Costs to the Federal Government and Respondents

Costs to the Federal Government for AD-1026U and AD-1026C=$3,872,050 estimated as follows:

- Forms AD-1026U and AD-1026C development, printing and distribution=$80,050.
- Workhours from County Employees: 10 minutes per respondent x 2,402,000 respondents=400,000 workhours x $9.48 (average wage)=$3,795,160.

Cost to the Public=$850,706 estimated as follows: 200,166 burden hours x $4.25 (minimum wage).

13. Estimate of Burden

Approximately 80% of the respondents who currently complete AD-1026 (3,000,000) will be able to complete AD-1026U, which totals 2,400,000 respondents. Of the respondents completing AD-1026U, approximately 2,000 will also complete AD-1026C. The average response time is 5 minutes per form x 2,402,000 responses=200,166 burden hours.

14. Reasons for Changes in Burden

The burden associated with OMB No. 0560-0004 is reduced 382,557 hours. The reduction is the result of form AD-1026U which simplifies the HELC/WC reporting process for 2,400,000 respondents.

15. Tabulation, Analysis, Publication Plans

The information reported is for eligibility and compliance determinations only and is not intended for publication.

B. Collections of Information Employing Statistical Methods

These information collections do not employ statistical methods.

Note: Attachments are not for codification.

Signed at Washington, DC on March 5, 1992.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

BILLING CODE 3410-05-M

Attachment 1

AD-1026U (01-28-92)

UNITED STATES DEPARTMENT OF AGRICULTURE

Form Approved - OMB No. 0560-0004

HIGHLY ERODIBLE LAND CONSERVATION (HELC) AND WETLAND CONSERVATION (WC) UPDATE

1. Name of Producer	2. Identification Number	3. Crop Year

PART I - CHECKLIST FOR COUNTY OFFICE COMPLETION

4. Is "Yes" checked on the prior year AD-1026 certification for any of items 7, 8, 10, 11, 12, or 13?

A. YES ☐ Do NOT have the producer complete this form. An AD-1026 must be completed by the producer.

B. NO ☐ The producer can certify below if all the conditions in Part II are met.

PART II - PRODUCER CERTIFICATION UPDATE

I certify that there has not been a change in my farming operation or farming practices on any land that would change the AD-1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification, filed for 19 .

DO NOT DUPLICATE FROM THIS COPY

For the crop year entered in item 3 above, I agree to the following on all farms in which I have an interest in the land or crops planted or produced on the land:

A	**NOT** to plant or produce an agricultural commodity or designate land as ACR or CU on highly erodible fields unless actively applying an approved conservation plan or maintaining a fully applied conservation system.
B	**NOT** to plant or produce an agricultural commodity on wetlands converted after December 23, 1985.
C	**NOT** to convert wetlands by draining, dredging, filling, leveling or any other means that would allow or make possible the planting of any crop, pasture, agricultural commodity, or other such crops.
D	**NOT** to use proceeds from any FmHA farm loan, insured or guaranteed, received after December 23, 1985, for a purpose that will contribute to the conversion of a wetland to produce an agricultural commodity, or contribute to excessive erosion of highly erodible land as determined by SCS.

It is my responsibility to file a new AD-1026 in the event there are any changes in my farming operation(s).

Signature of Producer → | Date

NOTE: Signature on this Form AD-1026U gives USDA representatives authorization to enter upon and inspect all farms in which the producer has an interest for the purpose of confirming the above statements. This form will be considered to be the filing of the AD-1026 for the crop year identified in item 3.

Any questions concerning the requirements of the Food Security Act of 1985, as amended, shall be directed to your County ASCS Office personnel before signing in Part II.

Remarks:

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or handicap.

(See reverse for Privacy Statement)

Attachment 2

REPRODUCE LOCALLY. Include form number and date on reproductions.

Form Approved - OMB No. 0560-0004

AD-1026C
(PROPOSAL 3)

UNITED STATES DEPARTMENT OF AGRICULTURE

LANDLORD OR LANDOWNER EXEMPTION REQUEST

STATE

COUNTY

NOTE: The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the information to be supplied on this form is the Food, Agriculture, Conservation, and Trade Act of 1990 and regulations promulgated under the Act (7 CFR PART 12). The information will be used to determine eligibility for program benefits and other financial assistance administered by USDA agencies. The information may be furnished to other USDA agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court magistrate or administrative tribunal. Furnishing the Social Security Number is voluntary. Furnishing the other requested information is voluntary; however, failure to furnish the correct, complete information will result in a determination of ineligibility for certain program benefits and other financial assistance administered by USDA agencies. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to information provided by the producer on this form. Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining 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 Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0004), Washington, D.C. 20503. RETURN THIS COMPLETED FORM TO YOUR COUNTY AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (ASCS) OFFICE.

PART A - PRODUCER INFORMATION

1. NAME AND ADDRESS OF LANDLORD OR LANDOWNER	2. PHONE NO. (area code)	3. IDENTIFICATION NUMBER
	4a. FARM NUMBER	4b. TRACT NUMBER
	5. CROP YEAR	6. CROPLAND

PART B - LANDLORD OR LANDOWNER CERTIFICATION

7. *I hereby certify that the following information is correct for the farm and tract(s) listed in items 4a and 4b for the crop year entered in item 5:*

(1) Production of an agricultural commodity on highly erodible land or on converted wetland in violation of the highly erodible land and wetland conservation provisions of the Food Security Act of 1985 as amended is NOT required under the terms of an agreement between myself and the tenant or sharecropper.

(2) I did not consent to any activities by the tenant or sharecropper to violate the highly erodible land and wetland conservation provisions of the Food Security Act of 1985 as amended.

8. SIGNATURE OF LANDLORD | DATE

DO NOT DUPLICATE FROM THIS COPY

PART C - TO BE COMPLETED BY COC

☐ a. The landlord exemption shall NOT apply

☐ b. The landlord exemption shall apply *(List all land on which the producer will be ineligible for benefits Determine according to the table in Part D.)*

10. Describe the reasons for the COC determination *(Attach another sheet, if necessary.)*

11. SIGNATURE OF COC | DATE

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or handicap.

[FR Doc. 92-5644 Filed 3-10-92; 8:45 am]

BILLING CODE 3410-05-C

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of publication of list of warehouses licensed under the U.S. Warehouse Act and availability of list of cancellations and/or terminations occurring during calendar year 1991.

Notice is hereby given that the Agricultural Stabilization and Conservation Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1991, as required by section 26 of that Act (7 U.S.C. 266). Also available is a list of cancellations and/or terminations that occurred during calendar year 1991. A copy of the list of warehouses as of December 31, 1991, will be distributed to all licensed warehousemen. Other interested parties may obtain a copy of either list from: Mrs. Judy Fry, Agricultural Stabilization and Conservation Service Licensing Authority Division, U.S. Department of Agriculture, P.O. Box 2415, room 5962, South Agriculture Bldg., Washington, DC 20013, Telephone: 202-720-3822.

Signed at Washington, DC, March 5, 1992.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 92-5695 Filed 3-10-92; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Exemption of the Thompson Creek Fire Recovery Project From Appeal

AGENCY: Forest Service, Northern Region, USDA.

ACTION: Notification that a fire recovery and timber salvage timber project is exempt from appeals under the provisions of 36 CFR part 217.

SUMMARY: During 1991, the Thompson Creek Fire burned 7,700 acres of the Gallatin National Forest. Lands within the burn area were treated during the fire suppression efforts to stabilize slopes and prevent damage to watersheds and other resources. The Gallatin Forest Supervisor has determined these initial efforts were not sufficient to meet long-term objectives of the Gallatin Land and Resource Management Plan (Forest Plan). In September 1991, the Forest Supervisor proposed a recovery project consisting of three major actions: (1) Harvesting timber damaged by fire, windthrow and insects on 950 acres, (2) construction of 4.7 miles of new road and reconditioning of 6.8 miles of existing roads to facilitate removal of timber (all roads would be revegetated and closed after harvest operations), and (3) reforestation and revegetation by planting tree and shrub species on approximately 1,200 acres of burned and salvaged areas.

The Forest Supervisor has determined, through an environmental analysis documented in the Environmental Assessment (EA) for the Thompson Creek Fire Salvage Project, that there is good cause to expedite these actions for rehabilitation of National Forest System Lands and recovery of damaged resources. Salvage of commercial sawtimber within the fire area must be accomplished within the spring and summer of 1992 to avoid further deterioration of sawtimber and additional insect mortality.

This is notification that the decision to implement the Thompson Fire Recovery Project on the Gallatin National Forest is exempted from appeal. This conforms with the provisions of 36 CFR 217(a)(11).

EFFECTIVE DATE: Effective on March 11, 1992.

FOR FURTHER INFORMATION CONTACT: David P. Garber, Forest Supervisor, Gallatin National Forest, P.O. Box 130, Bozeman, MT 59771.

SUPPLEMENTARY INFORMATION:

Background

In July and August 1991, the Thompson Creek Fire burned 7,700 acres of the Gallatin National Forest. The lightning-caused fire started within the Absaroka-Beartooth Wilderness and burned into the Mill Creek drainage. Within the recovery project area, approximately 1,800 acres of the fire-killed timber are within Management Areas, which are considered suitable for timber production in the Forest Plan. A fire rehabilitation team surveyed the burned area to assess damage to timber and other resources. Wildlife and fish habitats were altered when vegetation in riparian areas and stabilizing woody material in stream channels were partly or completely removed by the fire. Water quality has also been lowered.

In September of 1991, the most severely burned areas on steep slopes were treated by installing log erosion barriers and seeding with grasses. Other areas were seeded with grass and a protective mulch applied.

An interdisciplinary team was convened to evaluate the effects of the fire and its relationship to the Mill/Emigrant Timber Sales. A Supplemental Information Report (SIR) dated August 16, 1991, documents the team's findings. The SIR concluded that the Thompson Creek Fire did not change the effects described in the Mill/Emigrant Final Environmental Impact Statement (FEIS) within the Davis/Chico and Wicked/Snowbank subdivisions. Based on the conclusions documented in the SIR, a decision was made to analyze potential fire recovery projects including salvage of timber.

The Thompson Creek Fire Recovery Project encompasses the majority of the Wicked/Snowbank Timber Sale. The Wicked/Snowbank Timber Sale was offered for sale in June 1991, with a major objective of salvaging blowdown timber that was damaged in the spring of 1988. After the fire, the sale advertisement was withdrawn. Much of the blowdown timber is included in the Thompson Creek Fire Recovery Project. This blowdown timber, in conjunction with the fire-killed trees, constitutes considerable mortality and warrants immediate action while the trees still have commercial value. Additional delay will result in near total product deterioration of sawtimber damaged in 1988 and substantial loss of commercial value of the fire-killed trees due to cracking and "checking." Delays in reforestation will result in reductions in long-term yields and establishment of vegetation for wildlife cover, watershed stabilization, and visual rehabilitation.

In September, 1991, the Forest Supervisor proposed projects to rehabilitate Forest lands affected by the fire. The proposal was designed to meet the following needs: (a) Recover merchantable timber products from the area, (b) contribute to providing a continuous supply of timber to industry, (c) revegetate the area with trees and shrubs for future timber production, watershed recovery and enhancement of visual quality and wildlife hiding cover, and (d) provide for the recovery of conditions essential to sustaining ecological systems in the area. Initial scoping of issues occurred in October 1991. After public meetings, press releases, and contacts with individuals and State and Federal agencies, five environmental issues were identified and formed the foundation for the analysis of environmental effects disclosed in the EA.

The EA discloses the analysis of three alternatives, including a "no action" alternative. The Thompson Creek Fire Recovery EA incorporates by reference descriptions of resource characteristics, environmental effects and public comments associated with timber harvest and road access affecting the North Absaroka roadless area included in the Mill/Emigrant FEIS (1990).

Alternatives analyzed investigated recovery actions ranging from treatment of 1200 acres, 968 acres and no treatment. Estimated timber salvage ranges from a high of 9.3 MMBF to no salvage operations.

Planned Actions

The Selected Alternative (Alternative 1) includes three major actions. The first is to harvest approximately 950 acres of fire, blowdown, and insect killed or damaged timber within the recovery area. Harvest in all cases is limited to removal of dead trees, insect infested trees, and trees damaged beyond recovery. Second, an estimated 4.7 miles of new road would be constructed and 6.8 miles of existing road would be reconditioned to facilitate removal of timber. All roads would be ripped, revegetated, and closed after timber harvest operations are completed. Third, reforestation and revegetation of burned and salvaged areas would be accomplished by planting a mixture of coniferious species and shrubs. The objectives for these plantings include: (1) Reforestation of lands suitable for timber production as soon as possible, (2) establishment of wildlife hiding cover and winter forage for moose at a faster rate than natural conditions would allow, and (3) increased diversity of plant species as the area recovers.

Further delay in removal of the dead and damaged trees will render then unmerchantable as sawtimber, and a lack of reforestation and revegetation treatments will result in unacceptable delays affecting long-term timber yeilds, effectiveness of wildlife and fisheries habitat, and rehabilitation of visual resources. Due to the length of time it has taken to develop an acceptable recovery project and to evaluate its environmental effects, the time remaining for accomplishment has become critical. Additional delays will result in futher damage to presently undamaged resources and would decrease the ability to recover timber and other resources affected by the Thompson Creek fire and the 1988 snowstorm.

To expedite this recovery project and associated timber salvage, procedures outlined in 36 CFR part 217(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenonmena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Thompson Creek Fire Recovery Project EA and the Gallatin Forest Supervisor's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: March 5, 1992.

Christopher Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-5702 Filed 3-10-92; 8:45 am]

BILLING CODE 3410-11-M

Forest Service

Management for the Northern Spotted Owl; National Forests in Washington, Oregon, and California

AGENCY: Forest Service, USDA.

ACTION: Notice; record of decision.

SUMMARY: The Forest Service gives notice that on March 3, 1992, James R. Moseley, Assistant Secretary, Natural Resources and Environment, signed the Record of Decision for the Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests located in the States of Washington, Oregon, and California. The decision adopts a management plan for northern spotted owl habitat on National Forest System lands that is based on the conservation strategy proposed by the Interagency Scientific Committee in its 1990 report, "A Conservation Strategy for the Northern Spotted Owl."

EFFECTIVE DATE: The standards and guidelines of the management plan were effective on March 3, 1992, the date the Record of Decision was signed. Because this decision amends Regional Guides and Forest Plans, no implementing decisions will be made before April 10, 1991. Until April 10, 1991, there will be no Records of Decision, Decision Notices, or Decision Memos signed for timber sales, salvage sales, road construction, or other development activities, in Habitat Conservation Areas or in spotted owl nesting, roosting, and foraging habitat.

ADDRESSES: Copies of the Record of Decision, appendix A, appendix B, and the Final Environmental Impact Statement are available from National Forest System Operations, USDA Forest Service, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Mary Coulombe, National Forest System Operations, (202) 205-1519.

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests was filed with the Environmental Protection Agency (EPA) on January 24, 1992. Notice of its availability was published in the **Federal Register** by EPA on January 31, 1992 (57 FR 3753). The Record of Decision summarizes the basis and need for the decision and the public comment received on the Draft and Final Environmental Impact Statements. It presents a comparison of the alternatives considered in the Final Environmental Impact Statement and describes the rationale for the alternative selected. This decision is not appealable under Forest Service administrative appeal procedures.

The text of the Record of Decision is set out in full at the end of this notice. Appendixes A and B are not included because of their length. Copies of the Record of Decision are being mailed to persons who received a copy of the complete Final Environmental Impact Statement. Appendix A, "Response to Public Comment on the Final Environmental Impact Statement," and Appendix B, "Response to Comments on the Draft Environmental Impact Statement from Plaintiffs and Intervenors in *Seattle Audubon Society, et al.* v. *Evans, et al., No. 89-160WD,*" are available upon request from the office listed in "**ADDRESSES**" earlier in this notice.

Dated: March 6, 1992.

F. Dale Robertson,

Chief.

RECORD OF DECISION

U.S. Department of Agriculture—Forest Service

Management for the Northern Spotted Owl in the National Forests

Amendments to the Regional Guides
- Pacific Northwest Region
- Pacific Southwest Region

Amendments to the Land and Resources Management Plans
- Deschutes, Gifford Pinchot, Modoc, Mount Baker-Snoqualmie, Mount Hood, Okanogan, Olympic, Rogue River, Siskiyou, Siuslaw, Umpqua, Wenatchee, Willamette, and Winema National Forests

Management direction pending completion of Land and Resource Management Plans
- Klamath, Lassen, Mendocino, Shasta-Trinity, and Six Rivers National

Forests

States of Washington, Oregon, and California

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I. Summary of Decision

This Record of Decision (ROD) documents my reasons for adopting Alternative B of the Final Environmental Impact Statement (FEIS) published in January 1992. This decision is direction for managing habitat for the northern spotted owl on the National Forests within its range in Washington, Oregon, and California. Alternative B is based on the strategy proposed by the Interagency Scientific Committee (ISC) in its 1990 report "A Conservation Strategy for the Northern Spotted Owl" (Conservation Strategy). The Conservation Strategy is flexible and should be more than adequate to provide a high likelihood of maintaining viable populations of the northern spotted owl, and allows new information to be incorporated to modify the Strategy, if appropriate. This Record of Decision adopts a scientifically credible plan to protect spotted owl habitat on National Forests, while minimizing the loss of jobs and revenue in communities dependent on National Forest timber harvest. However, this decision is not a decision to harvest trees or undertake any other specific activity on any of the National Forests in the planning area. This decision is in accordance with the requirements of the National Forest Management Act (NFMA) as interpreted by the Federal District Court in *Seattle Audubon Society, et al.* v. *Evans, et al.*, No. 89-160WD, (*SAS* v. *Evans*). My intent is to move management of the National Forests out of the court system.

This decision results in 5.9 million acres, including wilderness, of National Forest System lands being managed primarily for northen spotted owl habitat as Habitat Conservation Areas (HCAs). The decision establishes standards and guidelines for activities within the HCAs to ensure that nesting, roosting, and foraging habitat is available for the spotted owl. Also, this decision establishes standards and guidelines for timber management and other management activities on National Forest System Lands between the HCAs to provide dispersal habitat for the owl. In addition, this decision provides for an intergrated inventory, monitoring, and research program.

This decision amends the Pacific Northwest and Pacific Southwest Regional Guides to meet the regulator requirement to manage habitat to maintain viable populations of the northern spotted owl as part of planning for overall multiple-use management of the National Forests. It also amends Land and Resource Management Plans (Forest Plans) for National Forests in Washington, Oregon, and California within the range of the spotted owl to ensure that planning and implementation of projects on the affected National Forests are consistent with this direction. For National Forests in California with Draft Forest Plans, the standards and guidelines and area designations of the Regional Guide will serve as direction for managing northern spotted owl hibitat. The direction will be included in Forest Plans as they are completed.

The scope of this decision is limited to the management planning direction necessary to maintain viable populations of the northern spotted owl throughout its range on National Forest System lands. This decision does not analyze, define, or propose solutions for other issues, such as removing the northern spotted owl from the list of threatened species under the Endangered Species Act, managing old-growth forest ecosystems on National Forest System lands, or managing spotted owl habitat on other Federal state, tribal, or private lands.

The northern spotted owl is also protected on National Forest System lands as a threatened species under the Endangered Species Act. In addition, the U.S. Fish and Wildlife Service is developing a Recovery Plan for the northern spotted owl. After a Recovery Plan is approved by the U.S. Fish and Wildlife Service and the Forest Service has identified objectives for National Forests under the Recovery Plan, management planning direction provided by this Record of Decision will be evaluated and adjusted as appropriate. However, the Conservation Strategy should promote recovery of the northern spotted owl if it is followed by other Federal agencies.

II. Background

Events Leading to This Decision

The Forest Service previously promulgated management guidelines for the northern spotted owl in the Pacific Southwest Regional Guide in 1984 and in an amendment to the Pacific Northwest Regional Guide in 1988. In October 1989, an Interagency Scientific Committee was established under an interagency agreement among the Forest Service in the U.S. Department of Agriculture, and the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the National Park Service in the U.S. Department of the Interior. This Committee of Scientists was charged with developing a scientifically credible conservation strategy for the northern spotted owl. In its April 1990 report, the Interagency Scientific Committee reported that the spotted owl was imperiled over significant portions of its range and proposed a Conservation Strategy.

In June 1990, the U.S. Fish and Wildlife Service listed the northern spotted owl as a threatened subspecies throughout its range under the Endangered Species Act. The primary reasons given for the listing were widespread loss of habitat due to timber harvesting and the lack of effective regulatory mechanisms at the time to protect the subspecies. By notice in the **Federal Register** (55 FR 40412, October 3, 1990), the Secretary of Agriculture vacated the existing standards and guidelines for northern spotted owl habitat management in the Pacific Northwest and Pacific Southwest Regional Guides. Pending further direction under Endangered Species Act procedures, the notice directed the Forest Service to conduct timber management activities in a manner not inconsistent with the Conservation Strategy developed by the Interagency Scientific Committee. On March 7, 1991, the Federal District Court, Western Washington, ruled in *SAS* v. *Evans* that the notice did not consitute compliance with the procedural requirements of the National Forest Management Act. On May 23, 1991, the court further ordered that "The Forest Service is enjoined to proceed diligently in compliance with NFMA * * * and to submit to the court and have in effect by March 5, 1992, revised standards and guidelines to ensure the northern spotted owl's viability, together with an environmental impact statement, as

required by NFMA and its implementing regulations."

The Viability Requirement in National Forest Planning

The National Forest Mangement Act requires that National Forest planning regulations "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives * * *." (16 U.S.C. sec. 1604(g)(3)(B)). Forest planning regulations require that diversity of plant and animal communities—the entire biological community—be considered throughout the process for integrated resource planning for Forest Plans (36 CFR 219.13, 219.26 and 219.27(g)). These regulations also include provisions that specify how particular resources that are part of the biological community are to be addressed in forest planning.

Among the provisions for fish and wildlife habitat are requirements to manage habitat to maintain viable populations of vertebrate species (36 CFR 219.19 and 210.27(a)(6)). There are also requirements to select representative species to serve as indicators of the effects of management and to establish management objectives to maintain or improve habitat for these species, consistent with overall multiple-use objectives (36 CFR 219.19(a) and 219.27(a)(6)). In addition, there are requirements to protect critical habitat for threatened and endangered species, as determined by the U.S. Fish and Wildlife Service, and to contribute, where possible, to the recovery of listed species (36 CFR 219.19(a)(7) and 219.27(a)(8)).

The viability planning requirement in 36 CFR 219.19 is as follows: "Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area." In this case, the "planning area" as defined in 36 CFR 219.3 is the range of the northern spotted owl on National Forest System lands.

Because there cannot be scientific certainty about future events, it is not truly possible to "insure" the maintenance of viability of any species. Therefore, population viability for a species under 36 CFR 219.19 is evaluated in terms of the probability or likelihood that the species will persist in well-distributed patterns throughout its range in the National Forest System for a long period of time. For purposes of 36 CFR 219.19, a "high" probability of persistence insures viability.

Planning and management direction for maintaining viable populations of northern spotted owls on National Forest System lands is established in Regional Guides and Forest Plans. Regional Guides provide standards and guidelines for addressing major issues and management concerns that need to be considered at the Regional level to facilitate the development of Forest Plans under the National Forest Management Act (36 CFR 219.8(a)). Forest Plans provide multiple-use prescriptions and associated standards and guidelines for each management area on the Forest, including proposed and probable management practices (36 CFR 219.11(c)). Management activities, permits, contracts, cooperative agreements, and other instruments for occupancy and use of National Forest System lands must be consistent with the approved Forest Plan (36 CFR 219.10(e)). Where a Forest Plan has not yet been approved, these activities must follow the standards and guidelines in the Regional Guide.

Forest Plans define multiple-goals and objectives for the National Forests and establish a set of rules to be followed in planning and implementing projects to achieve these goals and objectives. A Forest Plan provides a framework for determining what types of activities are permitted or not permitted on various areas of a National Forest, but it usually does not make the decision to proceed or not to proceed with a specific project. Hence, Forest Plans generally do not make irreversile or irretrievable commitments of resources. Decisions on individual projects require additional anlaysis. Project-level decisions must be consistent with the Forest Plan, and they must also comply with National Environmental Policy Act requirements for site-specific environmental analysis and public involvement, as well as the requirements of other laws, such as the Clean Water Act and the Endangered Species Act.

III. Decision

Management Direction

It is my decision to select Alternative B as the management direction for northern spotted owl habitat on National Forest System lands within the range of the spotted owl. Alternative B is based on a comprehensive evaluation of all the relevant scientific studies completed or in process at the time and has been extensively peer reviewed. The scientists most qualified in the biology of the northern spotted owl determined that this strategy has a high probability of insuring a viable population of the northern spotted owl throughout its range for at least 100 years. This timeframe also means that alternative B has a high probability of insuring viabilty for all lesser time periods and is, therefore, both a sort-term and long-term solution. The viability analysis, and the resulting rating, acknowledged and accounted for areas of special concern. The Conservation Strategy of Alternative B addressed these areas by establishing guidelines for additional protection measures. Alternative B, therefore, meets the viability planning requirement in the NFMA regulation (36 CFR 219.19).

The northern spotted owl is also protected on National Forest System lands as a threatened species under the Endangered Species Act. The protection of the spotted owl and its habitat provided by Alternative B is essentially the same as the protection measures that have evolved through the consultation process with the U.S. Fish and Wildlife Service.

Habitat Conservation Areas and Standards and Guidelines

This decision establishes Category 1, 2 and 3 NCAs and guidelines for establishment of Category 4 NCAs on National Forest System lands. These four categories of NCAs will be managed primarily for nesting, roosting, and foraging habitat for the northern spotted owl. Category 1 and Category 2 HCAs are large blocks of existing and potential habitat that will support multiple pairs of spotted owls. These blocks are spaced to facilitate dispersal of spotted owls between them. In areas of special concern, Category 1 and 2 HCAs do not provide sufficient security for the spotted owl because of current habitat conditions, spotted owl population densities, landscape or ownership patterns. In these areas, Category 3 HCAs are established around known or future individual pairs to supplement spotted owl populations in the larger HCAs. In addition, Category 4 HCAs are to be established around a limited number of known pairs in areas outside of other HCAs (the "forest matrix") to provide future nesting sites for spotted owls.

The forest matrix is to be managed to provide adequate dispersal habitat for northern spotted owls and, also, to provide opportunities to study spotted owls in managed forests. Fifty percent of the forested lands outside of HCAs should be maintained in stands of timber with an average diameter at breast height (d.b.h.) of 11 inches or greater and at least 40 percent canopy closure (the 50–11–40 rule).

Details of this management direction are described as Alternative B in the FEIS (chapter 2, pages 19–40) and the ISC's Conservation Strategy. Further details and clarifications are provided in the three sets of questions and answers issued by the Interagency Scientifc Committee and the Technical Review Team, which was established to interpret questions regarding the ISC's Conservation Strategy. The three documents are listed below and are part of the adminstrative record for this Record of Decision.

USDA Forest Service. 1991. Questions and answers on: "A conservation strategy for the northern spotted owl." Portland, OR: USDA Forest Service, Pacific Northwest Research Station. Miscellaneous Publication. February 1991. 63 p.

Thomas, J.W. 1991. Letter with memo entitled, Responses to questions pertaining to interpretation and impelmentation of the Interagency Scientific Committee Conservation Strategy. Answers to questions in memo provided by ISC Committee. The letter is dated January 3, 1991; the memo is dated January 2, 1991.

Mays, L.K.; Mulder, B.S. 1991. Letter with memo entitled, Responses to questions pertaining to interpretation and implementation of the Interagency Scientific Committee Conservation Strategy. Answers to questions in memo provided by members of the Technical Review Team of the Interagency Northern Spotted Owl Conservation Group (NSOG). The letter is dated April, 30, 1991; the memo is dated April 29, 1991.

Monitoring and Research

An integrated monitoring and research program is also established. This program will assess on a continuing basis the effectiveness of the Conservation Strategy and will explore opportunities to develop or maintain suitable owl habitat through silvicultural treatments.

The Regional Foresters for the Pacific Northwest and Pacific Southwest Regions and the Station Directors for the Pacific Northwest and Pacific Southwest Forest Research and Experiment Stations are directed to proceed with the northern spotted own monitoring and research program described in the FEIS (appendix J).

Implementation

All management activities, permits, contracts, cooperative agreements, and other instruments for occupancy and use on National Forest System lands within the range of the northern spotted owl are to be consistent with the management direction adopted by this Record of Decision.

Accordingly, this Record of Decision:

- Amends the Pacific Southwest Regional Guide to add the HCAs and standards and guidelines for northern spotted owl habitat management of Alternative B in the FEIS. The previous management direction for northern spotted owl habitat in the Regional Guide is superseded.
- For the Klamath, Lassen, Mendocino, Shasta-Trinity, and Six Rivers National Forests, HCAs are established and the standards and guidelines are to be applied directly to all management activities within the range of the northern spotted owl pending completion of the Forest Plans. The HCAs and standards and guidelines will be included in the Forest Plans being developed on these Forests. The Modoc National Forest Plan is amended to add the standards and guidelines of Alternative B for that portion of the Forest within the range of the northern spotted owl.
- Amends the Pacific Northwest Regional Guide to add the HCAs and standards and guidelines for northern spotted owl habitat management of Alternative B. The previous management direction for northern spotted owl habitat in the Regional Guide, as amended, is superseded.
- Amends the Forest Plans for the Gifford Pinchot, Mount Baker-Snoqualmie, Mount Hood, Olympic, Rogue River, Siuslaw, Siskiyou, Umpqua, and Willamette National Forests to add the HCAs and standards and guidelines for northern spotted owl habitat management of Alternative B. It amends the Forest Plans for the Deschutes, Okanogan, Wenatchee, and Winema National Forests to add the HCAs and standards and guidelines of Alternative B for that portion of those Forests within the range of the northern spotted owl.

Projects will be conducted according to the management direction in the Forest Plans, as amended by this decision. Management direction in the Regional Guides and Forest Plans that is not directly superseded by this decision remains in effect. The standards and guidelines adopted by this decision assume that the existing standards and guidelines and management area designations and prescriptions for forest lands outside HCAs will remain in effect. Changes in management direction on such lands will have to be carefully evaluated through the adaptive management process. The obsolete Spotted Owl Habitat Areas (SOHAs) of the Forest Plans are replaced by either the standards and guidelines for HCAs or the standards and guidelines for the forest matrix and surrounding management areas. The annual quantity of timber offered for sale will reflect the harvest implications of the standards and guidelines and HCA designations.

Specific standards and guidelines are provided for timber management in HCAs, including timber sales currently under contract (FEIS, chapter 2, pages 30–31). In cases where existing sales do not meet the requirements outlined in the standards and guidelines, the Forest Service will make every effort to work with purchasers to bring these sales into compliance. The standards and guidelines apply to these sales, even if the sales are exempt from judicial review or are covered by a biological opinion from the U.S. Fish and Wildlife Service that states the sales would not jeopardize the continued existence of the spotted owl.

Situations may arise in the future where standards and guidelines will need to be evaluated. The Conservation Strategy provides for some activities, such as salvage of timber in HCAs and land exchanges, if they have been reviewed by the Technical Review Team. This Record of Decision provides a process for evaluation of proposals to modify the standards and guidelines through adaptive management.

Regional Guide and Forest Plan Amendments

This decision amends the Regional Guides for the Pacific Northwest and Pacific Southwest Regions to prescribe standards and guidelines for management of northern spotted owl habitat to be used in the forest planning process. In addition, the affected Forest Plans are amended to add the HCAs and standards and guidelines.

The degreee to which the HCAs and the standards and guidelines for the management of habitat for the northern spotted owl in this decision require changes in existing management prescriptions in the Forest Plans varies by Forest. Although the area available for timber production and the annual quantity of timber offered for sale is limited by this decision, as disclosed in the FEIS, this decision does not amend the Forest Plans to change the suitable land base or allowable sale quantities. Additional analysis and public

involvement under the process provided by the National Forest Management Act and the National Environmental Policy Act are required at the Forest level before making these adjustments.

Each National Forest must analyze its own management situation and capabilities to determine the effects of implementing this decision on other multiple-use goals and objectives in the Forest Plan. Each Forest must then determine whether the adjustments required to manage habitat for the spotted owl are to be addressed through further Forest Plan amendments or revision. Individual Forests will want to consider other changes in the Forest Plans to mitigate some of the adverse economic effects of this decision on local communities. This Record of Decision replaces previous direction for management of spotted owl habitat and assumes that other Forest Plan standards and guidelines and management area designations and prescriptions for the forest matrix will remain in effect (FEIS, chapter 2, page 32). Changes in management direction on such lands would have to be carefully evaluated through the forest planning process and the adaptive management process.

In summary, analysis of the effects of implementation of Forest Plans as amended by this decision, additional public involvement, environmental analysis, and interdisciplinary evaluation of alternatives for all forest resources will have to be undertaken by each National Forest to determine what further amendments or revisions of Forest Plans are needed. The timing to initiate this process will depend on a number of factors, including the status of the Recovery Plan and the need to respond to changes in resource conditions on the Forest.

Adaptive Management

This decision includes an adaptive management process to monitor and evaluate implementation of the standards and guidelines. If monitoring indicates that adjustments are needed to increase protection for spotted owl habitat or to expand management options for other forest resources, the processes outlined for adaptive management will be followed.

The adaptive management process will involve both technical and management groups within the Forest Service and interagency groups in which the Forest Service participates. An interagency Technical Review Team was set up in November 1990 to provide interpretation of the Conservation Strategy, to review proposed actions under the standards and guidelines to determine consistency with the strategy, and to evaluate monitoring and research information over time to determine the need or desirability of modifying the strategy (FEIS, Chapter 2, pages 33–34). The Technical Review Team will review and make recommendations on proposals to modify or adjust HCAs, proposals for various activities within HCAs, and proposals for activities within the forest matrix that might not be compatible with the Conservation Strategy.

The Forest Service established the Northern Spotted Owl Steering Committee and the Northern Spotted Owl Oversight Team to perform functions similar to the Technical Review Team. The composition and functions of the Oversight Team and Steering Committee are discussed in the FEIS (chapter 2, page 35). The Oversight Team and the Steering Committee will ensure a consistent interpretation of the standards and guidelines adopted by this decision on National Forest lands across regional and forest boundaries. They will also facilitate corrdination with the Technical Review Team on the review of proposals to modify management direction through the adaptive management process.

Relationship to the Endangered Species Act

Adoption of the Conservation Strategy does not relieve the Forest Service of its responsibilities under the Endangered Species Act. The Forest Service will continue appropriate consultation and conferencing with the U.S. Fish and Wildlife Service and National Marine Fisheries Service as required by section 7 of the Endangered Species Act. On December 18, 1991, the U.S. Fish and Wildlife Service issued their biological opinion on the Draft Environmental Impact Statement and stated that adoption of Alternative B is not likely to jeopardize the continued existence of the northern spotted owl. Consultation on specific projects will occur before specific projects are implemented in areas where spotted owls are present.

In addition, on January 15, 1992, the U.S. Fish and Wildlife Service designated 5.7 million acres of National Forest System lands as critical habitat for the spotted owl. Eighty percent of this area is in HCAs. The U.S. Fish and Wildlife Service excluded from designation portions of HCAs that were part of wilderness areas. It extended protection under the Endangered Species Act to approximately 1.2 million acres of spotted owl habitat outside of HCAs. Consultation will occur before any actions are taken that may result in the destruction or adverse modification of critical habitat, whether or not spotted owls are present.

IV. Alternatives Considered

The Purpose and Need for the Proposed Action

The underlying purpose and need to which the Forest Service responded in proposing alternatives are described in chapter 1 of the FEIS. Specifically, the FEIS states: The Forest Service has a need to manage National Forest habitat for the northern spotted owl (*Strix occidentalis caurina*) within the requirements of the National Forest Management Act (NFMA) and its implementing regulations as interpreted in *Seattle Audubon Society, et al.* v. *Evans, et al.*, No. 89–160WD (*SAS* v. *Evans*).

The underlying purposes are: (1) to satisfy the court order "to submit to the court and have in effect by March 5, 1992 revised standards and guidelines to ensure the northern spotted owl's viability, together with an environmental impact statement, as required by NFMA and its implementing regulations." (*SAS* v. *Evans*), and

(2) to amend the Regional Guide and the Forest Land Resource Management Plans for the Pacific Northwest Region, and amend the Regional Guide for the Pacific Southwest Region, to provide management direction to the National Forests within the range of the northern spotted owl.

Alternatives Considered in Detail

The FEIS explored and evaluated a reasonable range of alternatives which met this underlying purpose and need, as well as the "no-action" alternative required by 40 CFR 1502.14(d) and one alternative management strategy raised during the period of public comment on the Draft Enviromental Impact Statement (DEIS). All alternatives would require compliance with consultation requirements for critical habitat under the Endangered Species Act (see section VIII of this ROD).

These alternatives included:

Alternative A—Spotted Owl Habitat Areas ("No-Action Alternative")

Alternative A would manage the National Forests as directed in the Regional Guides and Forest Plans. Those guides and plans prescribe management areas known as Spotted Owl Habitat Areas (SOHAs) for maintenance of spotted owl habitat.

This alternative meets the Council on Environmental Quality's requirements for a "no-action" alternative required in environmental impact statements.

Alternative B—ISC Conservation Strategy

This alternative would manage the National Forests using the Conservation Strategy presented by the Interagency Scientific committee in its 1990 report "A Conservation Strategy for the Northern Spotted Owl". This alternative was identified as the "Proposed Action" in both the DEIS and FEIS.

Alternative C—ISC Conservation Strategy Plus Critical Habitat

This alternative would manage the National Forests using the Conservation Strategy presented by the Interagency Scientific Committee and further expand the Habitat Conservation Areas to include the Critical Habitat Units identified by the U.S. Fish and Wildlife Service in its January 15, 1992, rule.

It is assumed that ground-disturbing management activities in Critical Habitat Units would be more restricted under the standards and guidelines for HCAs, as provided by this alternative, than they would be under the guidelines that result from consultation. The U.S. Fish and Wildlife Service's January 15, 1992, rule did not prescribe activities that would or would not be permitted in Critical Habitat Units. As stated above, consultation for activities that may destroy or adversely modify spotted owl habitat in Critical Habitat Units will occur under all alternatives.

Alternative D—ISC Conservation Strategy plus All Nesting, Roosting, and Foraging Spotted Owl Habitat

This alternative would manage the National Forests using the Conservation Strategy presented by the Interagency Scientific Committee and further apply the prescriptions for Habitat Conservation Areas to all existing northern spotted owl nesting, roosting, and foraging habitat.

Alternative E—"A Multi-Resource Strategy for the Conservation of the Northern Spotted Owl"

This alternative would adopt a strategy developed by the Spotted Owl Subgroup of the Wildlife Committee of the National Forest Products Association and American Forest Council. It proposes an alternative set of standards and guidelines and an alternative set of conservation areas to protect the northern spotted owl.

Alternatives Considered but Eliminated from Detailed Study

Several alternatives were considered but eliminated from detailed study.

Alternatives presenting an old-growth forest management plan, or focusing on the management of other old-growth associated wildlife species, were considered but were eliminated from detailed study. All old-growth forests are not spotted owl habitat; all spotted owl habitat is not old-growth forest. The Regional Guides, the approved Forest Plans, and those Forest Plans still in preparation, all address the issue of old-growth forest management. The decision here is focused on management direction that will insure the viability of the northern spotted owl. Its effects on old growth and old-growth associated species are identified in the FEIS.

Alternatives which would have prescribed management direction for lands managed by other Federal agencies, tribes, states, and private individuals were suggested, but were eliminated from detailed study. The Forest service has no authority to prescribe management on these other lands. The management of these lands and effects on them, however, are factors that were considered in the FEIS.

Some commenters suggested exempting certain parts of the spotted owl's range from consideration. These proposals were considered but eliminated from detailed study because they would not meet the regulatory requirement to insure the viability of the northern spotted owl throughout its range within the planning area.

Other proposals were received suggesting silvicultural regimes which could be applied to parts of the northern spotted owl's range. Stand management techniques such as extended rotation and commercial thinning should be explored through research and experimentation. Our knowledge of how to create and maintain spotted owl habitat in managed stands is insufficient at this time to apply these suggestions.

Officials of Siskiyou County, California, and others proposed developing a separate environmental impact statement, including separate standards and guidelines, to revise the Pacific Southwest Regional Guide. Current information on differences in habitat in this part of the spotted owl's range does not indicate a need for a separate analysis for California. If future information indicates a need, standards may be adjusted through the adaptive management component of Alternative B.

Two proposals from the Northwest Forestry Association would have reduced the acreage in the HCAs identified by the Interagency Scientific Committee. These proposals were not considered in detail, as initial evaluation showed they would not meet the regulatory requirement of insuring the northern spotted owl's viability. A similar, but more comprehensive and detailed, management strategy developed by this group was analyzed in the FEIS as Alternative E.

No proposals were received from the plaintiffs in *SAS* v. *Evans*.

The Environmentally Preferable Alternative

"The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources." (Council on Environmental Quality, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" (40 CFR 1500–1508), **Federal Register** Vol. 46, No. 55, 18026–18038, March 23, 1981; Question 6a.)

Alternatives B, C, D, and E are preferable to the no-action alternative (Alternative A), in that all of these alternatives limit disturbance to the environment relative to the no-action alternative, and thereby mitigate adverse consequences to the northern spotted owl and its habitat. Since the least human-caused change to the biological and physical environment, as well as to historic, cultural, and natural resources, would occur with Alternative D, it is the environmentally preferable alternative. This preference is indicated despite the likelihood that Alternative D also could result in a higher risk of castastrophic forest fires and forest loss from disease and insect infestation. All of the alternatives provide the protection to environmental factors afforded by the standards and guidelines of the Regional Guides and Forest Plans, as well as the protection developed in environmental analysis, to avoid and mitigate adverse effects of projects and management activities.

V. Reasons for the Decision

Meeting the Purpose and Need for Action

The selection of Alternative B puts into effect "revised standards and guidelines to ensure the northern spotted owl's viability" as ordered by the District Court. Adoption of Alternative B meets the purpose and need and the regulatory requirement to insure viability. Although the environmental analysis and public involvement required for this decision had to be completed within the

extremely tight time frames mandated by the court, they provided the information needed for an informed decision.

Factors Considered

Primary consideration was given to the need to select a scientifically credible management strategy with a high probability of maintaining viable populations of the northern spotted owl an National Forest System lands. The information considered in reaching this decision is contained in the administrative record, including but not limited to the FEIS, the ISC Report, peer reviews of the ISC Conservation Strategy and of the Multi-Resource Strategy proposed by forest industry (Alternative E), the results of section 7(a) consultation with the U.S. Fish and Wildlife Service, public comment, and applicable laws and regulations. Also important was the need to minimize the economic and social impact of this decision.

Comparison With Other Alternatives

Alternative B (along with Alternatives C and D) insures the viability of the northern spotted owl, by providing a high probability of both short and long-term viability of the owl.

Alternative A does not ensure the viability of the northern spotted owl, as it would provide only a low probability of long-term viability of the owl.

Alternative E does not ensure the viability of the northern spotted owl. It would provide only a low probability of long-term viability because (1) designated areas for habitat management are not large enough; (2) portions of the owl's range on the east side of the Cascade Mountains in Oregon and Washington, the north Oregon Coast Range, and the Olympic Peninsula are outside the Owl Management Zone; (3) there is limited latitude for catastrophic events; and (4) owl cluster sizes are small.

Economics—All of the alternatives, including the "no-action" Alternative A, project declines in employment and income related to National Forest timber harvests, compared with historic averages for the past 5 years (1986–1990) and the past decade (FEIS, chapter 2, page 69; chapter 3&4, pages 192–195). The FEIS discusses trends and factors affecting timber markets, employment, and income in the Pacific Northwest (FEIS, chapter 3&4, pages 171–196). Of the alternatives that ensure the northern spotted owl's viability (Alternatives B, C, and D), Alternative B has the least adverse effects on the economy and on timber-dependent communities of the three states.

Timber—Under Alternative B, 74 percent of the 6.1 million acres of northern spotted owl nesting, roosting, and foraging habitat on National Forest System lands will be unavailable for timber production (FEIS, chapter 3&4, page 110). Of the total area on the affected National Forests that is physically capable of being managed for timber production, over 6.7 million acres, 55 percent, will be available for timber production (FEIS, chapter 3&4 page 110). This total includes approximately 1.6 million acres of northern spotted owl habitat outside of HCAs (FEIS, chapter 3&4, page 56). Any timber harvests in northern spotted owl habitat outside of HCAs will, of course, still be subject to consultation requirements with the U.S. Fish and Wildlife Service, the standards and guidelines for management of the forest matrix that are part of this decision, and other resource protection standards and guidelines in the Forest Plans.

Of Alternatives B, C, and D, Alternative B also provides the most opportunity to use adaptive management in these National Forests to find ways of maintaining, creating, or accelerating the development of suitable owl habitat and potentially to lower threats to the forest from fire, insects, and disease. The ISC recommended, as part of its strategy, experimentation and testing of silvicultural treatments to improve, maintain, or develop suitable owl habitat over time (FEIS, chapter 2, page 33). The management situation for fire, insects, and disease is discussed in appendix F and appendix G of the FEIS.

Discussion of Tradeoffs

Implementation of this decision will have significant effects on the economy and communities of the Pacific Northwest. However, the best scientific information available at this time indicates that Alternative B provides reasonable guidelines for habitat management for the northern spotted owl that will insure its viability. Achieving short and long-term protection for the spotted owl at a much lower cost to people, communities, and the economy does not appear possible at this time based on existing information; the Conservation Strategy, however, provides for modification of proposed management as new information becomes available.

Long-term options for timber management in areas providing habitat for the northern spotted owl are not foregone by this decision. The monitoring and research components of this decision will explore silvicultural treatments that have less adverse effects on the people dependent on National Forest timber harvests and insure the spotted owl's viability.

VI. Public Involvement

Summary of the Process

Information describing the public involvement process up to the publication of the Final Environmental Impact Statement (FEIS) is presented in Appendix L (Public Involvement) of the FEIS. The environmental impact statement was developed with involvement of the public, state, local, and tribal governments, and other Federal agencies.

The Forest Service published a Draft Environmental Impact Statement (DEIS) disclosing the environmental effects of alternatives on September 27, 1991. The public was afforded three months in which to submit comments. During that time, the Forest Service held public hearings in Olympia, Washington; Salem, Oregon; and Redding, California. About 150 people presented official testimony at those hearings. Most of the public comment was received through the mail. Over 5,000 comments on the draft were received.

Public comments resulted in several changes between the DEIS and the FEIS. A major change is the inclusion of a new alternative—Alternative E—based on the Multi-Resource Strategy offered by the Spotted Owl Subgroup of the Wildlife Committee of the National Forest Products Association and the American Forest Council.

Notice of the availability of the FEIS for public review was published in the Federal Register on January 31, 1992. Because no administrative appeal of the this decision is available, a 30-day period between publication of the FEIS and the Record of Decision was required (40 CFR 1506.10(b)(2)).

The public comments received following release of the FEIS, as well as those received on the DEIS, have been considered in making this decision.

Major Concerns From Public Comments

Major concerns expressed by the public included:

- Whether the ISC Conservation Strategy is scientifically credible and whether new information available since its release was considered.
- Whether the risks and uncertainties to the short-term and long-term viability of the spotted owl under the ISC Conservation Strategy were properly disclosed and evaluated.
- Whether the Forest Service can ensure the viability of the northern spotted owl when other owners and agencies manage habitat in its range

and the ISC Conservation Strategy assumed all Federal agencies would participate in the strategy.

• Whether the environmental impact statement as a whole, or one or several alternatives, should have focused on a management plan for old-growth forest ecosystem.

• Whether less intensive management applied to the whole forest, rather than habitat conservation areas, should have been used both to supply timber and to provide spotted owl habitat.

• Whether the needs of people and communities were properly weighed against the needs of the spotted owl.

The following discussion explains how these major concerns were addressed in making this decision. Specific comments and responses on the DEIS appear in Appendix L of the FEIS. Appendix A of this Record of Decision responds to the comments received on the FEIS. Appendix B of this Record of Decision responds to comments made by plantiffs and intervenors in *SAS* v. *Evans*.

Response to Major Concerns

The scientific credibility of the ISC Conservation Strategy and consideration of new information.

After consideration of the criticisms of the Conservation Strategy by other scientists, in particular the testimony by several scientists in *SAS* v. *Evans*, the decision is to adopt the strategy recommended by the scientists on the Interagency Scientific Committee, who are widely acknowledged as the most knowledgeable in the biology of the spotted owl.

In making this decision, recent information on northern spotted owls and their habitat needs, including indications of differences in habitat use and habitat characteristics in various parts of the range and reports of spotted owl use of second-growth, managed stands, was considered. Preparation of the environmental impact statement included a thorough review of relevant scientific studies and other literature that have been published, or are in process, since the Interagency Scientific Committee published its Conservation Strategy. A summary of published and unpublished sources reviewed is presented in Appendix D (Annotated Bibliography) of the FEIS. While much of the new information adds precision and affirms the scientific knowledge of the spotted owl's biology and habitat needs, none alters the principles on which the ISC Conservation Strategy is based.

While the FEIS was being printed, additional information on northern spotted owl populations and their habitat was presented during the adminstrative hearing on the Bureau of Land Management's request to the Endangered Species Committee for an exemption under the Endangered Species Act (see the discussion of related activities on lands managed by the Bureau of Land Management under Section VIII of this ROD). In testimony, Dr. Barry Noon stated that the amount of habitat on Bureau of Land Management lands may be lower than previously expected. In addition, a recent demographic analysis by Drs. Anderson and Burnham shows that populations are declining in five areas and that the rates of decline may be accelerating. A draft of this report was available for and considered in the FEIS (FEIS, Chapter 3&4, page 35). After preliminary review, it was concluded that this information does not represent a significant change in the status and trends for the owl. Declining trends were anticipated in the ISC Report.

A later version of the Anderson and Burhnam analysis was presented at the Endangered Species Committee hearings. The conclusions of the two versions are the same. This information does not run counter to the assumptions underlying the ISC Report or Alternative B and there is no need to change the strategy's standards and guidelines or process of implementation. Because demographic parameters are crucial in determining the status of the spotted owl, this information will be reviewed as part of the adaptive management process.

Evaluation and Disclosure of Risks and Uncertainties to the Short-Term and Long-Term Viability of the Spotted Owl

The viability analysis in the environmental impact statement was developed and reviewed by leading spotted owl experts and scientists and received favorable comments. The criteria used are appropriately based on measures of the amount and distribution of habitat. The seven criteria used to evaluate viability are indices of specific population parameters. This analysis is independent and additional to the ISC Reports's risk analysis.

There is a potential threat to the spotted owl in both the short term and long term. It is not possible to provide a 100 percent assurance for the viability of a species. However, the standards and guidelines provide for large blocks of suitable habitat and for dispersal habitat, and in the short term protect key habitat areas and pairs of spotted owls. Because the Conservation Strategy provides for continuous distribution of breeding pairs, restoration of habitiat in key areas, interaction among pairs and subpopulations, and monitoring and research, it provides for the viability of the spotted owl in both the short term and the long term.

In the determinations of the viability ratings for the alternatives, potential threats to the spotted owl were recognized for specific areas, such as the Coast Range. While there is a potential risk in the short term to spotted owls in specific areas, there is a realistic expectation of natural recolonization of these areas from adjacent areas with ample habitat and numbers of spotted owls. Therefore, even with these recognized threats to the spotted owl, the overall rating for alternative B was HIGH.

The Relationship of This Decision to Management of Northern Spotted Owl Habitat on Other Land Ownerships

Forest Service authorities and responsibilities to maintain the viability of the northern spotted owl apply only to National Forest System lands.

The Relationship of This Decision to Management of Old-Growth Forest Ecosystems

This decision responds to the stated purpose and need for a management plan to ensure the viability of the northern spotted owl. Alternatives for management of old-growth ecosystems and associated wildlife species, including those alternatives developed by the Scientific Panel on Late Successional Forest Ecosystems, would require consideration of issues, concerns, and opportunities that are beyond the purpose and need. Therefore, alternatives of this nature were considered but eliminated from detailed study (see discussions in section IV of this ROD; FEIS, chapter 2, pages 73–76, and appendix L, pages A–16 and A–17).

For purposes for forest planning and monitoring, the northern spotted owl has been selected as a management indicator species for the effects of management activites and old-growth forests and associated species. Identification of a species as a mangement indicator, however, is independent of the regulatory requirement for maintenance of viability (see the discussion of planning requirements in section II of this ROD). To ensure the viability of the northern spotted owl, the alternatives considered for this decision focus on habitat needs specific to the spotted owl.

However, information was displayed in the FEIS with regard to the effects of Alternative A through E on existing old-growth stands and associated wildlife

species. Those alternatives that result in a high probability of maintaining the viability of the northern spotted owl also provide additional protection for other species associated with old-growth forests.

Possibilities for Less Intensive Management of the Whole Forest to Provide Spotted Owl Habitat

Research to date suggests that large designated areas set aside to provide habitat for multiple pairs of spotted owls provide for greater likelihood of persistence of spotted owls than do small areas of habitat surrounded by managed stands. Until our ability to create or enhance spotted owl habitat through silvicultural treatments is more fully understood, this decision adopts the recommendations in the ISC Conservation Stretegy to protect stands in a manner known to favor spotted owls (this is, no silvicultural treatment). Hypotheses about the use of timber management to create or improve spotted owl habitat need to be developed and tested. This decision provides for research and experimentation in the forest matrix on the use of silviculture to maintain or improve spotted owl habitat. If this research demonstrates that silvicultural treatments are beneficial to spotted owl habitat, the adaptive management process provides a means to consider adjustments to the management direction.

The Effects of This Decision on People and Communities

Many of the comments stated that the needs of the people and communities affected by this decision should be considered equal to, or more important than, the needs of the spotted owl. These comments clearly express a frustration with the Endangered Species Act, the viability planning regulation, and legal rulings that seem to disregard the needs of people, their families, and their communities.

Alternative B was selected to minimize adverse social and economic effects of this decision, while complying with all applicable laws and regulations. Of the alternatives that meet the regulatory requirement for viability, Alternative B has the least adverse social and economic effect. Using Alternative A (existing Forest Plans) as a base, the FEIS projects under Alternative B a 43 percent decline in jobs related to timber harvests from National Forests (FEIS, chapter 3&4, page 186; see also, Additional Information: Revised Employment Coefficients, which was issued with errata to the FEIS on February 5, 1992).

Regardless of the alternative selected, the Forest Service will continue to provide protection for the northern spotted owl and its habitat under the Endangered Species Act. This decision seeks to adopt a scientifically credible plan to protect spotted owl habitat on National Forests, while minimizing the loss of jobs and revenue in communities dependent on National Forest timber harvest. The intent is to meet the requirements of the court injunction so that projects developed through interdisciplinary planning, public involvement, and environmental analysis as provided by the National Forest Management Act, the National Environmental Policy Act, and the Endangered Species Act will be able to proceed on the National Forests within the planning area.

VII. Findings Required by Other Laws or Regulations

Consultation Required by the Endangered Species Act

On December 18, 1991, the U.S. Fish and Wildlife Service issued their biological opinion on the Draft Environmental Impact Statement and stated that adoption of Alternative B is not likely to jeopardize the continued existence of the northern spotted owl. Because this decision does not authorize any site-specific activities, incidental take will be evaluated through consultation on a project level basis when site-specific information is available.

On January 15, 1992, the U.S. Fish and Wildlife Service's final rule designated critical habitat for the northern spotted owl (57 FR 1796). Since the alternatives considered for this decision provide direction for spotted owl habitat protection and are not a plan for timber harvest, the Forest Service will consult with the U.S. Fish and Wildlife Service with regard to critical habitat at the project level when ground-disturbing activities are proposed. The Forest Service has discussed this approach to consultation on critical habitat with the U.S. Fish and Wildlife Service, and they have concurred.

On January 7, 1992, the National Marine Fisheries Service stated that implementation of any alternative in the DEIS is unlikely to adversely affect the Snake River salmon species currently listed or proposed for listing under the Endangered Species Act.

Review by the Environmental Protection Agency

The Environmental Protection Agency (EPA) reviewed the Draft Environmental Impact Statement and raised no environmental objections (Appendix L, page B-8). The Environmental Protection Agency rated the Draft EC-2 (Environmental Concerns—Insufficient Information). After reviewing the FEIS, EPA stated in its letter of February 24, 1992, that the FEIS adequately responded to its concerns.

VIII. Related Activities Under the Endangered Species Act

Designation of Critical Habitat

The U.S. Fish and Wildlife Service designated critical habitat for the northern spotted owl in January 1992. To identify areas for critical habitat, the U.S. Fish and Wildlife Service began with the areas designated as HCAs under the ISC Conservation Strategy and added to or deleted areas to satisfy their criteria. Approximately 5.7 million acres of National Forest System lands were designated as critical habitat; approximately 1.2 million of these acres are outside of HCAs. The critical habitat designation, however, applies no specific management prescription to the areas designated. In accordance with section 7(a) of the Endangered Species Act, the Forest Service will consult with U.S. Fish and Wildlife Service on any activities that may destroy or adversely modify spotted owl habitat in critical habitat areas.

The effects of critical habitat designation could not be fully evaluated in the FEIS because management guidelines for critical habitat were not included in the designation. In the FEIS, Alternative C expanded the area covered by the prescription for HCAs to the Critical Habitat Units identified in the final rule. It is expected, however, that this prescription is more restrictive than could actually occur in Critical Habitat Units outside of HCAs. Therefore, the effects of critical habitat designation would likely fall somewhere between the effects estimated for Alternatives B and C in the FEIS.

The Recovery Plan

The U.S. Fish and Wildlife Service has also been working with an interagency team (including state representatives) to develop a Recovery Plan for the northern spotted owl, as provided by the Endangered Species Act. The Northern Spotted Owl Recovery Plan, once approved, will serve as a guide to future Federal, state, and private activities affecting the spotted owl. The goal of the Recovery Plan is to manage habitat so

that the northern spotted owl will no longer need to be listed under the Endangered Species Act. Department of Agriculture and Forest Service representatives are participating on the Recovery Team. When the U.S. Fish and Wildlife Service issues an approved Recovery Plan for the northern spotted owl, the Forest Service will identify its objectives under the Recovery Plan. The Forest Service will determine at that time if adjustments to the management direction in this decision are necessary.

Management on Bureau of Land Management Lands

The Bureau of Land Management is currently in the process of formulating alternatives for its Resource Management Plans, including plans for its Oregon lands within the range of the northern spotted owl.

On September 11, 1991, the Bureau of Land Management petitioned Department of the Interior Secretary Manuel Lujan, Jr. to convene the Endangered Species Committee to consider applying the Endangered Species Act exemption process to 44 timbers sales located in spotted owl habitat in western Oregon. The decision of the Endangered Species Committee on these 44 sales is expected later this year. The viabiltiy rating for Alternative B (and other alternatives) assumed that management activities on Bureau of Land Management lands would comply with section 7(a) of the Endangered Species Act. In its Bilogical Opinion on the Draft Environmental Impact Statement, the U.S. Fish and Wildlife Service stated that it would consider the granting of an exemption to the Bureau of Land Management by the Endangered Species Committee as significant new information, which would require the Forest Service and the U.S. Fish and Wildlife Service to consider the need for reinitiation of consultation.

IX. Effective Date and Implementation

The standards and guidelines of this management plan are effective as of the date of this Record of Decision. Because this decision amends Regional Guides and Forest Plans, it will be implemented 30 days after publication of this Record of Decision in the **Federal Register**. Until 30 days after the publication of this Record of Decision, there will be no ground-disturbing or habitat-modifying actions, and no Records of Decision, Decision Notices, or Decision Memos signed for timber sales, salvage sales, road construction, or other development activities, in Habitat Conservation Areas or in spotted owl nesting, roosting, and foraging habitat.

X. The Administrative Record

This decision and the accompanying environmental impact statement comply with the requirements of the court's March 7, 1991, and May 23, 1991, rulings in *SAS* v. *Evans*, and are in accordiance with the National Forest Management Act (16 U.S.C. Sec. 1600 et seq.), the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), and the Endangered Species Act (16 U.S.C. 1531–1536, 1538–1540), and other applicable laws.

Information about the northern spotted owl, its habitat needs, the analysis of population viability, and management alternatives and their environmental impacts were presented in the Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests, published in January 1992, and its accompanying administrative record. This Record of Decision is based on that information. Readers are referred to the FEIS and the administrative record for detailed information.

XI. Administrative Review

This decision by the Secretary of Agriculture, delegated to the Assistant Secretary for Natural Resources and Environment pursuant to 7 CFR 2.19 (56 FR 27889), is the final decision of the Department of Agriculture. There is no opportunity for administrative review.

Decisions on site-specific projects affecting northern spotted owl habitat will continue to be subject to the requirements of the National Forest Management Act, the National Environmental Policy Act, the Endangered Species Act, other environmental laws, and the administrative review process provided in 36 CFR part 217.

XII. Contact Person

James C. Overbay, Deputy Chief, National Forest System, USDA Forest Service, P.O. Box 96090, Washington, DC 20090–6090, 202–205–1523.

XIII. Signature, Date

Dated: March 3, 1992.

James R. Moseley,

Assistant Secretary for Natural Resources and Environment.

Appendix A and Appendix B

Note: See notice of availabilty at the end of **SUPPLEMENTARY INFORMATION.**

[FR Doc. 92–5710 Filed 3–10–92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 59-91]

Foreign-Trade Zone 110A—Albuquerque, NM, Application for Subzone Adria-SP, Inc., Pharmaceutical Products Plant; Amendment of Application

The application submitted to the Foreign-Trade Zones Board (the Board) by the City of Albuquerque, New Mexico, grantee of FTZ 110A, at the pharmaceutical plant of Adria-SP, Inc., located in Albuquerque, New Mexico, requesting authority to expand the subzone and the scope of manufacturing authority (Docket 59–91, FR 56054, 10–31–91) has been amended to include new information regarding the Customs treatment of bulk doxorubicin hydrochloride. At the time the application was submitted, the duty rate on bulk doxorubicin was 3.7 percent, the same as finished doxorubicin. Thereafter, a Customs ruling determined that the duty rate of bulk doxorubicin is 6.6 pecent. Thus, the original notice is revised to indicate that zone procedures would allow Adria to chose the lower finished product rate (3.7%) on the bulk ingredient. The application remains otherwise unchanged.

The comment period is reopened until April 21, 1992.

The application and amended material are available for public inspection at the following locations:

U.S. Department of Commerce, District Office, 625 Silver Street SW., 3rd Fl., Albuquerque, NM 87102.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 05, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–5709 Filed 3–10–92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[Docket No. 920247-2047]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of the availability of funds for the Special American Business Internship Training Program (SABIT).

SUMMARY: The Department of Commerce, International Trade Administration (ITA) established the Special American Business Internship Training (SABIT) program in September 1990 as a key element in the Administration's ongoing efforts to provide technical assistance supporting the former Sovit Union's transition to a market economy. Since that time, SABIT has been matching mangers from the former Soviet region with U.S. firms which sponsor them for short term management training programs. Similar to the pilot program, the expanded SABIT program will assist economic restructuring of the Independent States of the former Soviet Union (Independent States) by providing business managers with exposure to American ways of innovation and management through three to six month management internships in U.S. firms. Under the new program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting an intern. ITA will interview and recommend eligible interns to participate in SABIT. Priority consideration will be given to interns from Russia, Ukraine, Kyrgyzstan, Byelarus, Kazakhstan, Armenia and other states identified for priority U.S. assistance. The U.S. firms will be expected to provide the interns with a flexible training program designed to maximize their exposure to management operations.

DATES: The closing date for applications is April 10, 1992.

ADDRESSES: For further information contact: Cynthia M. Anthony, Manager, Special American Business Internship Training Program, International Trade Administration, U.S. Department of Commerce, phone—(202) 377-0073, facsimile—(202) 377-2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: SABIT is designed to expose business managers from the Independent States to a completely new way of thinking in which demand, consumer satisfaction, and profits drive production. Management level interns visiting the U.S. for internship programs with public or private sector companies will be exposed to an environment which will provide them with practical knowledge for transforming their countries' enterprises and economies to the free market. The program provides first-hand, eye-opening experience to managers which cannot be duplicated by American managers travelling to their territories.

Funding Availability

Pursuant to section 531 of the Foreign Assistance Act of 1961, as amended, (the "Act") and section 632(a) of the Act, funding for the program will be provided by the Agency for International Development (A.I.D). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act. The maximum amount of financial assistance available for the program is $850,000.

Funding Instrument and Project Duration

Federal assistance awarded pursuant to a cooperative agreement between ITA and the recipient firm. With funds provided by A.I.D., ITA will reimburse companies for the roundtrip air travel of each intern from Moscow to the U.S. internship site upon submission to ITA of the travel invoice. ITA will reimburse companies a stipend of $30 per day per intern for up to six months. Disbursement of funds for reimbursement of the stipend will be made upon certification by the companies that the intership program has been completed. Each award will have a cap of $7,500 for total cost of airline travel and stipend. There are no specific matching requirements for the awards. Recipients, however, are expected to bear the cost beyond those covered by the award, including payment for housing and insurance, and for any food and incidentals costs beyond $30 per day. Federal funding will be provided for this program for not more than eighteen months from the date of this Notice. Individual internships are expected to run from three to six months. U.S. firms wishing to utilize SABIT in order to be matched with an intern without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

Request for Applications

Competitive Application kits will be available from ITA starting on the day this notice is published. To obtain a copy of the Application Kit please telephone (202) 377-0073, or telefax (202) 377-2443 (these are not toll free numbers) or send a written request with two self-addressed mailing labels to Cynthia M. Anthony, Manager, Speical American Business Internship Training Program, room 3413 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. An original and two copies of the application (Standard Form 424 (Rev. 4-88) and supplemental material) are to be received at the address designated in the Application Kit no later than 3 p.m., 30 days from publication of this notice. Awards are expected to be made in several cycles. All awards are expected to be made prior to October 1, 1992.

Eligibility

Eligible applicants for SABIT will be any for profit or non-profit U.S. corporation, association, organization or other public or private entity. Each application will receive an independent, objective review by one or more three-member review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive basis as they are received in accordance with the selection criteria set forth below. ITA reserves the right to reject any application; to limit the number of interns per applicant; and to consider other than competitive procedures to distribute assistance under this program if appropriate and in accordance with law.

Selection Criteria

Consideration for financial assistance will be given to those SABIT proposals which:

1. Demonstrate a commitment to the intent and goals of the program to provide an appropriate management training experience to the intern;
2. Are proposed by applicants with the financial capacity to successfully undertake the intended activities of hosting an intern(s);
3. Respond to the priority business needs of managers in the Independent States.

In addition, priority consideration will be given to those applications which represent:

4. U.S. geographic diversity;
5. Industry diversity;
6. Applicant diversity in terms of size; and
7. Priority consideration will also be given to those applications which present a realistic work plan detailing the work program to be provided to SABIT intern.

Selection criteria 1-3 will be weighted equally. Priority consideration factors 4-7 will also be weighted equally. Selection criteria will take precedence over the priority consideration factors.

If funds remain available after the award of financial assistance to qualified firms pursuant to this notice,

ITA may later announce the offer of the remaining funds through further notices in the **Federal Register.**

Notifications

All applicants are advised of the following:

1. Applicants that have an outstanding account receivable with the Federal Government may not be considered for funding until the debt has been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

2. Applicants are subject to Government-wide Debarment and Suspension (Non-procurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

3. A false statement on the application may be grounds for denial or termination of funds.

4. Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

5. The Standard Form 424 (Rev. 4–88) mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

6. The Grants Officer is the only individual who may legally commit the Government to the expenditure of public funds. No costs chargeable to the proposed cooperative agreement may be incurred before receipt of either a fully executed cooperative agreement or a specific, written authorization from the Grants Officer.

Dated: March 5, 1992.

Cynthia M. Anthony,

Manger, Special American Business Internship Training Program.

[FR Doc. 92–5651 Filed 3–10–92; 8:45 am]

BILLING CODE 3510-DA-M

Short-Supply Request for Reconsideration: Certain Standard Length Premium Curve Rails

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply request for reconsideration.

SHORT-SUPPLY REVIEW NUMBER: 64.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a request for reconsideration of its short-supply decision with respect to 13,000 net tons of certain standard length premium curve rails for the first quarter of 1992 under the U.S.-Japan Steel Arrangement.

EFFECTIVE DATE: March 5, 1992.

FOR FURTHER INFORMATION CONTACT: James Rice or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th St. and Constitution Ave., NW Washington, DC 20230; (202) 377–3793.

SUPPLEMENTARY INFORMATION: On January 15, 1992, the Secretary received an adequate short-supply petition from Union Pacific Railroad (UP) requesting a short-supply allowance for 13,000 net tons of certain premium curve rail for the first quarter of 1992 under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products (the U.S.-Japan Steel Arrangement). The Secretary conducted this short-supply review pursuant to Section 4(b)(4)(a) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Suppply Procedures").

Because the Secretarty determined that a domestic supplier could produce the requested material, and because the Secretary determined that the unusually short order-to-delivery period required by UP did not offer the potential supplier an adequate opportunity to supply the material, the Secretary denied the short-supply request in its entirety. A notice of this decision was published in the **Federal Register** on February 21, 1992 (57 FR 6215).

On February 25, 1992, Union Pacific filed a timely request for reconsideration under section 357.109 of Commerce's Short-Supply Regulations for the entire 13,000 net tons for the first quarter of 1992, alleging that the decision was based on inaccurate information and that the Departmeant had overlooked facts and misapplied points of law.

The Secretary hereby grants Union Pacific's request for reconsideration and will review and afffirm, modify, or reverse the original determination, and publish such decision in the **Federal Register.**

Dated; March 5, 1992.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–5708 Filed 3–10–92; 8:45 am]

BILLING CODE 3510-DS-M

COMMODITY FUTURES TRADING COMMISSION

List of Option Categories

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of list of occupation categories.

SUMMARY: On August 27, 1982, the Commission published in the **Federal Register** notification of its list of occupation categories for option contracts (47 FR 37880). This list, as amended on January 10, 1983 (48 FR 1047), February 3, 1984 (49 FR 4200), October 15, 1984 (49 FR 40159), October 26, 1984 (49 FR 43048), December 17, 1985 (50 FR 51385), July 22, 1986 (51 FR 26236), January 28, 1987 (52 FR 2920) and March 2, 1987 (57 FR 6139), forms the basis from which the Commission measures commercial participation in domestic exchange-traded commodity options. Futures commission merchants and members of contract markets are required under Commission Rule 1.37(a), 17 CFR 1.37(a)(1982), to record for each option customer account they carry an appropriate occupation category from a list of such categories set forth by the Commission. Futures commission merchants and members of contract markets are required also to record a symbol indicating whether the option customer is commercial or non-commercial. In order to accommodate proposed options on natural gas futures, the Commission has determined to revise its current list of occupation categories.

FOR FURTHER INFORMATION CONTACT: Richard Shilts of the Division of Economic Analysis, (202) 254–7303, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission has revised the list of commercial categories for option contracts as follows:

Commodity	Occupation categories
Sugar, Cocoa, and Coffee.	1. Producer. 2. Merchant or Dealer. 3. Refiner/Processor of Raw Commodities. 4. Manufacturer of Intermediate or Final Products. 5. Other Commercial.
Metals/Precious Metals	6. Miner/Producer. 7. Primary or Secondary Refiner. 8. Dealer (Metal Merchant). 9. Commercial End User. 46. Fabricator or Alloyer. 11. *Other Commercial.

Commodity	Occupation categories
Petroleum	39. Crude Oil or Natural Gas Producer. 40. Crude Oil or Natural Gas Reseller. 12. Refiner. 53. Natural Gas Processor. 13. Product Marketer and/or Distributor. 14. End User. 15. Other Commercial.
Financial Instruments/ Foreign Exchange.	16. Savings and Loan, Mortgage Bank or Thrift Institution. 17. Commercial Bank. 18. Insurance Company. 19. Pension and Retirement Fund. 20. Mutual Fund. 21. Broker/Dealer. 22. Foundation or Endowment. 23. Other Commercial. 24. Importer/Exporter of Goods and Services. 25. Investor/Issuer of Foreign Currency Denominated Securities.
Grains, Soybeans, and Soybean Products.	26. Grain or Soybean Producer. 27. Producer Cooperative. 28. Elevator Operator or Merchant Other than a Producer Cooperative. 29. Processor, Including Feed Manufacturing and Soybean Crushing. 30. Livestock Feeder or Producer. 47. Soybean Oil Refiner. 31. Other Commercial.
Livestock and Frozen Pork Bellies.	32. Farmer or Rancher. 33. Commercial Feedlot Operator. 34. Other Livestock Feeder. 35. Marketing Agency and/or Merchant. 36. Packer or Other Meat Processor. 37. Meat Wholesale, Retailer, or Buyer. 38. Other Commercial.
Cotton and Frozen Concentrated Orange Juice.	41. Producer/Grower. 42. Producer/Grower Cooperative. 43. Merchant/ Wholesaler. 44. Mill Operator/ Processor. 45. Other Commercial.
Forest Products	48. Producer. 49. Remanufacturers. 50. Wholesalers. 51. Retailers and Builders. 52. Other Commercial.

*Category 10 intentionally blank.

Under the revisions, the list of occupation categories for the commodity category, "Petroleum", will be amended by modifying existing categories 39 and 40 and by adding a new category 53. These revisions will accommodate option trading in natural gas and related commodities.[1]

As is the case with the existing categories, the appropriate classification for a customer is based on the primary activity of the customer in using the option market in conjunction with its cash market activities.

Issued in Washington, DC, on March 4, 1992.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 92-5599 Filed 3-10-92; 8:45 am]

BILLING CODE 6351-01-M

[1] In addition, the Commission has revised the former commodity category "Sugar, Cocoa and Coffee C by deleting the identifying letter "C" from Coffee to accommodate option trading based on coffee futures other than the coffee "C" futures contract.

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 2, 1992.

The USAF Scientific Advisory Board (SAB) will hold its Spring General Board Meeting on 14-15 April 1992 from 8 a.m. to 5 p.m. at Headquarters Tactical Air Command (TAC), Langley Air Force Base, VA.

The purpose of these meetings are to receive information on Air Combat Command and discuss the SAB 92 Summer Study on Global Reach-Global Power.

These meetings will involve discussions of classified defense and contractor proprietary matters listed in section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the USAF Scientific Advisory Board Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-5664 Filed 3-10-92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Notice of Interest

AGENCY: Communications-Electronics Command (CECOM), DoD.

ACTION: Notice of interest for Cooperative Research and Development of Ultra High Frequency Satellite Communication Radios.

SUMMARY: In accordance with the Technology Transfer Act of 1986, 15 United States Code, sections 3701 et seq, announcement is made of the interest for Cooperative Research and Development partners with regard to the subject matter set forth below.

The CECOM Space Systems Directorate supports development of Ultra High Frequency Manpack Satellite Communication Radios. The Space Systems Directorate is interested in entering into a Cooperative Research And Development Agreement in this area. Of particular interest are developments in the performance of the radios in the 225 MHZ to 400 MHZ frequency range, which operate at 2.4 KBS SBPSK, compatible with the DoD standard advanced narrowband digital voice terminal (ANDVT) LPC-10 algorithm (STANAG 4198) and KYV-5 COMSEC device.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Pinney, United States Army, Communications-Electronics Command, ATTN: AMSEL-RD-SS-DR-TR, Fort Monmough, New Jersey 07703-5208, Telephone (908) SS-DR-TR, Fort Monmough, New Jersey 07703-5208, telephone (908) 532-2886, or Mr. William H. Anderson, United States Army, Communications-Electronics Command, Attn: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5010, Telephone (908) 532-4112.

SUPPLEMENTARY INFORMATION: The Tactical Space Systems Research Facility at the Space Systems Directorate is equipped to support research and evaluation of tactical UHF radio transceivers to investigate/resolve engineering or operational problems and characterize various performance parameters. Highly skilled technical personnel are available to investigate problem areas and characterize equipment performance, with state-of-the-art automated test equipment in a screen room which minimizes external interference.

Unique capabilities exist within the facility to support a wide range of research and engineering development activities and support engineering evaluation in the government allocated EHF (43.5 to 45.5 GHZ, 20.2 to 21.2 GHZ), SHF (7.9 to 8.4 GHZ, 7.25 to 7.75 GHZ), and UHF (225 to 400 MHZ) satellite frequency band. Among these special capabilities is a precision phase noise test set (PNTS) which measures the single sideband phase noise of signal source from 5 MHZ to 50 GHZ. This test set is a state-of-the-art, microprocessor controlled unit designed by the National Institute of Standards and Technology

(NIST). It is capable of being used to measure the phase noise characteristics of a wide variety of frequency synthesizers or oscillators used in, or being developed for satellite communications, frequency conversion systems.

A complete inventory of automated test equipment is available in the facility to aid in the resolution of hardware problems and to support a wide range of performance evaluation activities utilizing satellite simulator or non-orbit spacecraft.

Some of the measurements that can be performed utilizing the available equipment assets are the following: noise figure; phase noise; amplitude versus frequency; gain/gain transfer; intermediation distortion; gain stability; VSWR/return loss; system interoperability; and modem bit error rate performance.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-5677 Filed 3-10-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Stealth and Stealth Countermeasures Task Force will meet April 6-7, 1992, from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy requirements for stealth and stealth countermeasures systems. The entire agenda for the meeting will consist of discussion of key issues related to stealth and stealth countermeasures, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c) (1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: March 4, 1992.

Wayne T. Baucino

Lieutenant, JACC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-5669 Filed 3-10-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; New Systems of Records

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of existence and character of new systems of records.

SUMMARY: The Federal Energy Regulatory Commission ("Commission" or "FERC"), under the requirements of the Privacy Act of 1974, 5 U.S.C. 552a (1988 & Supp. 1991), is publishing a list and description of new systems of records. Additionally, this Notice deletes systems of records that are no longer maintained and provides a current list of all systems of records.

DATES: This notice is effective March 11, 1992. Comments may be filed on or before May 11, 1992.

ADDRESS: Comments should be directed to the following address: Julia L. White, Privacy Act Officer, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol St, NE., Room 8002, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Elizabeth Arnold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 8002, Washington, DC 20426, Telephone 202-208-0457.

SUPPLEMENTARY INFORMATION:

I. Report on New Systems

A. Background

The Privacy Act of 1974, 5 U.S.C. 552a (1988 & Supp. 1991), requires that each agency publish a notice of the existence and character of each new or altered "system of records." 5 U.S.C. 552a(a)(5). This Notice identifies and describes the Commission's new systems of records. There are no altered systems of records to report. A copy of this report has been distributed to the Speaker of the House of Representatives and the President of the Senate, as the Act requires.

The Commission has adopted several new systems of records under the Privacy Act of 1974. These systems do not duplicate any existing agency systems. For each system of records listed below are the following: Name; location; categories of individuals on whom the records are maintained; categories of records in the system; authority for maintenance of the system; each routine use; the policies and practices governing storage, retrievability, access controls, retention and disposal; the title and business address of the agency official responsible for the system of records; procedures for notification, access and contesting the records of each system; and the sources for the records in each system. 5 U.S.C. 552(a)(4).

The format of the system designations has changed. Formerly, the systems were named "FERC-X." However, it was felt that this designation was too similar to that used for the agency's public data collections forms. FERC's designations for systems of records will now be "FERC/X."

George L.B. Pratt,

Executive Director.

B. New Personnel Systems of Records

New systems of records include the following:

Title	Designation
Advanced Sick Leave Requests File	FERC/14
Commission Employee Relations Tracking System (CERTS).	FERC/15
Death Cases File	FERC/16
Disability Retirements File	FERC/17
Discontinued Service Retirements File.	FERC/18
Employee Suggestions File	FERC/19
Employee Training Requests	FERC/20
Equal Employment Opportunity Discrimination Complaints File.	FERC/21
Indebtedness Case Files	FERC/22
Leave Without Pay Requests File	FERC/23
Miscellaneous Investigation File	FERC/24
Office of Workers Compensation Program Claims File.	FERC/25
Performance Management Recognition System Reconsideration File.	FERC/26
Reconsideration of Refund Decisions File.	FERC/27
Restoration of Annual Leave Requests File.	FERC/28
Unemployment Compensation File	FERC/29
Within-Grade Increase Denials and Reconsideration File.	FERC/30

Other New System of Records

Title	Designation
Automated Parking System File	FERC/31
Freedom of Information and Privacy Act Requests Tracking File.	FERC/32
Freedom of Information and Privacy Act Request File.	FERC/33
Transit Subsidy Program Records	FERC/34

II. Deletion of Systems

Several of the systems of records previously reported are no longer maintained and therefore are deleted from Commission system notices. The deleted systems are:

Title	Designation
Regulatory Evaluation and Docketed Information (READI) System.	FERC/1
Appeals, Grievances and Complaints Records.	FERC/2
Biographical Information on Chairmen, Vice Chairmen and Commissioners.	FERC/5
Mailing List for Information Concerning Applications for Interlocking Directorates.	FERC/11
Time Distribution Reporting System	FERC/13

III. Table of Contents of All FERC Systems

Title	Designation
Applications for Interlocking Directorates, Public Files.	FERC/3
Applications for Interlocking Directorates, Security Files.	FERC/4
Biographical Material on Commissioners and Key Staff members.	FERC/6
Congressional Correspondence Files, Office of Electric Power Regulation.	FERC/7
Congressional Correspondence Files, Office of the Executive Director.	FERC/8
Correspondence Files, Office of Pipeline and Producer Regulation.	FERC/9
Employee Conduct Records	FERC/10
Advanced Sick Leave Requests File	FERC/14
Commission Employee Relations Tracking System.	FERC/15
Death Cases File	FERC/16
Disability Retirements File	FERC/17
Discontinued Service Retirements File.	FERC/18
Employee Suggestions File	FERC/19
Employee Training Requests	FERC/20
Equal Employment Opportunity Discrimination Complaints File.	FERC/21
Indebtedness Cases File	FERC/22
Leave Without Pay Requests File	FERC/23
Miscellaneous Investigation File	FERC/24
Office of Workers' Compensation Program Claims File.	FERC/25
Performance Management Recognition System Reconsideration File.	FERC/26
Reconsideration of Refund Decisions File.	FERC/27
Restoration of Annual Leave Requests File.	FERC/28
Unemployment Compensation File	FERC/29
Within-Grade Increase Denials and Reconsideration File.	FERC/30
Automated Parking System File	FERC/31
Freedom of Information and Privacy Act Requests Tracking File.	FERC/32
Freedom of Information and Privacy Act Request File.	FERC/33
Transit Subsidy Program Records	FERC/34

IV. Minor Changes to Current Systems

The following changes should be noted to reflect the current status of the Commission's systems of records as published in the **Federal Register**, 45 FR 70,702 (October 24, 1980), and amended in the **Federal Register**, 47 FR 37,283 (August 25, 1982). Where there are changes within an existing paragraph, the entire paragraph containing the change, with the change underlined, is shown below.

FERC/3

SYSTEM LOCATION:

Records Maintenance Center, Public Reference and Files Maintenance Branch, Associate Executive Directorate for Information Resources Management, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC. 20426.

Computer Room, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 3300, Washington, DC. 20426.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original paper records are maintained in boxes and filing cabinets in the Records Maintenance Center. All records are also stored on microfilm in the Computer Room.

RETENTION AND DISPOSAL:

Retention and disposition of these records is handled pursuant to applicable GSA regulations and applicable internal administrative directives.

SYSTEM MANAGER(S) AND ADDRESSES:

Public Reference and Files Maintenance Branch, Associate Executive Directorate for Information Resources Management, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC. 20426.

Information Management Division, Associate Executive Directorate for Information Resources Management, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426.

FERC/4

SYSTEM LOCATION:

Opinions and Corporate Applications Branch, Division of Opinions and Systems Analysis, Office of Electric Power Regulation, 825 North Capitol Street, NE., Washington, DC. 20426.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders *on shelves in a room that is closed to the public.*

SYSTEM MANAGER AND ADDRESS:

Opinions and Corporate Applications Branch, Division of Opinions and Systems Analysis, Office of Electric Power Regulation, 825 North Capitol Street, NE., Washington, DC. 20426.

FERC/6

SYSTEM LOCATION:

Division of Public and Intergovernmental Affairs, Office of External Affairs, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

SYSTEM MANAGER AND ADDRESS:

Division of Public and Intergovernmental Affairs, Office of External Affairs, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 29426.

FERC/7

SYSTEM NAME:

Correspondence File—Office of Electric Power Regulation, Federal Energy Regulatory Commission

SYSTEM LOCATION

Division of Investigations, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress and other individuals who have received correspondence drafted by the staff of the Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

This file contains copies of incoming inquiries and outgoing replies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETENTION AND DISPOSAL:

These records are maintained indefinitely until the system manager determines that their usefulness to the Office has ceased. Their disposition is handled pursuant to applicable GSA regulations and applicable internal administrative directives.

SYSTEM MANAGER AND ADDRESS:

Division of Investigations, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426.

RECORD SOURCE CATEGORIES:

Staff of the Commission and correspondents.

FERC/8

SYSTEM NAME:

Controlled Correspondence Files, Office of External Affairs.

SYSTEM LOCATION:

Executive Secretariat, Office of External Affairs, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those current members of the United States Congress who have corresponded with the Commission; *other correspondents, such as state and local officials, environmental groups, and citizen groups, whose letters the Commission believes merit an official response.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence with Commission replies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETRIEVABILITY:

These records are indexed by the names of the corresponding Congressmen *and other correspondents.*

RETENTION AND DISPOSAL:

These records are maintained indefinitely until the system manager determines that their usefulness to the Commission has ceased. Their disposition is handled pursuant to applicable GSA regulations and applicable internal administrative directives.

SYSTEM MANAGER AND ADDRESS:

Executive Secretariat, Office of External Affairs, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

RECORD SOURCE CATEGORIES:

Corresponding Congressmen *and other correspondents*, and Commission staff who draft replies.

FERC/9

SYSTEM LOCATION:

Management Planning and Administrative Branch, Division of Planning and Management, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress and other individuals who have received correspondence drafted by the *Office of Pipeline and Producer Regulation.*

CATEGORIES OF RECORDS IN THE SYSTEM:

This file contains copies of incoming inquiries and outgoing replies drafted by the *Office of Pipeline and Producer Regulation.*

SYSTEM MANAGER AND ADDRESS:

Management Planning and Administration Branch, Division of Planning and Management, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FERC/10

SYSTEM NAME:

Employee Financial Disclosure Files.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETENTION AND DISPOSAL:

Records are maintained for six years or until no longer needed for an ongoing investigation.

FERC/14

SYSTEM NAME:

Advanced Sick Leave Requests File, FERC/14.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees requesting use of advanced sick leave.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written employee requests and decision documents from FERC's Personnel Director.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 630.101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To serve as a data source to FERC officials in determining the proper current personnel action to take concerning the employee. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g., letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

FERC Personnel Director, subject employee, personnel specialists.

FERC/15

SYSTEM NAME:

Commission Employee Relations Tracking System (CERTS), FERC/15.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 403, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees that are the subject of any one of the following actions: Disciplinary action, awards grievance, retirement, and within-grade increase reconsideration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various agency forms, decision documents, grievances, denials, appeals, requests for reconsideration, and briefs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR parts 430, 451, 531, 630, 752, 771.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To respond to a member of Congress concerning the status of a particular action or an employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To serve as a data source to FERC officials in determining the proper current personnel action to take concerning the employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On a personal computer.

RETRIEVABILITY:

By name of requester or by type of action.

SAFEGUARDS:

A password is required to access the system.

RETENTION AND DISPOSAL:

Records created in conjunction with an adverse action are retained for four years after the case is closed. Other records are retained for three years. They are then deleted from the automated data base.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Subject employee, supervisors, office directors, Executive Director, personnel specialists, Office of the General Counsel staff, and Merit Systems Protection Board.

FERC/16

SYSTEM NAME:

Death Cases File, FERC/16.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees who die while employed and whose survivors file a claim for death benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims forms for various death benefits filed by deceased employees' survivors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 831.102 and 5 CFR part 890.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To disclose to a federal, state, or local agency for a decision by that agency on a claim by the employee. To provide benefit information to employees' survivors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Employee/Labor Relations Branch Chief and employees' survivors.

FERC/17

SYSTEM NAME:

Disability Retirements File, FERC/17.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees who file a claim to retire from Federal service due to medical disability.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various retirement claims forms, supporting medical and other documentation, and decision documents on the claim from the Office of Personnel Management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 831.102.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To disclose to a federal, state, or local agency for a decision by that agency on a claim by the employee. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable file cabinets in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Office of Personnel Management, retiree, supervisors, doctors, insurance companies, personnel specialists, and the FERC Personnel Director.

FERC/18

SYSTEM NAME:

Discontinued Service Retirements File, FERC/18.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees retiring due to involuntary separation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Retirement application documents, supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 831.102.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To disclose to a federal, state, or local agency for a decision by that agency on a claim by the employee. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinet in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch Staff. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

FERC Personnel Director, subject employee, and personnel specialists.

FERC/19

SYSTEM NAME:

Employee Suggestions File, FERC/19.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees submitting suggestions to the FERC suggestion program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written suggestion, evaluation and decision documents relative to the suggestion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 451.107.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

The Office Director of the office to which the suggestion is directed, employee submitting the suggestion, and personnel specialists.

FERC/20

SYSTEM NAME:

Employee Training Requests, FERC/20.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, Employee

Development Branch, 810 First Street NE., Room 431, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees who formally request training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, office, name of course, vendor, cost, type of course, and purpose.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 410.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To prepare the annual OPM report of training activities. To generate yearly individual training histories. To track office expenditures.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On 3½ inch diskettes and training forms with completed course evaluations by year.

RETRIEVABILITY:

By employee name, office, course name, or vendor.

SAFEGUARDS:

Access only to Employee Development Branch staff.

RETENTION AND DISPOSAL:

Training forms and evaluations are boxed by fiscal year and kept 5 years before disposal. The computer disks are being kept until a system is implemented that will enable FERC to generate a cumulative record of training.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee Development Branch, 810 First Street NE., Room 428, Washington, DC 20426.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

See notification procedures above.

CONTESTING RECORD PROCEDURES:

See notification procedures above.

RECORD SOURCE CATEGORIES:

Agency training officer and subject employee.

FERC/21

SYSTEM NAME:

Equal Employment Opportunity Discrimination Complaints File, FERC/21.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing formal EEO Complaints of Discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written complaint, investigate reports, decision documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR part 1613.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To serve as a data source to FERC officials in determining the proper current personnel action to take concerning the employee. To disclose to a federal, state or local agency for a decision by that agency on a claim by the employee. To adjudicate appeals, complaints or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinet in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for four years after the resolution of a case. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Equal Employment Opportunity Investigator, subject employee, Executive Director, Office of the General Counsel staff, Equal Employment Opportunity Commission, and courts.

FERC/22

SYSTEM NAME:

Indebtedness Cases File, FERC/22.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees about whom creditors submit written complaints of indebtedness to FERC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written complaints and agency correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 735.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To serve as a data source to FERC officials in determining the proper current personnel action to take concerning the employee. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letter, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Creditors of employees, personnel specialists, supervisors, and subject employee.

FERC/23

SYSTEM NAME:

Leave Without Pay Requests File, FERC/23.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees requesting leave without pay in excess of 12 weeks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written request and decision document from FERC Personnel Director.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 630.101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To serve as a data source to FERC officials in determining the proper current personnel action to take concerning the employee. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

FERC Personnel Director, subject employee and supervisor.

FERC/24

SYSTEM NAME:

Miscellaneous Investigation File, FERC/24.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees involved in issues which FERC management judges are appropriate for inquiry and which do not involve a finalized grievance or appeal process or formal Inspector General inquiry.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal reports of inquiry and supporting documentation; records of actions taken resulting from the inquiry, and decision documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 735.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To serve as a data source to FERC officials in determining the proper current personnel action to take concerning the employee. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Various FERC officials, complainants, and investigators.

FERC/25

SYSTEM NAME:

Office of Workers' Compensation Program Claims File, FERC/25.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees who file compensation claims for expenses or "lost time" salary reimbursement due to work-related injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee claim and supporting documents, input from FERC officials, and Department of Labor decision documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 CFR part 10.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To disclose to a federal, state, or local agency for a decision by that agency on a claim by the employee. To serve as a data source to FERC officials in determining the proper current personnel action to take concerning the employee. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Department of Labor, subject employee, and FERC officials.

FERC/26

SYSTEM NAME:

Performance Management Recognition System Reconsideration File, FERC/26.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees (GM–13 through 15) who contest their performance ratings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Appeal, review, and decision documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 430.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To serve as a data source to FERC officials in determining the proper current personnel action to take concerning the employee. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in a lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Third level supervisor of employee, subject employee and supervisor.

FERC/27

SYSTEM NAME:

Reconsideration of Refund Decisions File, FERC/27.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees appealing a determination of ineligibility for refund of Civil Service Retirement deductions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written reconsideration request, agency preliminary decision, and final OPM decision document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 842.308.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To disclose to a federal, state, or local agency for a decision by that agency on a claim by the employee. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinet in lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE PROCEDURES:

Office of Personnel Management, subject employee, and personnel specialists.

FERC/28

SYSTEM NAME:

Restoration of Annual Leave Requests File, FERC/28.

SYSTEM LOCATION:

Association Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees requesting restoration of excess annual leave lost due to illness or exigencies of public business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request for restoration and supporting documents and the decision document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 630.101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in lockable (combination lock) rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

FERC Personnel Director, subject employee, supervisors, and the Executive Director.

FERC/29

SYSTEM NAME:

Unemployment Compensation File, FERC/29.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former FERC employees who have filed for unemployment benefits from the District of Columbia government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notification of filing from state unemployment compensation office, former employee's claim, and decision document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 CFR part 609.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a date source for OPM or GAO during the course of on-site inspections or audits. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g., letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinet in lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employee/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

State Unemployment Services, former employees, and supervisors.

FERC/30

SYSTEM NAME:

Within-Grade Increase Denials and Reconsideration File, FERC/30.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, 810 First Street, NE., Room 415, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FERC employees who have had their Within-Grade Increases withheld and/or who have filed requests to have the withholding decision reconsidered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Withholding letter and supporting documenting, written reconsideration request, review documents, and decision document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 531.410.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To respond to a member of Congress concerning the status of the particular action or the employee's general employment history. To serve as a data source for OPM or GAO during the course of on-site inspections or audits. To serve as a data source to FERC officials in determining the proper current personnel action to take concerning the employee. To adjudicate appeals, complaints, or grievances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper (assorted documents, e.g. letters, forms, etc.).

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinet in lockable (combination lock) room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for three years. File documents are shredded and discarded in burn bags.

SYSTEM MANAGER AND ADDRESS:

Chief of Employer/Labor Relations and Performance Management Branch. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests are directed to the System Manager or the FERC Personnel Director.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Subject employee, supervisors, various FERC officials.

FERC/31

SYSTEM NAME:

Automated Parking System, FERC/31.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, Management Service Branch, 825 North Capitol Street, NE., Room 3319, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons applying for parking at 825 and 941 North Capitol Street, and 810 First Street.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address (office and home), office phone, vehicle description and license tag. Information is grouped by parking application with one applicant and, if applicable, riders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 101–20.104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To rank applicants for and assign FERC parking spaces on an annual basis. To assign parking spaces based on criteria established in FERC Administrative Directive 5–7C. To produce monthly parking labels for the parking permits. To notify drivers of emergencies or violations. To match employees in the same zip code area with existing carpools.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Installed on one personal computer.

RETRIEVABILITY:

By name of requester, city, zip code or license plate number.

SAFEGUARDS:

Requires special password for access to personal computer.

RETENTION AND DISPOSAL:

Records are retained for one year. After one year, they are deleted from the personal computer and the paper applications are torn apart and thrown away.

SYSTEM MANAGER AND ADDRESS:

Parking Coordinator, Management Services Branch, Associate Executive Directorate for Support Services. Same address as system location above.

NOTIFICATION PROCEDURES:

The system only contains records that an applicant submits voluntarily each parking open season; therefore, anyone with information in the system realizes the fact. Should there be additional questions, they should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Requests are directed to the System Manager.

CONTESTING RECORD PROCEDURES:

Same as record access procedures above.

RECORD SOURCE CATEGORIES:

The subject employee.

FERC/32

SYSTEM NAME:

Freedom of Information Act and Privacy Act Requests Tracking File,

SYSTEM LOCATION:

Office of External Affairs, 825 North Capitol Street, NE., Room 9205, Washington, DC. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals requesting copies of records from FERC under the provisions of the Freedom of Information Act and the Privacy Act of 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized log for each request, including the following information: Requester's name and address, log number, description of request, billing information, tracking information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To maintain a tracking system to expedite responses within the statutory time limits for the FOIA requests. To contact FOIA requesters. To prepare weekly activity reports to the division director and an annual report to Congress under section (d) of the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On a personal computer.

RETRIEVABILITY:

By log number.

SAFEGUARDS:

Password required to access the system.

RETENTION AND DISPOSAL:

Records retained for six years or until the case file (System FERC–33) is destroyed, whichever occurs later.

SYSTEM MANAGER AND ADDRESS:

Public Inquiries Section, Public Affairs Specialist. Same address as system location above.

NOTIFICATION PROCEDURE:

Requests directed to the System Manager.

RECORD ACCESS PROCEDURES:

Requests directed to Sanford J. McAllister, Director, Division of Public and Intergovernmental Affairs, 825 N. Capitol Street, NE., Room 9200, Washington, DC. 20426.

CONTESTING RECORD PROCEDURES:

Same as record access procedures above.

RECORD SOURCE CATEGORIES:

The subject individual; System Manager.

FERC/33

SYSTEM NAME:

Freedom of Information Act and Privacy Act Request File, FERC/33.

SYSTEM LOCATION:

Office of External Affairs, 825 North Capitol Street, NE., Room 9205, Washington, DC. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals requesting copies of records from FERC under the provisions of the Freedom of Information Act and the Privacy Act of 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming and outgoing correspondence including all enclosures, interoffice correspondence, fee records (bill, search time reports, review time reports).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To contact FOIA requesters. To prepare an annual report to Congress under section (d) of the Freedom of Information Act. To maintain a record of all events and documents pertinent to the request in case of litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

By name and log number.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in a lockable room with a key distributed to those whose official duties require access.

RETENTION AND DISPOSAL:

Retention period is two years after completion date if the requested information is released or six years after completion date if any or all information is withheld from the requester.

SYSTEM MANAGER AND ADDRESS:

Public Inquiries Section, Public Affairs Specialist. Same address as system location above.

NOTIFICATION PROCEDURES:

Requests directed to the System Manager.

RECORD ACCESS PROCEDURES:

Requests directed to Sanford J. McAllister, Director, Division of Public and Intergovernmental Affairs, 825 N. Capitol Street, NE., Room 9200, Washington, DC 20426.

CONTESTING RECORD PROCEDURES:

Same as record access procedures above.

RECORD SOURCE CATEGORIES:

The subject individual; System Manager; Director, Division of Public and Intergovernmental Affairs.

FERC/34

SYSTEM NAME:

Transit Subsidy Program Records, FERC/34.

SYSTEM LOCATION:

Associate Executive Directorate for Support Services, Management Services Branch, 825 North Capitol Street, NE., Room 3321, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons applying for transit subsidies for use of public transportation to and from the workplace.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address (office and home), grade level, mode of transportation, commuting costs, and bank account information needed for electronic deposit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

56 FR 33,760 (1991); Pub. L. No. 101–509, sec. 629, 104 Stat. 1478 (1990).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To maintain eligible and ineligible applicants for the FERC Transit Subsidy Program. To provide subsidies in accordance with FERC Administrative Directive AD 14–2. To provide monthly lists of applicants eligible to receive subsidies and forward the list to FERC Financial Management for disbursement through the Department of Treasury. To respond to information requests from the General Accounting Office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on diskette and on paper.

RETRIEVABILITY:

By name of applicant, mode of transportation, grade level, or home address.

SAFEGUARDS:

Diskette is locked in a desk when not in use. Paper applications stored in lockable file cabinets.

RETENTION AND DISPOSAL:

Applications will be maintained for as long as the applicant is an eligible participant in the subsidy program. Ineligible applicants' names will be maintained but applications will be returned to them. Applications will be discarded in burn bags and information

on diskette deleted when no longer needed.

SYSTEM MANAGER AND ADDRESS:

Transit Subsidy Program Coordinator, Management Services Branch, Associate Executive Directorate for Support Services. Same address as system location above.

NOTIFICATION PROCEDURES:

The system contains information submitted voluntarily by the employee; therefore, anyone with information in the system realizes the fact. Additional questions should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Requests are directed to the System Manager.

CONTESTING RECORD PROCEDURES:

Same as record access procedures above.

RECORD SOURCE CATEGORIES:

The subject employee.

[FR Doc. 92-5622 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-334-000, et al.]

Alabama Power Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Alabama Power Co.

[Docket No. ER92-334-000]

March 3, 1992.

Take notice that on February 28, 1992, Alabama Power Company (the Company), tendered for filing Amendment No. 4 to the Interconnection Agreement dated May 5, 1980, as amended, between the Company and Alabama Electric Cooperative, Inc. ("AEC"), along with an Off-System Generation Agreement between those same parties. Both of these agreements relate to the purchase and operation of AEC's ownership interest in the Company's Plant Miller. Under Service Schedule AE, the Company may provide energy during periods in which the Plant Miller Units are otherwise available for operation from other resources owned or available to the Company. The Off-System Generation Agreement identifies the Plant Miller capacity as an AEC resource, as required by the Agreement for Transmission Service to Distribution Cooperative Members of the Alabama Electric Cooperative dated August 28, 1980, as amended.

Comment date: March 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Utilities Co.

[Docket No. EL91-57-000]

March 3, 1992.

Take notice that on February 27, 1992, West Texas Utilities Company ("WTU"), with the concurrence of the affected customers, tendered for filing revised tariff sheets in lieu of the tariff sheets originally filed in this proceeding. The revised tariff sheets permit recovery through WTU's fuel adjustment clause of fuel payments deferred during a contract dispute with WTU's primary gas supplier.

WTU seeks an effective date of January 1, 1992 for the revised tariff sheets and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on all affected WTU wholesale customers, on the Public Utility Commission of Texas and on all parties. Copies are also available for inspection at WTU's offices in Abilene, Texas.

Comment date: March 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Co.

[Docket No. ER92-333-000]

March 3, 1992.

Take notice that on February 27, 1992, Commonwealth Edison Company ("Edison") tendered for filing Amendment 4, dated February 3, 1992, to Interconnection Agreement, dated April 1, 1973, between Edison and Wisconsin Electric Power Company ("Wisconsin Electric"). Amendment No. 4 revises Appendix A, Waukegan Interconnection, to change the location of the metering equipment on the Waukegan-Kenosha 138 kV transmission line between the parties and to establish the maintenance responsibility for and cost of new metering equipment.

Copies of this filing were served upon the Illinois Commerce Commission, the Public Service Commission of Wisconsin and Wisconsin Electric.

Comment date: March 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Co.

[Docket No. ER92-336-000]

March 3, 1992.

Take notice that on February 26, 1992, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide interruptible transmission service to Pennsylvania Power and Light for the delivery of power and associated energy to the Consolidated Edison Company of New York, Inc.

PSE&G requests a waiver of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be made effective forthwith.

Comment date: March 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Power Co.

[Docket No. ER92-331-000]

March 3, 1992.

Take notice that on February 27, 1992, Consumers Power Company ("Consumers") tendered for filing an Open Access Transmission Tariff providing for various classifications of firm and non-firm transmission service which would be available to eligible utilities, including PURPA Qualifying Facilities, independent power producers, and municipal and cooperative utilities. A copy of the filing was served on the Michigan Public Service Commission.

Comment date: March 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corp.

[Docket No. ER92-337-000]

March 3, 1992.

Take notice that on February 28, 1992, Florida Power Corporation ("Florida Power") filed an operation and maintenance agreement with Seminole Electric Cooperative, Inc. dated April 20, 1987 and three contribution in aid of construction agreements: (1) An agreement with Seminole Electric Cooperative, Inc. dated April 20, 1987; (2) an agreement with Orlando Utilities Commission dated October 1, 1978; and (3) an agreement with the City of Tallahassee dated February 8, 1983.

The agreements were the result of a search of its files which Florida Power undertook following its filing of contribution-in-aid agreements in Docket No. ER92-183-000 and recently completed. Florida Power requests waiver of the notice requirement to permit the contribution-in-aid agreements to become effective as of the dates when the construction projects were energized and states as good cause for waiver and that it only recently became aware that contributions in aid of construction should be treated as jurisdiction rate schedules. The Commission has denied Florida Power's request for waiver of the notice requirement in Docket No. ER92-183-000 as to other contribution-to-aid agreements in its order issued on February 13, 1992 in that proceeding.

Florida Power intends to apply for rehearing of that order and requests that the contribution-in-aid agreements enclosed for filing in the present docket be accepted for filing subject to the final outcome of that proceeding. Florida Power requests that the operation and maintenance agreement, under which no charges have been collected, be allowed to become effective on April 29, 1992.

Comment date: March 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Green Mountain Power Corp.

[Docket No. ER92-330-000]

March 3, 1992.

Take notice that on February 27, 1992, Green Mountain Power Corporation (the "Company") tendered for filing proposed changes to its FERC Electric Tariff First Revised Volume No. 1 (Power Rate W), its Power Sales Agreement ("PSA") with Bozrah Light and Power Company ("Bozrah") and certain Transmission Contracts. The Rate W changes would increase revenues from jurisdictional sales and service by 5.2% ($193,483), based on the twelve month period ending December, 1992. The Bozrah PSA and Transmission Contract revisions would increase revenues from jurisdictional sales and service by 15.5% ($256,681) and 51.5% ($133,118) respectively, based on the twelve month period ending December, 1992. In addition to revisions in the charges, the proposed changes to the Transmission Contracts permit use of a methodology for revising rates other than the formulas contained in those contracts, and revise the method of calculating billing demand.

The Company states that the proposed revisions in charges are designed to allow it to recover its costs in providing electric service, which have risen substantially since the Company's last tariff revisions and that the revisions are consistent with the Commission's regulations or are otherwise justified in light of unique circumstances.

Copies of the filing have been served on the Company's jurisdictional customers, the Vermont Public Service Board, the Vermont Public Service Department, the New Hampshire Public Utilities Commission, and the Connecticut Public Utility Control Authority.

Comment date: March 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket Nos. ES92-2-001, ES92-3-001 and EL92-20-000]

March 4, 1992.

Take notice that on February 27, 1992, UtiliCorp United Inc. (UtiliCorp) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to amend its existing authorization in Docket Nos. ES92-2-001 and ES92-3-001 to permit issuance of up to $50 million in guarantees of the securities issued by its subsidiaries. UtiliCorp requests that such guarantees, on the basis of 50% of face amount of each guarantee, would count against the authority previously granted UtiliCorp against the ceiling established in the aforementioned dockets. In Docket No. EL92-20-000, UtiliCorp requests a disclaimer of jurisdiction to the effect that § 204 applies only to the guarantee of securities issued by third parties and not to other types of corporate guarantees.

Comment date: March 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Cogentrix of Mayaquez, Inc.

[Docket No. QF91-154-000]

March 4, 1992.

On February 27, 1992, Cogentrix of Mayaquez, Inc. tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment clarifies the ownership structure of the cogeneration facility.

Comment date: March 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Lavair Cogeneration Limited Partnership

[Docket No. QF92-86-000]

March 4, 1992.

On February 26, 1992, Lavair Cogeneration Limited Partnership, c/o EDC Catskill Cogeneration, 325 Columbia Turnpike, Florham Park, New Jersey 07932, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Brown's Crossing site in Greene County, New York. The facility will consist of one combustion turbine generator, one heat recovery steam generator, and one condensing steam turbine generator. The primary energy source will be natural gas. The net electric power production capacity will be approximately 113 Megawatts. Installation of the facility is expected to commence by July 1992

Comment date: April 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Nevada Cogeneration Associates #2

[Docket No. QF90-68-005]

March 4, 1992.

On February 26, 1992, Nevada Cogeneration Associates #2 of 420 N. Nellis Boulevard, #A3-117, Las Vegas, Nevada, 89110, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 85 MW topping-cycle cogeneration facility will be located in Clark County, Nevada. The instant recertification was filed to reflect a change in ownership from Bonneville Nevada Corporation to Nevada Cogeneration Associates #2.

Comment date: April 10, 1992, 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. 92-5685 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1390-001]

Southern California Edison; Availability of Environmental Assessment

March 4, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new, minor license for the Lundy Hydroelectric Project located on Mill Creek in Mono County near Lee Vining, CA, and has prepared a Final Environmental Assessment (EA) for the project.

The EA analyzed the potential environmental impacts of the proposed project and concluded that approval of the proposed project, with appropriate mitigation and enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426, and at the local offices of the Forest Service and Bureau of Land Management in Bishop, CA.

Lois D. Cashell,

Secretary.

[FR Doc. 92-5623 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM87-17-000]

Natural Gas Data Collection System; New Edit-Checking Software Plus Revisions to the Edit Checks for the FERC Form No. 2-A

March 5, 1992.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of availability of edit-checking software and revisions to the edit checks for the FERC Form No. 2-A.

SUMMARY: New software for edit-checking of the structured data file of the FERC Form No. 2-A, Annual Report of Nonmajor Natural Gas Companies, is now available. This software has been developed for Commission use and to assist pipelines in complying with the electronic submission requirement for filing the FERC Form No. 2-A in accordance with Order Nos. 493 (53 FR 15,025 (Apr. 27, 1988)), 493-A (53 FR 30,027 (Aug. 10, 1988)), and 493-B (53 FR 49,652 (Dec. 9, 1988)). Also, the Commission is alerting the users to a previous revision to the record formats and several new revisions to the edit checks for the FERC Form No. 2-A.

Only a PC version of the edit-checking software is available at this time. A User's Manual and "README" file, containing the instructions on how to use this software, are included. This software is being issued to enable FERC Form No. 2-A respondents to accomplish limited automated validation of the Form No. 2-A prior to submission. User suggestions and comments on potential improvements to the edit-checking software are encouraged. An order form is attached to this notice for requesting the software and User's Manual. The order form will not be published in the **Federal Register.**

DATE: The PC software and User's Manual are available on March 5, 1992.

ADDRESS: Requests for the software and the documentation should be directed to: LaDorn Energy Information Services, 941 North Capitol Street NE., room 3106, Washington, DC 20426, (202) 898-1151 or (800) 676-FERC.

FOR FURTHER INFORMATION CONTACT: James Krug, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., room 6000, Washington, DC 20426, (202) 208-0677.

SUPPLEMENTARY INFORMATION: PC software (executable code) is now available to provide for edit-checking of the structured data file of the FERC Form No. 2-A when filed in accordance with the Form No. 2-A instructions and record formats as revised and issued through a Notice dated March 1, 1991. PLEASE NOTE: Appendix A of the March 1, 1991, Notice inadvertently omitted listing a record format change for Schedule F8 Record 08—Statement of Income for the Year—Part I. One of the codes in the "Comments" section for the "Plant Reported" item, character position 12, was revised and a new code was added. The revised record format for the "Plant Reported" item is:

Item	Character position	Data type	Comments
Plant reported.	12	Numeric.....	Electric utility, code=1; gas utility, code=2; other1 utility, code=3 (identify in item 99a); other2 utility, code=4 (identify in item 99a); total all utility plants, code=5.

Users, who relied solely on the revisions listed in appendix A of the March 1, 1991, Notice and did not purchase the complete revised record formats, may not be aware of this change.

In addition, several revisions to the edit checks are listed in appendix A of this Notice. A complete list of the edit checks and related error messages are found in appendix A of the User's Manual for the edit-checking software.

The edit-checking software was written in the C programming language. The software can be run on an IBM-compatible PC with 640K RAM, DOS 3.3 or later version and a fixed (hard) disk. The software is available on one 3.5" (1.44MB) or 5.25" (1.2MB) double-sided, high density diskette. The User's Manual is available in paper and ASCII file formats.

The software has been tested by staff. However, if problems occur relating to the use of this software, the Commission staff encourages users to submit written comments as to the exact nature of the problem(s) to James Krug, Room 6000, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software

should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208–1397. For access at 9600 baud dial (202) 208–1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems, please call (202) 208–2474. The notice will be available on CIPS for 30 days from the date of issuance of the notice.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Public Reference and Information Center (Room 3104) at the Commission's headquarters, 941 North Capitol Street NE., Washington, DC 20426.

The PC software is available from the Commission's copy contractor, LaDorn Energy Information Services (202) 898–1151 or (800) 676–FERC), located in room 3106, 941 North Capitol Street NE., Washington, DC 20426. Persons requesting the software should contact LaDorn directly or fill out the attached Order Form. The software is available without charge. However, the Commission's copy contractor has a copy fee of $7.00 per 3.5" or 5.25" diskette. The User's Manual is also available in hardcopy at 30 cents per page. A director of files found on the diskette is listed in appendix B.

Lois D. Cashell,

Secretary.

Appendix A—Revisions to the FERC Form No. 2–A Edit Checks

Note: For a complete list of edit checks refer to Appendix A of the User's Manual.

Edit No.	Description				
SCH–ID	REC–ID	Range Checks Field	Item No.	Postion	Valid range
F8	08	Plant reported		12	1, 2, 3, 4 or 5.
F8	37	Filler		12	Blank.
F8	38	Filler		12	Blank.
F8	39	Filler		12	Blank.

Appendix B—Directory of Files

Diskette A:

Root Directory Files:

BATTY.EXE—FORM 2–A Edit-Checking program file
INSTALL.BAT—Installs Edit-Checking program
JENNER.EXE—A virus detection program file
F2AEDMAN.ASC—User's Manual for this software
NOTICE.ASC—This Notice in ASCII format
README—A quick reference file for software installation and operation

XF2A Subdirectory Files:

ATT.BGI—FORM 2–A Edit-Checking program file
CGA.BGI—FORM 2–A Edit-Checking program file
COCODES.TXT—FORM 2–A Edit-Checking program file
EGAVGA.BGI—FORM 2–A Edit-Checking program file
F2CHECK—FORM 2–A Edit-Checking program file
F2ACOL—FORM 2–A Edit-Checking program file
F2AEDIT.EXE—FORM 2–A Edit-Checking program file
GOTH.CHR—FORM 2–A Edit-Checking program file
HERC.BGI—FORM 2–A Edit-Checking program file
JENNER.TXT—A documentation file for JENNER.EXE
TRIP.CHR—FORM 2–A Edit-Checking program file

[FR Doc. 92–5684 Filed 3–10–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. CP92–371–000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline

[Docket No. CP92–371–000]

March 2, 1992.

Take notice that on February 27, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–371–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish a new delivery point for its existing firm sales customer, the Town of Adamsville, Tennessee (Adamsville), and construct and operate the appurtenant facilities under the authorization issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that it currently provides natural gas service to Adamsville under the terms and conditions of Tennessee's Rate Schedule GS–1 and a gas sales contract dated June 3, 1982. Tennessee states that it has one authorized delivery point to Adamsville, the Milledgeville Sales Meter Station, located in Chester County, Tennessee, with a maximum daily quantity (MDQ) of 1,324 Dth.

According to Tennessee, Adamsville has requested and Tennessee has agreed to provide an additional delivery point, to be known as the Leapwood Sales Meter Station, located near Adamsville, McNair County, Tennessee. It is stated that the MDQ of gas to be delivered at the Milledgeville and Leapwood delivery points is 1,324 Dth, provided that the total MDQ to be delivered to Adamsville would be 1,324 Dth. Tennessee states that Adamsville expects growth of 20–30 percent over the next three to five years that necessitates the additional delivery point.

It is stated that the new delivery point will require the construction of a two-inch hot tap, interconnecting pipeline and meter near Tennessee's M.P. 74-1+7.5 in McNair County, Tennessee. Tennessee submits that it will install, own, operate and maintain these facilities. If is further stated that Adamsville has agreed to reimburse Tennessee for all costs associated with the construction and installation of the facilities, which costs are estimated to be $82,000.

Tennessee submits that the new delivery point will have no impact on its peak day and annual deliveries. In addition, it is stated that the total quantities of natural gas to be delivered after establishment of the new delivery point will not exceed presently authorized quantities. Tennessee states that it has sufficient authorized capacity in its system to accomplish delivery of the gas to the proposed delivery point without detriment or disadvantage to any other customer.

Comment date: April 16, 1992, in accordance with Standard Paragraph G at the tend of this notice.

2. Tennessee Gas Pipeline Co.

[Docket No. CP92-368-000]

March 2, 1992.

Take notice that on February 26, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-368-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate a new delivery point to serve Tenngasco Corporation (Tenngasco), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully detailed in the request which is on file with the Commission and open to public inspection.

Specifically, Tennessee proposes to construct facilities for a delivery point for service to Tenngasco in Montgomery County, Texas. It is stated that Tennessee would receive up to 300 dt equivalent of gas per day from Tenngasco for transportation by Tennessee pursuant to Tennessee's Rate Schedule IT. It is explained that the cost of the proposed facilities is $5,586, and that Tennessee would be reimbursed for the construction cost. It is asserted that the deliveries would have no impact on Tennessee's peak day and annual deliveries and that the volumes are within Tenngasco's currently authorized entitlement from Tennessee. It is further asserted that Tennessee can effect the deliveries without detriment or disadvantage to Tennessee's other customers.

Comment date: April 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Co.

[Docket No. CP92-357-000]

March 2, 1992.

Take notice that on February 20, 1992, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP-357-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for and exchange of natural gas with Northwest Pipeline Corporation (Northwest), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to abandon the transportation and exchange for Northwest which were authorized by the Commission in Docket No. CP78-232 and were carried out pursuant to the provisions of a Gas Transportation and Exchange Agreement between CIG and Northwest dated April 7, 1976, on file with the Commission as CIG's Rate Schedule X-13. CIG states that in a letter agreement dated September 20, 1990, CIG and Northwest agreed to terminate the transportation and gas storage service. It is asserted that the proposal involves no abandonment of facilities. It is stated that no other customers of CIG would be affected by the proposed abandonment.

Comment date: March 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. OXY USA Inc., et al.

[Docket No. CI87-223-007,[1] *et al.*]

March 3, 1992.

Take notice that each Applicant listed on the Appendix hereto filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for extension of its blanket limited-term certificate with pregranted abandonment authorizing sales for resale in interstate commerce previously issued by the Commission for a term expiring March 31, 1992, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Comment date: March 16, 1992, in accordance with Standard Paragraph J at the end of this notice.

APPENDIX

Docket No.	Date filed	Applicant
CI87-223-007	2/26/92	OXY USA Inc., 110 West 7th Street, Tulsa, Oklahoma 74119.
CI88-74-005 [1]	2/24/92	Panhandle Trading Company, P.O. Box 1354, Houston, Texas 77251-1354.
CI89-332-004	2/25/92	Columbia Gas Development Corporation, P.O. Box 1350, Houston, Texas 77251-1350.
CI89-501-004 [2]	2/24/92	Enserch Gs Company, Suite 504 North, 301 South Harwood, Dallas, Texas 75201.

[1] Applicant also requests amendment of its certificate to include authorization to make sales for resale in interstate commerce of imported natural gas including liquefied natural gas, ANGTS prebuild gas, and gas purchased from non-first sellers such as intrastate pipelines, local distribution companies, and pipeline suppliers under an interruptible sales certificate (ISS gas).

[2] Applicant also requests amendment of its certificate to include authorization to make sales for resale in interstate commerce of gas purchased from non-first sellers including intrastate pipelines and local distribution companies.

5. United Gas Pipe Line Co.

[Docket No. CP92-374-000]

March 3, 1992.

Take notice that on February 27, 1992, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-374-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act 18 CFR 157.205) to construct and operate a sales tap in Jasper County, Mississippi, for service to Entex, a local distribution company, under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully detailed in the request which is on file with the Commission and open to public inspection.

Specifically, United proposes to install a one-inch tap for the sale of natural gas to Entex for resale to one industrial customer in Stonewall, Mississippi. It is indicated that the tap would be located on United's 12-inch Plant Sweatt line in Jasper County. It is asserted that the tap would be used for delivery of 105 MMBtu equivalent of gas on a peak day and 11,318 MMBtu equivalent on an annual basis. It is further asserted that

the deliveries would be within Entex's currently effective entitlement from United and that United can make the proposed deliveries without detriment or disadvantage to its other existing customers. It is stated that United would be reimbursed by Entex for all costs resulting from the proposed installation.

Comment date: April 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Co.

[Docket No. CP92-372-000]

March 4, 1992.

Take notice that on February 27, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-372-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act 18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point to accommodate the delivery of natural gas to Trans Louisiana Gas Company (TransLa), a local distribution company, under Tennessee's blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it proposes to install a 2-inch hot tap at milepost 830-1+11.56 in La Salle Parish, Louisiana, in accordance with a transportation agreement with TransLa. Also, Tennessee states that the transportation agreement further provides for the transportation of 450 Dekatherms equivalent per day of natural gas on a firm basis under Tennessee's Rate Schedule FT-A. Tennessee additionally states that the projected cost of the proposed facilities is $10,322, which cost would be reimbursed by TransLa.

Tennesee further states that the natural gas would be transported under its blanket transportation authorization issued in Docket No. CP87-115-000.

Comment date: April 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street, NW., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-5686 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-69-012 and RP87-30-036]

Colorado Interstate Gas Co.; Report of Refunds

March 4, 1992.

Take notice that on January 15, 1992, Colorado Interstate Gas Company (CIG) filed a refund report showing that on December 16, 1991, it refunded $925,576.00 ($893,702.10 in principal and $31,873.90 in interest) to various jurisdictional customers.

CIG states that the refund report summarizes sales, storage, and transportation refunds for the period April 1, 1991, through October 31, 1991, made pursuant to the Commission's Orders of August 5, 1991, in Docket Nos. RP90-69-007 and RP87-30-036 (Phase II) and September 16, 1991, in Docket Nos. RP90-69-009 and RP87-30-038 (Phase II).

CIG states that copies of the filing have been served on CIG's jurisdictional customers, interested state commissions, and all parties to the proceedings.

Any person desiring to protest said filing should file 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 March 11, 1992. 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. 92-5624 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-32-000]

Colorado Interstate Gas Co.; Filing

March 4, 1992.

Take notice that on February 28, 1992 Colorado Interstate Gas Company

("CIG") submitted for filing an original and five copies of Fourth Revised Sheet Nos. 7.1 through 8.2. CIG requests that these proposed tariff sheets be made effective on April 1, 1992.

CIG states that the instant purchased gas adjustment (PGA) filing is made pursuant to section 154.308 of the Commission's Regulations implementing Order 483, *et seq.* Fourth Revised Sheet Nos. 7.1 through 8.2 reflect a 0.05 cent/Mcf decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules. There is no change in the Demand-1 and Demand-2 rates because CIG does not currently incur "as billed" charges from its suppliers.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

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 sections 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-5625 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-8-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

March 4, 1992.

Take notice that on February 28, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5309 tendered for filing with the Commission Twelfth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing proposed changes in rates for effectiveness on March 1, 1992.

According to Granite State, it is filing this out-of-cycle purchased gas cost adjustment to reflect reduced costs for projected purchases of spot market supplies during the remainder of the first quarter of 1992. Granite State further states that the net effect of its revisions in projected purchases is a reduction of approximately $2,400,000 in gas costs reflected in its revised sales rates.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire

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 Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 11, 1992. 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 to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-5626 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-189-000]

Midwestern Gas Transmission Co.; Informal Settlement Conference

March 4, 1992.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on March 13, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 395.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1991).

For additional information, contact Arnold H. Meltz at (202) 208-2161 or Marc G. Denkinger at (202) 208-2215.

Lois D. Cashell,

Secretary.

[FR Doc. 92-5629 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-16-000]

National Fuel Gas Supply Corp., Proposed Changes in FERC Gas Tariff

Take notice that on February 28, 1992, National Fuel Gas Supply Corporation ("National") submits for filing the following revised tariff sheet as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on April 1, 1992:

Third Revised Eighteenth Revised Sheet No. 5

National states that the purpose of the filing is to reflect a quarterly Purchased Gas Cost Adjustment ("PGA"). The revised tariff sheet reflects a commodity current adjustment of 21.65 cents per dekatherm ("Dt"), from National's Update to Annual PGA on December 2, 1991, in Docket No. TQ92-2-16-000. The revised RQ and CD sales commodity rate of 322.48 cents per Dt is based upon a current average cost of purchased gas of 301.62 cents per Dt (in unit of purchases), or 312.93 cents per Dt (in unit of sales).

National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

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 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before March 11, 1992. 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. 92-5630 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1992.

Take notice that Northern Natural Gas Company (Northern), on February 28, 1992, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2.

Northern states that it is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. Northern states that the instant filing reflects a Base Average Gas Purchase Cost of $1.4759 per MMBtu to be effective April 1, 1992, through June 30, 1992. Northern further states that it intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.

Northern states that the instant filing establishes, when necessary, new Demand rates in compliance with the above referenced PGA rulemaking. Such required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. Northern states that the filing will establish a new Demand rate component of $6.808 per MMBtu. This rate will be effective April 1, 1992 through June 30, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Regulations. All such motions or protests should be filed on or before March 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-5631 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-7-37-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 4, 1992.

Take notice that on February 28, 1992, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets with a proposed effective date of April 1, 1992:

Second Revised Volume No. 1:

Twelfth Revised Sheet No. 13

First Revised Volume No. 1-A

Second Revised Sheet No. 202

Original Volume No. 2

Thirteenth Revised Sheet No. 2.2
Twenty-Fourth Revised Sheet No. 2-B

Northwest states that the above tariff sheets were filed to propose new Fuel Reimbursement Percentages, based on Northwest's actual fuel use for the prior calendar year. Northwest states that the proposed percentages are 1.40% for mainline transportation services and 1.76% for gathering service.

Northwest states that copies of the filing were served upon Northwest's jurisdictional customers list, affected state regulatory commissions, and on Public Interstate Transmission Company.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-5633 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-6-37-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 4, 1992.

Take notice that on February 28, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Eighteenth Revised Sheet No. 10
Seventeenth Revised Sheet No. 11
Eleventh Revised Sheet No. 13

First Revised Volume No. 1-A

Twelfth Revised Sheet No. 201

Original Volume No. 2

Twenty-Seventh Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Surcharge effective April 1, 1992, to reflect (1) interest applicable to January, February and March 1992, and (2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 3.92¢ per MMBtu for the three months commencing April 1, 1992. Northwest states that this instant filing, and the Commodity SSP Surcharge included herein, was prepared in a manner consistent with the provisions of Commission orders, issued in Docket Nos. TM91-8-37 and TM92-2-37, which relate to the level of billing determinants to be used in the calculation of the Commodity SSP Surcharge.

Northwest has challenged the Commission's orders requiring it to calculate its Commodity SSP Surcharge based upon billing determinants other than those approved in the settlement of Phase I of Docket No. RP88-47. Northwest reserves the right and gives notice that it will refile its Commodity SSP Surcharge rates for any affected periods, including the three months beginning April 1, 1992, should Northwest ultimately be successful in its court appeals.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such

motions or protests should be filed on or before March 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-5634 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-138-000]

Tennessee Gas Pipeline Co.; Filing

March 4, 1992.

Take notice on March 2, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheet in Third Revised Volume No. 1 of its FERC Gas Tariff to be effective on April 1, 1992:

First Revised Sheet No. 228A

Tennessee states that this filing is being made to alter the nomination procedures for the transportation of plant thermal reduction (PTR). Tennessee's tariff currently provides that a nomination for the transportation of PTR will be automatically triggered when a shipper nominates to deliver the gas that is associated with the PTR quantities. Tennessee has indicated that this procedure is not workable at this time. First, the necessary computer system support is not in place at this time. Second, Tennessee indicated that producers often change their decision of whether to process the gas stream from individual sources. Currently, Tennessee is not informed of the producers' processing decisions until after the gas has flowed. Tennessee states that the current process makes it impossible to track PTR nominations. As a result, Tennessee has proposed that producers or other parties retaining processing rights be required to submit nominations for the transportation of PTR quantities just like all other shippers.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

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 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 March 11, 1992. 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. 92-5635 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-8-010]

Transcontinental Gas Pipe Line Corporation; Tariff Filing

March 4, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on February 26, 1992 certain substitute and revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Third Revised Volume No. 1, which tariff sheets are enumerated in appendix A attached to the filing. Transco states that the tariff sheets are proposed to be effective as indicated on appendix A.

Transco states that the purpose of the instant filing is to implement the rates approved by the Commission in its order dated January 24, 1992, wherein the Commission accepted Transco's Stipulation and Agreement (Agreement) filed September 6, 1991, in Docket Nos. RP90-8-006 and RP90-8-007. The Agreement resolves the remaining outstanding issues concerning the rates for transportation service on Transco's onshore Mobile Bay pipeline facilities. Transco states that the settlement rates contained on the tariff sheets in the instant filing pertain to three separate time periods, beginning April 10, 1990, the effective date of Docket No. RP90-8 and terminating upon expiration of the Docket No. RP90-8 rate period.

Transco states that it served a copy of the instant filing to all parties to this proceeding.

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 March 11, 1992. 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. 92-5636 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-30-002]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1992.

Take notice that Trunkline Gas Company (Trunkline) on February 21, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifth Revised Sheet No. 21-F.1
Seventh Revised Sheet No. 21-I

The proposed effective date of these revised tariff sheets is March 22, 1992.

Trunkline states that the above-referenced tariff sheet is being filed in compliance with the Commission's letter order of January 23, 1992 in Docket No. TA91-1-30-000.

Trunkline states that the Commission's January 23, 1992 letter order directed Trunkline to revise its tariff language to provide that its sales rates will not reflect costs associated with non-sales service fuel use and lost and unaccounted for gas costs.

Trunkline states that copies of this filing have been served on all jurisdictional sales customers and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 11, 1992. 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. 92-5637 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-35-000]

West Texas Gas, Inc.; Filing

March 4, 1992.

Take notice that on March 2, 1992, West Texas Gas, Inc. ("WTG") filed First Revised Sheet No. 4 and Alternate First Revised Sheet No. 4 to its FERC Gas Tariff, Revised Volume No. 1, proposed to be effective April 1, 1992. These tariff sheets and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG's filing explains that two tariff sheets relating to Revised Volume No. 1 of WTG's FERC Gas Tariff are included with this filing because of WTG's recently filed restatement of base rates proposed to become effective on March 29, 1992. "First Revised Sheet No. 4" reflects rates consistent with WTG's existing base rates (i.e., those in effect today). "Alternate First Revised Sheet No. 4" reflects rates consistent with WTG's restated base rates filed on February 28, 1992, in Docket No. RP92-135-000. WTG states that the submission of alternative tariff sheets with its required quarterly PGA filing is intended to permit the Commission to make effective on April 1, 1992, whichever rates reflect the Commission action taken on WTG's proposed restated base rates between now and March 29, 1992.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons 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 March 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party 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. 92-5638 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-135-000]

West Texas Gas, Inc.; Filing

March 4, 1992.

Take notice that on February 28, 1992, West Texas Gas, Inc. ("WTG") filed First Revised Volume No. 1 of its FERC Gas Tariff, superseding Original Volume No. 1. WTG's First Revised Volume No. 1 includes a tariff page setting forth restated base rate proposed to be effective March 29, 1992. Accompanying WTG's filing were cost-of-service schedules and explanatory text supporting WTG's proposed rates. First Revised Volume No. 1 and the accompanying explanatory schedules constitute WTG's base rate restatement filing submitted in accordance with the Commission's purchased gas adjustments regulations.

Based on the analysis contained in its schedules, WTG states that a weighted average unit transmission of $.3570 and a gas commodity rate of $1.7504 are necessary under present conditions for WTG to recover its FERC jurisdictional cost of service. As compared with the rates under WTG's presently effective tariff, WTG states that its proposed unit transmission rates reflect an approximate reduction of $0.0613 in the unit transmission rate under rate schedule GS-1, a $0.0685 reduction in the unit transmission rate of rate schedule IS-1, and a $0.0705 reduction in the unit transmission rate under rate schedule I-1.

In its letter transmitting the tariff filing, WTG requests waiver of the Commission's electronic filing requirements to the extent necessary to permit WTG to submit its cost-of-service schedules in Lotus 1-2-3 spreadsheet form.

WTG states that copies of the tariff filing and accompanying schedules were served upon WTG's jurisdictional customers and interested state commissions.

Any persons 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 214. All such motions or protests should be filed on or before March 11, 1992. 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. 92-5639 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

March 4, 1992.

Take notice that on February 28, 1992, Western Gas Interstate Company ("Western"), tendered for filing proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date for the tariff sheets is March 1, 1992.

Western states that, its out of period Purchased Gas Adjustment Filing proposes a decrease in its Northern Division rates.

Western further states that the proposed changes provide for a decrease in purchased gas cost under Western's Rate Schedule CD-N of $.2265 per MMBTU.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Regulations. All such motions or protests should be filed on or before March 11, 1992. 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. 92-5640 Filed 3-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-43-000, TM92-6-43-000 and RP92-136-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1992

Take notice that Williams Natural Gas Company (WNG) on February 28, 1992, tendered the following tariff sheets

to its FERC Gas Tariff, First Revised Volume No. 1:

Eighth Revised Sheet No. 6
Ninth Revised Sheet No. 6A
Eighth Revised Sheet No. 9
Second Revised Sheet Nos. 232 and 233
Third Revised Sheet No. 260
Second Revised Sheet Nos. 261–264

WNG states that pursuant to the Purchased Gas Adjustment in Article 18 of its FERC Gas Tariff, it proposes to increase its rates effective May 1, 1992 to reflect:

(1) A $.5859 per Dth increase in the Cumulative Adjustment due to an increase in WNG's projected gas purchase costs.

(2) A $.3721 per Dth decrease in the Surcharge Adjustment (to a positive $.0946 per Dth from a positive $.4667 per Dth) to amortize the Deferred Purchased Gas Cost Subaccount Balance.

(3) A $.0436 per Dth decrease in the Take-or-Pay Surcharge Adjustment (to $.0000 per Dth from a positive $.0436).

WNG states that Second Revised Sheets Nos. 232 and 233 are being filed to add language to WNG's FERC Gas Tariff to enable WNG, with approval from the Commission, to directly assign any accumulated and unamortized balance(s) in its Account No. 191 to all sales customers in the event of suspension or termination of Article 18 to WNG's FERC Gas Tariff, First Revised Volume No. 1, or upon implementation of superseding rate schedules.

WNG states that Third Revised Sheet No. 260 is being filed to clarify that WNG has the right to file for collection of additional Take-or-Pay Settlement costs after April 30, 1992, the expiration of the initial 36-month recovery period, and to propose new collection periods for the Take-or-Pay Fixed Charge and the Take-or-Pay Volumetric Surcharge. Additionally, the expiration of sales service agreements shall not relieve customers of their share of the Take-or-Pay Fixed Charge. Second Revised Sheet Nos. 261–264 are being filed for pagination purposes only.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–5641 Filed 3–10–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-149-002]

Williston Basin Interstate Pipeline Co.; Compliance Filing

March 4, 1992.

Take notice that on February 28, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, suite 300, Bismarck, North Dakota 58501, tendered for filing revised tariff sheets and additional information in compliance with the Commission's Order dated February 19, 1992.

The proposed effective date of the tariff sheets is March 1, 1992.

Williston Basin states that the tariff sheets contained in Appendix A to the instant filing effectuate the Company's December 23, 1991 Offer of Settlement which was accepted to be effective March 1, 1992 in the Commission's Order dated February 19, 1992.

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 March 11, 1992. 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. 92–5642 Filed 3–10–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL89-48-001]

Wisconsin Power & Light Co.; Filing

March 4, 1992.

Take notice that on January 31, 1992, Wisconsin Power & Light Company tendered for filing its filing in compliance with the Commission's earlier order of November 6, 1991 in this proceeding.

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 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 9, 1992. 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. 92–5643 Filed 3–10–92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket EA-58-D]

Notice of Application To Amend Electricity Export Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application by Detroit Edison to amend electricity export authorization.

SUMMARY: The Detroit Edison Company has filed, on behalf of itself and Consumers Power Company, an application with the Office of Fuels Programs to amend its existing authorization to export electricity to Ontario Hydro.

DATES: Comments, protests or requests to intervene must be submitted on or before April 10, 1992.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number EA–58–D should appear clearly on the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) at 202–586–9624 or Lise Courtney M. Howe (Program Attorney) at 202–586–2900.

SUPPLEMENTARY INFORMATION: On February 25, 1992, the Detroit Edison

Company (Detroit Edison) applied on behalf of itself and Consumers Power Company (Consumers) for an amendment to their existing electricity export authorization. The existing authorization, issued by the Federal Power Commission on October 10, 1972, allows Detroit Edison and Consumers (the Michigan Companies) to export to Ontario Hydro up to 4,000,000,000 KWH of electric energy annually at a maximum rate of 2,200,000,000 volt-amperes (2,200 MVA). The application requests that DOE amend the existing authorization by waiving, for calendar year 1992, the annual energy limit while leaving the 2,200 MVA capacity limitation unchanged.

In their application filed pursuant to section 202(e) of the Federal Power Act, 16 U.S.C. 824(e), and 18 CFR section 205.300, *et seq.*, the Michigan Companies assert that if the waiver is granted, economic energy transactions with Ontario Hydro will be scheduled to flow over the existing Detroit Edison-Ontario Hydro interconnections in such a manner so as to minimize loop flows and to avoid detriment to the other regional interconnected utilities.

The electrical systems of the Michigan Companies and Ontario Hydro presently are interconnected at four points on the U.S.-Canadian border. Each interconnection has been authorized by a Presidential permit issued under Executive Order 10485.

The Michigan Companies assert that removal of the annual energy limits is warranted because such a condition is not necessary to maintain the reliability of the U.S. electric power supply system. Instead, the Michigan Companies argue, the reliability of their transmission system depends on keeping maximum flows on the transmission facilities within their capabilities for the system conditions encountered on a continuous basis.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214).

Any such petitions and protests should also be filed directly with: Raymond N. Shibley/Bruce W. Neely, LeBoeuf, Lamb, Leiby & MacRae, suite 1100, 1333 New Hampshire Ave., NW., Washington, DC 20036; Raymond O. Sturdy, Jr., Senior Attorney, The Detroit Edison Company, 2000 Second Avenue–688 WCB, Detroit, MI 48226 and William M. Lange, Assistant General Counsel, Consumers Power Company, Fifth Floor, 1016 16th Street, NW., Washington, DC 20036.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE 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 petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final determination will be made on this application after considering all available information and a determination can be made by the DOE that the proposed action will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, nonadversarial process involving members of the public, State governments, and the Federal Government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms.

Copies of this application will be made available, upon request, for public inspection and copying at the address above from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 5, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–5712 Filed 3–10–92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed Week of January 31 Through February 7, 1992

During the week of January 31 through February 7, 1992, the appeal and the applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date or receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 5, 1992.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 31 to February 7, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 3, 1992	Gulf/Mitzschke Oil Company, Remsen, IA	RR300-129	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The April 28, 1989 Decision and Order (Case No. RF300-3942) issued to Mitzschke Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Feb. 3, 1992	Gulf/Walter Dotson Gulf Service, Harley, VA	RR300-128	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The January 3, 1992 Dismissal Letter (Case No. RF300-12981) issued to Walter Dotson Gulf Service Station would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Feb. 5, 1992	Eason Oil Company, Washington, DC	LEF-0040	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, Subpart V, in connection with the May 3, 1991, Consent Order entered into with Eason Oil Company and ITT Corporation.
Feb. 5, 1992	Gulf/Barnhill's Gulf, Woodbridge, VA	RR300-130	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The January 3, 1992 Dismissal Letter (Case No. RF300-12953) issued to Barnhill's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Feb. 5, 1992	Hardy, Milutin & Johns, Houston, TX	LFA-0183	Appeal of an Information Request Denial. If granted: Hardy, Milutin & Johns would receive access to documents requested regarding hydrogen fluoride tests conducted in 1986 and August 1988 at DOE's Liquified Gaseous Fuels Spill Test in Nevada.
Feb. 7, 1992	Texas/Landmark Baptist Temple, Washington, DC	RR321-108	Request for Modification/Rescission in the Texas Refund Proceeding. If granted: The July 22, 1991 Decision and Order (Case No. RF321-9249) issued to Landmark Baptist Temple would be modified regarding the firm's application for refund submitted in the Texas refund proceeding.

REFUND APPLICATIONS RECEIVED

Week of January 31 to February 7, 1992

Date received	Name of refund proceeding/name of refund applicant	Case number
01/31/92	Owen's Gas Forless.	RF342-136
01/31/92	Larry's Clark Super 100.	RF342-137
01/31/92	Bill's Clark Service.	RF342-138
01/31/92	Tony's Texaco	RF321-18448
02/03/92	Coastal States Trading, Inc.	RF340-63
02/03/92	Mike's Clark Super 100.	RF342-139
02/03/92	Jerry's Super 100	RF341-140
02/02/92	Perrine's Clark Service, Inc.	RF342-141
02/03/92	Clark Super 100 Station.	RF342-142
01/27/92	Milliken & Company.	RC272-155
01/29/92	Tower Bottled Gas.	RF340-56
01/29/92	Independent Oil Company.	RF340-57
01/29/92	Ozona Butane Company, Inc.	RF340-58
01/29/92	Navasota LP-Gas Co., Inc.	RF340-59
01/30/92	Terrellgas, Inc	RF340-60
01/30/92	Henry Oil & Gas Co.	RF340-61
01/31/92	Shell Oil Company.	RF340-62
01/31/92	Dan's Super 100	RF342-134
01/31/92	Joe's Clark Station.	RF342-135

REFUND APPLICATIONS RECEIVED—Continued

Week of January 31 to February 7, 1992

Date received	Name of refund proceeding/name of refund applicant	Case number
02/04/92	Patrons Oil Company.	RF326-324
02/04/92	Big 4 Shell	RF315-10181
02/04/92	Economy Gas Company.	RF340-64
02/04/92	Bo Remer Bottled Gas.	RF340-65
02/04/92	Leon Gas Company.	RF340-66
02/04/92	Al's Clark Super 100.	RF342-143
02/06/92	Stanton Propane	RF340-67
02/07/92	Clark Super 100, Chicago S-20.	RF342-144
02/07/92	Lyle Oil Co	RF340-68
02/07/92	Ginger's Service Station.	RF323-32
01/31/92 thru 02/07/92.	Texaco refund applications received.	RF321-18423 thru RF321-18443
01/31/92 thru 02/07/92.	Crude oil applications received.	RF272-91518 thru RF272-91579
01/31/92 thru 02/07/92.	Gulf oil applications received.	RF300-19485 thru RF300-19537
01/31/92 thru 02/07/92.	Atlantic Richfield applications received.	RF304-12788 thru RF304-12822

[FR Doc. 92-5711 Filed 3-10-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-560; FRL-4050-3]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions (PP) and food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on certain agricultural commodities. This document also corrects a previous filing.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for

inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the product manager (PM) named in each petition at the following office location/telephone number:

Product Manager	Office location/ telephone number	Address
George LaRocca (PM-13).	Rm. 202, CM #2, 703-305-6100.	1921 Jefferson Davis Hwy., Arlington, VA
Phil Hutton (PM-18).	Rm. 213, CM #2, 703-305-7690.	Do.
Dennis Edwards (PM-19).	Rm. 207, CM #2, 703-305-6386.	Do.
Susan Lewis (PM-21).	Rm. 227, CM #2, 703-557-1900.	Do.
Joanne Miller (PM-23).	Rm. 237, CM #2, 703-305-7830.	Do.
Robert Taylor (PM-25).	Rm. 241, CM #2, 703-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/feed additive petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 1F4008.* BASF Corp., Agricultural Chemicals, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR 180.380 by establishing a regulation to permit combined residues of the fungicide vinclozolin, 3-(3,5-dichloro-phenyl)-5-ethenyl-5-methyl-2,4 oxazolidinedione and its metabolites containing the 3,5-dichloro-aniline moiety, in or on potatoes at 0.1 ppm. (PM-21)

2. *FAP 2H5623.* BASF Corp., Agricultural Chemicals, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit combined residues of vinclozolin, 3-(3,5-dichloro-phenyl)-5-ethenyl-5-methyl-2,4 oxazolidinedione, and its metabolites containing the 3,5-dichloro-aniline moiety in or on dry potato peel at 3.0 ppm and potato granules, flakes, and chips at 0.2 ppm. (PM-21)

3. *PP 1F4011.* ICI Americas, Inc., Agricultural Products, Wilmington, DE 19897, proposes to amend 40 CFR part 180 by establishing a regulation to permit combined residues of the herbicide acetochlor, 2-chlor-N-(ethoxymentyl)-N-(ethyl-6-methylphenyl)-acetamide, in or on corn grain at 0.05 ppm, corn forage at 1.0 ppm, and corn fodder at 1.5 ppm. (PM-23)

4. *PP 1F4013.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543-0400, proposes to amend 40 CFR 180.447 by establishing a regulation to permit combined residues of imazethapyr, (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-yl]-5-ethyl-3-pyridine-carboxylic acid) as its ammonium salt, and its metabolite 2-[4,5-di-hydro-4-methyl-4-(1-methylethyl-5-oxo-1H-imidazol-2-yl-5-(1-hydroxyethyl)-3-pyridine carboxylic acid both free and conjugated in or on alfalfa forage and hay at 3.0 ppm. Analytical method used is gas chromatography. (PM-25)

5. *PP 1F4016.* Ciba-Geigy Corp., Agricultural Division, P. O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR 180.414 by estab- lishing a regulation to permit combined residues of insecticide cyromazine, N-cyclo-propyl-1,3,5-triazine-2,4,6-triamine, plus its major metabolite melamine, 1,3,5-triazine-2,4,6-triamine, calculated as cyromazine in or on the leafy vegetables crop group at 10 ppm. (PM-18)

6. *PP 1F4029.* E. I. Du Pont Co., Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR 180.428 by establishing a regulation to permit combined residues of the herbicide metsulfuron methyl, 2-[[[[(4- methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]s ulfonyl]benzoate), and its metabolite methyl 2-[[[[(4methoxy-6-methyl-1-3,5-triazin-2-yl)amino]carbonyl]amino]s ulfonyl]-4-hydroxybenzoate in or on wheat grain at 0.1 ppm, wheat straw at 0.3 ppm, barley grain at 0.1 ppm, and barley straw at 0.3 ppm. (PM-25)

7. *PP 1F4030.* Rohm & Haas Co., Regulatory Affairs Department, Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR 180.443, by establishing a regulation to permit combined residues of the fungicide myclobutanil, alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile, and its metabolite alpha-(3-hydroxybutyl)-alpha-4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on tomatoes at 0.3 ppm. (PM-21)

8. *PP 1H5616.* Rohm & Haas Co., Regulatory Affairs Department, Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR 180.443 by establishing a regulation to permit combined residues of the fungicide myclobutanil, alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile, and its metabolite alpha-(3-hydroxybutyl)-alpha-4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on tomato (puree) at 0.4 ppm, tomato (catsup) at 0.7 ppm, tomato (paste juice) at 0.8 ppm, tomato (paste) at 2.0 ppm, tomato (wet pomace) and tomato (juice) at 3.0 ppm, and tomato (dry pomace) at 5.0 ppm. (PM-21)

9. *PP 2F4036.* DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the herbicide N-(2-6-difluorophenyl)-5-methyl-(1,2,4)-triazolo[1,5a]-pyrimidine-2-sulfonamide, coded DE-498, in or on corn, fodder at 0.05 ppm; corn, forage, at 0.05 ppm; corn, grain at 0.05 ppm; and soybeans at 0.05 ppm. (PM-23)

10. *PP 2F4039.* Sentry, Inc., P. O. Box 426, Buckeye, AZ 85326-0090, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance the tomato pinworm insect pheromone NoMate TPW Spiral [[E/Z]-4-tridecen-1-yl acetates]. (PM-18)

11. *PP 2F4040.* Espro, Inc., 1015 15th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance SPOD-X (spodoptera exiqua) for use against the beet armyworm. (PM-18)

12. *PP 2F4041.* BASF Corp., Agricultural Products Group, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR 180.412 by establishing a regulation to permit combined residues of Poast herbicide, 2-[1-(ethoxyimino)butyl]-5-[2-ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one moiety (calculated as the herbicide), in or on canola/rape seed at 35.0 ppm and canola/rape forage at 3.5 ppm. Analytical method used is gas chromatography. (PM-25)

13. *PP 2F4046.* AgriDyne Technologies, Inc., 417 Wakara Way, Salt Lake City, UT 84108, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for azadiracthin as an insect growth regulator and/or antifeedant applied to

seeds, cuttings, transplants, and plants. (PM-18)

14. *PP 2F4053.* Ciba-Geigy Corp., Agricultural Division, P. O. Box 18300, Greensboro, NC 27419, proposes to amend 40 CFR 180.414 by establishing a regulation to permit combined residues of the insecticide cyromazine (N-cyclopropyl-1,3,5-triazine-2,4,6-triamine), and its principal metabolite, melamine (1,3,5-triazine-2-4,6-triamine), calculated as cyromazine in or on cucurbit vegetables at 2.0 ppm. (PM-18)

15. *PP 2F4055.* Hoechst-Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500, Somerville, NJ 08876-1258, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the insecticide deltamethrin (1R,3R)-3(2,2-dibromovinyl)dimethylcyclopropane-carboxylic acid (S)-alpha- cyano-3-phenoxybenzyl ester and its metabolites, trans-deltamethrin: (1R,3S)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester and alpha-R-deltamethrin: (1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (R)-alpha-cyano-3-phenoxybenzyl ester calculated as parent, in or on cottonseed at 0.02 ppm. (PM-15)

16. *PP 2F4058.* Regulatory Assistance Corp., 17 Clearview Circle, Hopewell Junction, NY 12533, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of herbicide UMP-488, 1-methoxy-1-methyl-3-[4-(3,4-dihydro-2-methoxy-2,4,4-trimethyl-7-benzopyranyloxy) phenyl] urea, in or on field corn grain, forage, fodder, and silage at 0.01 ppm. (PM-23)

17. *PP 2F4061.* Du Pont, Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR 180.294 by establishing a regulation to permit residues of benomyl, methyl 1-(butylcarbamoyl-2-benzimidazolecarbamate, in or on rice straw at 20.0 ppm. (PM-21)

18. *PP 2F4063.* Ciba-Geigy Co., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR 180.408, by establishing a regulation to permit combined residues of the fungicide metalaxyl, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)alanine methyl ester, and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl)alanine methyl ester, each expressed as metalaxyl equivalents, in or on grass forage at 10.0 ppm and grass hay at 20.0 ppm. (PM-21)

19. *PP 2F4067.* E.I. du Pont de Nemours & Co., Inc., Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR 180.253 by establishing a regulation to permit residues of the insecticide methomyl, (S-methyl N-[methylcarbamoyl]oxy] thioacetimidate, in or on dried pea seed at 0.2 ppm, pea hay at 10.0 ppm, bean hay at 10.0 ppm, lentil forage at 10.0 ppm, lentil hay at 10.0 ppm, and soybean hay at 10.0 ppm. (PM-19)

20. *FAP 2H5624.* NOR-AM Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR 186.278, by establishing a food additive regulation to permit residues of the herbicide phenmedipham, 3-methoxycarbonylaminophenyl-3'-methylcarbanilate in or on sugar beet pulp, dehydrated at 0.5 ppm and sugar beet molasses at 0.2 ppm. (PM-25)

Corrected Filing

In the **Federal Register** of December 13, 1991 (56 FR 65081), EPA issued incorrectly an initial filing of PP 1F4004. It is corrected to read as follows:

PP 1F4004. Valent U.S.A. Corp., 1333 North Carolina Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, proposes residues of (E)-(R)-1-(2,4-dichlorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazol-1-yl)pent-1-en-3-ol and its related isomers in or on peanuts and peanut hulls and for residues of (R)-1-(2,4-dichlorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazol-1-yl)pent-1-en-3-ol, its related isomers and its metabolite, (E)-(R)-1-(2,4-dichlorophenyl)-4-methyl-4-hydroxymethyl-2-(1H-1,2,4-triazol-1-yl)-pent-1-en-3-ol in meat, milk, eggs, and the appropriate byproducts resulting from application of SPOTLESS 25W according to the proposed label of SPOTLESS 25W at rates ranging from 5 to 16 oz/acre (total individual treatment rates up to 8 oz/acre and a phi of 28 days for the higher rates). The grazing of peanut hay and vines is restricted by the proposed label. Peanut nutmeats at 0.1 ppm, peanut hulls at 3.0 ppm, eggs at 0.01 ppm, milk at 0.01 ppm, meat and fat of cattle, goats, hogs, horses, poultry, and sheep at 0.01 ppm, meat byproducts (except liver) of cattle, goats, hogs, horses, and sheep at 0.01 ppm, meat byproducts of poultry at 0.01 ppm, liver of cattle, goats, hogs, and horses and sheep at 0.50 ppm. Tolerances are also proposed for residues of (E)-(R)-1-(2,4-dichlorophenyl)-2,4-dimethyl-2-(1H-1,2,4,-triazol-1-yl)pent-1-en-3-ol and its related isomers in or on commodities of rotational crops planted no sooner than at specified intervals in the proposed label after a final application of SPOTLESS 25W to peanut plants. Wheat forage and straw at 0.2 ppm, corn silage and forage at 0.05 ppm, corn fodder at 0.1 ppm, sorghum, silage, fodder, hay and forage at 0.05 ppm, soybean hay and forage at 0.05 ppm, peanuts, vines, and hay at 0.05 ppm. (PM-21)

Authority: 7 U.S.C. 136a.

Dated: February 21, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-5063; Filed 3-10-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50699; FRL-3714-6]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Genetically Modified Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Agricultural Research Service, U.S. Department of Agriculture, a notification of intent to conduct small-scale field testing in Maryland, Delaware, and Tennessee of a UV-induced mutant strain of the fungus *Verticillium lecanni* as a potential biological control agent of soybean cyst nematodes.

DATES: Comments must be received on or before March 25, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager

(PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), dated December 31, 1991, has been received from the Agricultural Research Service, U.S. Department of Agriculture. The purpose of the proposed testing is to evaluate the efficacy of a UV-induced mutant strain of *Verticillium lecanii* for the control of soybean cyst nematodes on soybean plants. The proposed field tests would be conducted in cooperation with Crop Genetics International in the States of Maryland, Delaware, and Tennessee on a total area of less than 10 acres. The proposed testing of this organism is a continuation of testing in Maryland, which was approved without requiring an Experimental Use Permit under EPA's Notification procedures in 1990 and 1991.

Dated: February 18, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-5064 Filed 3-10-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180864; FRL 4049-9]

Receipt of Application for Emergency Exemption to use Quinclorac; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Mississippi Department of Agriculture and Commerce (hereafter referred to as the "Applicant") for use of the pesticide Quinclorac (CAS No. 84087-01-4) to control broadleaf weeds on up to 75,000 acres of rice in Mississippi. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 26, 1992.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180864," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Va, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-7889).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the herbicide, quinclorac, available as Facet 50WP from BASF Corporation, to control broadleaf weeds on up to 75,000 acres of rice in Mississippi. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

According to the Applicant, a herbicide is needed to control certain broadleaf weeds (*hemp sesbania, morningglory*, and *cocklebur*) in rice due to restrictions on the use of the registered herbicides, 2,4-D and MCPA. Uncontrolled weeds reduce both rice yield and quality. The Applicant estimates that if quinclorac is not available to control broadleaf weeds, net revenue will be reduced from approximately $125 per acre to minus $13 per acre, representing a total net loss of $1.0 million over the entire 75,000 acres of rice.

Under the proposed exemption, a single ground application of quinclorac would be made at a maximum rate of 0.5 pounds of active ingredient per acre. A maximum of 37,500 pounds of active ingredient may be needed to treat up to 75,000 acres of rice. Applications would be made by or under the direct supervision of certified applicators. A pre-harvest interval of 80 days would be observed.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)].

Quinclorac is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Mississippi Department of Agriculture and Commerce.

Dated: February 18, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-5255 Filed 3-10-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180863; FRL 4049-3]

Receipt of Application for Emergency Exemption to use Quinclorac; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arkansas State Plant Board (hereafter referred to as the "Applicant") for use of the pesticide Quinclorac (CAS No. 84087-01-4) to control grass weeds on up to 300,000 acres of rice in Arkansas. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 26, 1992.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180863," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-7889).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the herbicide, quinclorac, available as Facet 50WP from BASF Corporation, to control barnyardgrass on up to 300,000 acres of rice in Arkansas. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, barnyardgrass (*Echinochloa crusgalli*) infests 100 percent of Arkansas rice fields. The herbicide propanil has been used for thirty years to control this grass weed; however, in recent years, propanil's effectiveness has declined significantly. The Applicant attributes the poor control using propanil to development of propanil-tolerant barnyardgrass. Recent greenhouse studies on barnyardgrass grown from seed around the state indicate that the tolerant barnyardgrass is much more widespread than previously thought. The problem is most serious in Poinsett and adjacent counties. The Applicant claims that if quinclorac is not available for use, rice yields will be reduced by an estimated 50 percent, resulting in economic losses of $31.4 million over the entire state.

Under the proposed exemption, a single ground or aerial application of quinclorac would be made at a maximum rate of 0.5 pounds of active ingredient per acre. A maximum of 150,000 pounds of active ingredient may be needed to treat up to 300,000 acres of rice. Applications would be made by or under the direct supervision of certified applicators. A pre-harvest interval of 80 days would be observed.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)].

Quinclorac is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arkansas State Plant Board.

Dated: February 14, 1992.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-5254 Filed 3-10-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

L.A. Cruise Ship Terminal, et al.; Agreement(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 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200629.

Title: L.A. Cruise Ship Terminals/Princess Cruises Customer Agreement.

Parties: L.A. Cruise Ship Terminals, Inc. ("L.A. Cruise") Princess Cruises.

Synopsis: This proposed agreement would permit L.A. Cruise to provide terminal facilities and services to Princess Cruises at the Port of Los Angeles, California.

Agreement No.: 203-011367-002.

Title: Colombia Discussion Agreement.

Parties: Lykes Bros. Steamship Co., Inc., Flota Mercante Grancolombiana S.A. (F.M.G.), Frontier Liner Services, Compania Sud Americana De Vapores.

Synopsis: The proposed amendment would add Crowley Caribbean Transport Inc./CTMT as a party to the Agreement.

Agreement No.: 203-011368.

Title: The "8900" Lines/Lykes Lines Discussion Agreement.

Parties: The "8900" Lines, Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed Agreement authorizes the parties to discuss, exchange information and agree upon all aspects of transportation and service in the trade from U.S. Atlantic, Gulf and Pacific ports and inland points to Saudi Arabian, Persian Gulf and other Middle Eastern ports except Aden and Karachi, and inland points via such ports. The parties have no obligation under this Agreement, other than voluntarily, to adhere to any consensus or agreement reached.

By Order of the Federal Maritime Commission

Dated: March 5, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-5602 Filed 3-10-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. 7100-0124, (FR Y-6A)]

Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final approval of Agency Forms.

BACKGROUND: Notice is hereby given of final approval by the Board of Governors of the Federal Reserve (Board) of changes to the bank holding company reporting requirements identified below, under delegated authority from the Office of Management and Budget (OMB), as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public). The changes to the reporting requirements are to be effective for transactions occurring on or after January 1, 1992, for reports submitted according to a gradual phase-in period described below. No public comments were received and the Board has determined that the changes as approved on an interim basis should become final.

SUMMARY: Under the Bank Holding Company Act of 1956, as amended, the Federal Reserve is responsible for the supervision and regulation of all bank holding companies. The Board has approved revisions to the Bank Holding Company Report of Changes in Investments and Activities (FR Y-6A; OMB No. 7100-0124). The revisions are to be implemented effective with transactions occurring on or after January 1, 1992.

The Bank Holding Company Report of Changes in Investments and Activities is an event-generated report filed by top-tier bank holding companies to report changes in regulated investments and activities made pursuant to the Bank Holding Company Act and Regulation Y. The report collects structure information on subsidiaries and regulated investments of bank holding companies engaged in both banking and nonbanking activities.

The approved revisions involve a modification to the reporting schedule from a quarterly basis to an event-driven basis in which reports must be submitted within 30 calendar days of the occurrence of a reportable transaction. Additionally, the report form and instructions have been modified to improve clarity. Changes to the content of the report include the elimination of legel address and activity rank information, and the inclusion of certain non-voting equity investments and Small Business Investment Corporation (SBIC) investments.

To allow adequate time to adjust to the new reporting schedule and revised reporting form, the Federal Reserve requires all changes in investments or activities that occur during the first quarter of 1992 be filed within thirty days after the end of the quarter. The 30-day flow reporting schedule will be fully implemented for transactions that occur on or after April 1, 1992.

Revisions Approved Under OMB Delegated Authority—the Approval of the Collection of the Following Report:

1. *FR Y-6A* (OMB No. 7100-0124), Bank Holding Company Report of Changes in Investments and Activities;

This report is to be filed by all top-tier bank holding companies. The following bank holding companies are exempt from filing the FR Y-6A, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by § 211.23(b) of Regulation K. The revised report is to be implemented on a flow basis as of January 1, 1992, with a submission date of 30 days after the occurrence of a reportable transaction. The implementation of the report is subject to a gradual phase in of the new requirement.

Report Title: Bank Holding Company Report of Investments and Activities
Agency Form Number: FR Y-6A
OMB Docket Number: 7100-0124
Frequency: Flow-basis
Reporters: Bank Holding Companies
Annual Reporting Hours: 2,000
Estimated Average Hours per Response: 1.0
Number of Respondents: 1,000

The information collection is mandatory (12 U.S.C. 1844) and the information is not routinely given confidential treatment. However, confidential treatment for information, in whole or in part, can be requested in accordance with the instructions to the form.

FOR FURTHER INFORMATION CONTACT: Stephen M. Lovette, Manager, Policy Implementation, Division of Banking Supervision and Regulation (202/452-3622) or Alison Waldron, Senior Financial Analyst, Division of Banking Supervision and Regulation (202/452-2538). The following individuals may be contacted with respect to issues related to the Paperwork Reduction Act of 1980: Stephen Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division, (202/452-3920); Frederick J. Schroeder, Chief, Financial Reports, Division of Research and Statistics (202/452-3829); and Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve has granted final approval under delegated authority from the Office of Management and Budget (OMB), of revisions to the FR Y-6A (OMB No. 7100-0124), the Bank Holding Company Report of Changes In Investments and Activities.

The Bank Holding Company Report of Changes in Investments and Activities requests information from all top-tier bank holding companies on changes in investments and activities. This report is event-generated and is filed by bank holding companies only when they have changes in structure. The report collects information relating to acquisitions, divestitures, changes in relationships between a parent company and its subsidiaries, changes in activities, and legal authority. The response rate for the FR Y-6A varies depending on the reportable activity engaged in by each bank holding company.

In addition to a redesign of the reporting form and instructions, substantive changes to the FR Y-6A include a revision to the reporting cycle, the revision of existing reporting requirements to eliminate the collection of unnecessary information, and the addition of information required by users of the report.

The Bank Holding Company Report of Changes in Investments and Activities (FR Y-6A) is collected by the Federal Reserve to monitor compliance by bank holding companies with the Bank Holding Company Act of 1956, as amended, and Regulation Y. Structure data are used to support the financial data collected by the Federal Reserve, and to support studies focusing on nonbanking trends of bank holding companies.

In addition to facilitating compliance monitoring by the staff of the Federal Reserve, the structure data are utilized to provide information on the investments and nonbanking activities of bank holding companies to the Federal Reserve.

Report Form Revisions

The Board has granted final approval of the following changes to the Bank Holding Company Report of Changes in Investments and Activities (FR Y-6A):

1. *Revise the Reporting Cycle*—Change the existing quarterly reporting requirement to a flow-basis requirement. Bank Holding Companies will have 30 calendar days following a reportable change in investments or activities to submit the FR Y-6A to the Federal Reserve.
2. *Cease Collection of Certain Information*
   —Cease the collection of structure information on companies in the bank holding company organization that have not yet conducted any business activity.
   —Cease collection of information on the number of offices operated by nonbanking subsidiaries.

—Cease collection of legal address information for bank holding companies.
—Change requirement for ranking all business activities by order of importance to a requirement that only the primary activity be indicated.

3. *Add Certain Reporting Requirements*
—Require that controlling ownership interests based on nonvoting equity be reported.
—Require that investments made through Small Business Investment Corporations registered with the Small Business Administration be reported.

4. *Redesign the Reporting Form and Instructions*—Redesign the FR Y-6A reporting form and rewrite the instructions to correspond with the new form and to improve clarity.

Legal Status and Confidentiality

The reports are required by law (12 U.S.C. 1844 (b) and (c) and 12 CFR 225.5(b)).

The Federal Reserve has not considered the data in these reports to be confidential. However, a company may request confidential treatment pursuant to section (b)(4) and (b)(6) of the Freedom on Information Act (5 U.S.C. 552 (b)(4) and (b)(6)). Section (b)(4) provides exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Section (b)(6) provides exemption for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Board of Governors of the Federal Reserve System, March 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-5653 Filed 3-10-92; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. 7100-0124 (FR Y-6) and 7100-0218 (FR Y11I)]

Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Approval of Agency Forms.

BACKGROUND: Notice is hereby given of final approval by the Board of Governors of the Federal Reserve (Board) of changes to the bank holding company reporting requirements identified below, under delegated authority from the Office of Management and Budget (OMB), as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public). The change to the reporting requirements are to be effective with the December 31, 1991, reporting date. No public comments were received, and the Board has determined that the changes as approved on an interim basis should become final.

SUMMARY: Under the Bank Holding Company Act of 1956, as amended, the Federal Reserve is responsible for the supervision and regulation of all bank holding companies. The Board has approved revisions to the Annual Report of Bank Holding Companies (FR Y-6; OMB No. 7100-0124) and the Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies (FR Y-11I; OMB No. 7100-0218).

The Annual Report of Bank Holding Companies (FR Y-6) is filed annually as of the holding company's fiscal year-end by top-tier bank holding companies. It contains financial statements for the consolidated company, parent company only, and the holding company's nonbank subsidiaries, all in the company's own format; a list of the officers, directors, and shareholders, and their pecentage ownership of the holding company; and details on insider lending by the bank holding company. Currently, a bank holding company with total consolidated assets of $150 million or more is required to have the financial statements it submits with its FR Y-6 certified by an independent public accountant. Two minor revisions to the FR Y-6 have been approved. The first revision requires bank holding companies to list changes, during the fiscal year, in shareholders that own or control five percent or more of any class of voting securities in the bank holding company. The second revision requires a bank holding company to report at the end of its organizational chart a list of banking companies in which it holds 25 percent or more of nonvoting equity shares and which would not otherwise be contolled subsidiaries.

The Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies (FR Y-11I) is submitted annually by all bank holding companies and provides selected balance sheet and income information on the nonbank subsidiaries of the bank holding company. The following revisions to the FR Y-11I reporting form and instructions have been approved:

1. Clarification of instructions and reporting form to indicate that inactive subsidiaries are only reportable if the subsidiary previously conducted an activity (i.e., is temporarily inactive or in the process of liquidation). Those subsidiaries that have never engaged in any business activity are not reportable.

2. Clarification of the reporting instructions to indicate that financial data for mortgage banking and consumer finance organizations should only be consolidated in instances where the bank holding company has established separate corporations in various states in order to operate offices in those states. That is, financial data should only be consolidated for organizations that are the functional equivalent of branches.

3. Elimination of the Supplemental Cover Sheet for tiered bank holding companies.

Revisions Approved under OMB Delegated Authority—The Approval of The Collection of the Following Reports:

1. *FR Y-6* (OMB No. 7100-0124), Annual Report of Bank Holding Companies;

This report is to be filed by all top-tier bank holding companies. The following bank holding companies are exempt from filing the FR Y-6, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K. The revised report is to be implemented on an annual basis as of December 31, 1991; reports are to be submitted 90 days after the "as of" date.

Report Title: Annual Report of Bank Holding Companies.
Agency Form Number: FR Y-6.
OMB Docket Number: 7100-0124.
Frequency: Annual.
Reporters: Bank Holding Companies.
Annual Reporting Hours: 44,784.
Estimated Average Hours per Response: 8.0.
Number of Respondents: 5,598.

The information collection is mandatory [12 U.S.C. 1844]. Confidential treatment is not routinely given to the information filed. However, confidential treatment for the information, in whole or in part, can be requested in accordance with the instructions to the form.

2. *FR Y-11I* (OMB No. 7100-0218), Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies;

This report is to be filed by all bank holding companies that have nonbank subsidiaries. The report is filed for each individual nonbank subsidiary of the holding company. The following bank holding companies are exempt from filing the FR Y-11I, unless the Board specifically requires an exempt

company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act and foreign banking organizations as defined by section 211.23(b) of Regulation K. The revised report is to be implemented on a quarterly basis as of December 31, 1991, with a submission date of 60 days after the "as of" date.

Report Title: Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies.

Agency Form Number: FR Y-11I.

OMB Docket Number: 7100-0218.

Frequency: Annual.

Reporters: Bank Holding Companies.

Annual Reporting Hours: 1,693.

Estimated Average Hours per Response: 0.6.

Number of Respondents: 2,822.

The information collection is mandatory [12 U.S.C. 1844]. Confidential treatment is not routinely given to the information on the form. However, confidential treatment for the information can be requested in accordance with the instructions to the form.

FOR FURTHER INFORMATION CONTACT: Stephen M. Lovette, Manager, Policy Implementation, Division of Banking Supervision and Regulation (202/452-3622) or Alison Waldron, Senior Financial Analyst, Division of Banking Supervision and Regulation (202/452-2538). The following individuals may be contacted with respect to issues related to the Paperwork Reduction Act of 1980: Stephen Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division, (202/452-3920); Frederick J. Schroeder, Chief, Financial Reports, Division of Research and Statistics (202/452-3829); and Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve has granted final approval under delegated authority from the Office of Management and Budget (OMB), to revisions in the following reports.

1. *FR Y-6* (OMB No. 7100-0124), Annual Report of Bank Holding Companies;

2. *FR Y-11I* (OMB NO. 7100-0218), Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies;

FR Y-6

The FR Y-6 is an annual report filed by top-tier bank holding companies. It consists of financial statements for the consolidated entity (when the total consolidated assets of the company are $150 million or more) and the parent company only statement for all holding companies in the company's own format. The Form 10-K filed with the SEC usually satisfies the requirement for the consolidated statement. Additionally, financial statements for the nonbank subsidiaries of the holding company and information on the identity, percentage ownership, and business interests of principal shareholders, directors, and executive officers are included in the report. Amendments to the organizational documents, information on insider loans, and an organization chart are also required.

The Annual Reprot of Bank Holding Companies (FR Y-6) is the Federal Reserve's principal source of internally generated and independently audited financial data on individual bank holding companies, their banking and nonbanking subsidiaries, and their other regulated investments. The external audit by an independent public accountant, which is required in connection with this report for holding companies with total consolidated assets of $150 million or more, promotes continued safe and sound operations. The report enables the Federal Reserve (1) to monitor holding company operations and to ensure that the operations are conducted in a safe and sound manner; and (2) to determine holding company compliance with the provisions of the Bank Holding Company Act and Regulation Y (12 CFR 225).

The information collected by the FR Y-6 on the identity, percentage ownership, and business interests of principal shareholders, directors, and executive officers is also important for supervisory purposes. First, data on outside business interests (including interests in other financial institutions) aid in identifying chain banking organizations by indicating when an individual owns 25 percent or more of each of two or more banking organizations. Second, information on the principal owners and directors is of critical supervisory importance since these individuals have a significant impact on the policies and condition of banking organizations. Experience has shown that this information is extremely valuable in identifying potential problem situations and in developing supervisory follow-up programs. Third, information on the outside business interests of insiders can be useful in uncovering situations that involve a conflict of interest or preferential treatment in the granting of credit. Information on significant borrowings by holding company insiders assists in highlighting situations involving potential insider abuse. Finally, information on ownership helps the Federal Reserve monitor compliance with the Change in Bank Control Act.

Annual reporting of this information in the FR Y-6 is essential for supervisory purposes because it provides infomation between bank holding company inspections. The timely collection of these data in a supervisory report enhances the Federal Reserve's efforts to monitor the activities of bank holding companies.

FR Y-11I

The FR Y-11I consists of 13 selected financial items and certain other information collected annually from individual nonbank subsidiaries. The FR Y-11I must be submitted for each directly or indirectly held nonbank subsidiary. A subsidiary, for purposes of this report, is defined by Section 225.2 of Federal Reserve Regulation Y, which generally includes companies 25 percent or more owned or controlled by another company. Edge or Agreement corporations, foreign subsidiaries, and nonbank subsidiaries held directly by a bank are exempt from FR Y-11I reporting.

The information collected on this report is used by the Federal Reserve to assess the financial condition of individual nonbank subsidiaries and their impact on the consolidated financial entity.

The FR Y-11I is the only source of standardized financial information on individual nonbank subsidiaries of bank holding companies. This information is essential in light of their potential impact on the subsidiary bank's condition; the different types and degrees of risk inherent in these activities; the trend toward nonbank deregulation; an the potential for nonbank holding company entities to have an adverse impact on affiliated banks due to the volume of intercompany transactions and the complex interrelationships that can exist between holding companies and their bank and nonbank affilitates.

The Federal Reserve has an increasing interest in and a need for information on the nonbank operations of bank holding companies. Experience has shown that nonbank problems can cause funding, earnings, and asset

quality problems for the consolidated holding company, and that nonbank subsidiaries can create serious supervisory problems in bank subsidiaries. Consolidated reports do not reveal the extent of the problems of nonbank subsidiaries because the size of the subsidiary bank can obscure the operations of nonbank subsidiaries at the consolidated level. Consequently, a principal focus of the holding company supervisory effort is to evaluate the condition of nonbank companies and their potential impact on affiliated subsidiary banks.

Annual reporting on the FR Y-11I enables the staff to place an emphasis on monitoring the capitalization and leverage of the nonbank subsidiaries in relation to industry norms and applicable regulations. In addition, the data submitted on the FR Y-11I are also frequently used to respond to requests from Congress and from the public for information on nonbank subsidiaries.

Report Form Revisions

The Board has granted final approval to the following changes to the Annual Report of Bank Holding Companies (FR Y-6):

1. Modify Report Item 5, the list of shareholders, to require the reporting of changes (both additions and deletions), during the fisal year, in shareholders that own or control five percent or more of any class of voting securities in the bank holding company. Both the name and percent ownership would be reported.

2. Require each bank holding company to report at the end of its organizational chart a list of banks or bank holding companies in which it holds 25 percent or more of nonvoting equity shares and which would not otherwise be considered controlled subsidiaries.

The Federal Reserve has granted final approval to the following changes to the Annual Report of Selected financial Data for Nonbank Subsidiaries (FR Y-11I):

1. The reporting instructions will be modified to clarify that inactive nonbank companies are only reportable if they have previously engaged in any business activity. Those companies that are part of the holding company organization but have not yet engaged in any business activity are not reportable.

2. The reporting instructions will be modified to indicate instances where more than one nonbanking subsidiary may be consolidated for reporting purposes. Mortgage banking and consumer finance subsidiaries may be consolidated on the FR Y-11I if they operate as the functional equivalent of branches of a mortgage banking or consumer finance operation. In certain instances, a bank holding company will establish separate corporations in various states in order to operate offices in those states. These separate corporations may be consolidated when reporting on the FR Y-11I.

3. Clarifications to the FR Y-11I cover sheet and reporting form, including the elimination of the supplemental cover page for use by tiered bank holding companies.

Time Schedule for Information Collection and Publication

The FR Y-6 is collected annually as of the end of the bank holding company's fiscal year. This report must be submitted to the Federal Reserve within 3 months following the date of the report.

The FR Y-11I is reported annually as of the last calendar day of December. The FR Y-11I must be submitted to the appropriate Federal Reserve Bank within 60 days after the date of the report.

The data from these reports that are not given confidential treatment are available to the public. Data from these reports will generally not be published.

Legal Status and Confidentiality

The reports are required by law [12 U.S.C. 1844 (b) and (c) and 12 CFR 225.5(b) of Regulation Y].

The Federal Reserve has not considered the data in these reports to be confidential. However, a bank holding company may request confidential treatment pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. 522(b)(4) and (b)(6)]. Section (b)(4) provides exemption for "trade secrets and commercial and financial information obtained from a person and privileged or confidential." Section (b)(6) provides exemption for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Board of Governors of the Federal Reserve System, March 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-5655 Filed 3-10-92; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. 7100-0042]

Member Bank Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Agency forms under review.

BACKGROUND: Notice is hereby given of initial approval of the extension of information collections by the Board of Governors of the Federal Reserve System (Board) under delegated authority, as per 5 CFR 1320.9 [OMB Regulations on Controlling Paperwork Burdens on the Pubic].

SUMMARY: The Board of Governors of the Federal Reserve System proposes to give approval under delegated authority from the Office of Management and Budget (OMB) to an extension for three years, with revision, of the Applications for Subscription to and Cancellation of Federal Reserve Bank Stock (FR 2030,a; FR 2086a,b; and FR 2087: OMB No. 7100-0042). A three-year extension, with minor revision, is proposed for the Application for Adjustment in Holding of Federal Reserve Bank Stock (FR 2056; OMB No. 7100-0042). The applications, which are required by provisions of the Federal Reserve Act and Regulation I, are submitted to the various Federal Reserve Banks by member commercial banks to request the issuance or cancellation of Federal Reserve Bank stock. The proposed revision to the FR 2056 would eliminate the requirement that each adjustment in a member bank's Federal Reserve Bank stock be reported to the member bank's board of directors at its next meeting. Instead, the new form would require the certification by appropriate bank officers of the accuracy of the information submitted to the Board on the form.

DATES: Comments must be submitted on or before April 10, 1992.

ADDRESSES: Comments, which should refer to the OMB Docket number 7100-0042, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed forms, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once

approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3892).

SUPPLEMENTARY INFORMATION:

Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Reports

Report title: Applications for the Issuance and Cancellation of Federal Reserve Stock—National Bank, Nonmember Bank, Member Bank.

Agency form number: FR 2030, FR 2030a, FR 2086a, FR 2086b, and FR 2087.

OMB Docket number: 7100-0042.

Frequency: On occasion.

Reporters: National, State Member and Nonmember Banks.

Annual Reporting Hours: 165: 84 (FR 2030), 18 (FR 2030a), 19 (FR 2086a), 13 (FR 2086b), and 31 (FR 2087).

Estimated average hours per response: 0.5 (for each form).

Number of respondents: 328: 167 (FR 2030), 36 (FR 2030a), 37 (FR 2086a), 26 (FR 2086b), and 62 (FR 2087).

Small businesses are affected.

General description of report: These information collections are mandatory [12 USC 35, 222, 282, 288, and 321] and are not given confidential treatment.

Proposal To Approve Under OMB Delegated Authority the Extension With Revision of the Following Report

Report title: Application for Adjustment in Holding of Federal Reserve Bank Stock.

Agency form number: FR 2056.

OMB Docket number: 7100-0042.

Frequency: On occasion.

Reporters: National, State Member and Nonmember Banks.

Annual reporting hours: 766.

Estimated average hours per response: 0.5 hour.

Number of respondents: 1,531.

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 287] and is not given confidential treatment.

ABSTRACT: These Federal Reserve Bank stock application forms are required to be submitted to the Federal Reserve System by any national bank, state member bank, or nonmember bank wanting to purchase stock in the Federal Reserve System, increase or decrease its Federal Reserve Bank stock holdings, or cancel such stock. The proposed revision to the FR 2056 would eliminate the current requirement that each adjustment in a member bank's Federal Reserve Bank stock be reported to the member bank's board of directors at its next meeting. Instead, the new form would require the certification by appropriate bank officers of the accuracy of the information submitted to the Board on the form.

LEGAL STATUS AND CONFIDENTIALITY: The provisions of law, cited above, which require these applications relate to the requirement for purchase of stock in Federal Reserve Banks by national banks, adjustments to ownership in Reserve Bank stock to reflect changes in capital and surplus of member banks, proper disposition of Reserve Bank stock when a member bank merges or consolidates with a nonmember bank or when a national bank converts to state nonmember status, and proper disposition of Reserve Bank stock upon the insolvency of a member bank. In each case, the provisions require certain actions, such as the issuance or cancellation of Reserve Bank stock.

REGULATORY FLEXIBILITY ACT ANALYSIS: The Board certifies that the Federal Reserve Bank stock applications are not expected to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

When a bank receives approval for membership in the Federal Reserve System, the bank agrees to certain conditions of membership which are contained in an approval letter sent to the bank by the Federal Reserve Bank in whose district the bank is located. The Reserve Banks provide the applying banks with application forms for the initial subscription of Federal Reserve Bank stock and for any subsequent adjustments to the holdings of such stock. The forms are provided by the Reserve Banks to the applying banks and are prescribed under authority of Regulation I to ensure proper recordation of the number of shares of Federal Reserve Bank stock issued or cancelled in a transaction involving a particular bank. The application forms are used exclusively by the applying banks and the Federal Reserve Banks. The information collected by the forms is not available from any other source.

Board of Governors of the Federal Reserve System, March 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-5654 Filed 3-10-92; 8:45 am]

BILLING CODE 6210-01-M

Bank Corporation of Georgia, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 6, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Bank Corporation of Georgia, Macon, Georgia; to acquire 100 percent of the voting shares of First South Bank of Ben Hill County, N.A., Fitzgerald, Georgia; First South Bank of Coweta County, N.A., Newnan, Georgia; and First South Bank of Jones County, N.A., Gray, Georgia, all of which are *de novo* banks.

2. Corte Banc Corporation, New Orleans, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank and Trust, New Orleans, Louisiana.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Community Bancshares Corp., Anamosa, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Lesernal Corporation, Anamosa, Iowa, and thereby indirectly acquire Citizens Savings Bank, Anamosa, Iowa; and First Community Bancshares Corp., Milton, Wisconsin, and thereby indirectly

acquire First Community Bank, Milton, Wisconsin.

2. Princeton National Bancorp, Inc., Princeton, Illinois; to acquire 100 percent of the voting shares of Illinois Valley Bancshares, Inc., Princeton, Illinois, and thereby indirectly acquire Colonial Bank and Trust Co. of Bureau County, Princeton, Illinois, and Colonial Bank and Trust Company of LaSalle County, Peru, Illinois.

3. State Financial Services Corporation, Hales Corner, Wisconsin; to acquire 100 percent of the voting shares of Eastbrook State Bank, Brookfield, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. South Central Bancshares, Inc., Russellville, Kentucky; to merge with First Midwest Bancshares, Inc., Princeton, Kentucky, and thereby indirectly acquire First Bank and Trust Company, Princeton, Kentucky.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Integrity Bancorporation, Inc., Staples, Minnesota; to merge with Frazee Bancorporation, Inc., Frazee, Minnesota, and thereby indirectly acquire Peoples State Bank of Frazee, Frazee, Minnesota.

Board of Governors of the Federal Reserve System, March 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-5661 Filed 3-10-92; 8:45 am]

BILLING CODE 6210-01-F

Commercial Bancorp of Georgia, Inc.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 6, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Commercial Bancorp of Georgia, Inc., Atlanta, Georgia; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout Metropolitan Atlanta.

2. SouthTrust Corporation, Birmingham, Alabama; to engage *de novo* through its subsidiary, SouthTrust Community Reinvestment Corporation, Birmingham, Alabama, in community development activities, including building, acquiring, renovating, and owning low to moderate income multi-family rental housing properties pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Honor Bancorp, Inc., Honor, Michigan; to engage *de novo* through its subsidiary, Honor Recovery Agency, Inc., Honor, Michigan, in the collection of bad debts and the provision of a repossession service pursuant to § 225.25(b)(23); and in the servicing of debts pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. Marquette National Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, Marquette Community Development Corporation, Chicago, Illinois, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Chicago, Illinois.

Board of Governors of the Federal Reserve System, March 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-5660 Filed 3-10-92; 8:45 am]

BILLING CODE 6210-01-F

Fifth Third Bancorp; 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 April 6, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire 100 percent of the voting shares of First Lima National Bank of Lima, Lima, Ohio.

In connection with this application, Applicant also proposes to acquire First Federal Savings and Loan Association of Lima, Lima, Ohio, and thereby convert Company into First Lima National Bank of Lima immediately upon acquisition.

Board of Governors of the Federal Reserve System, March 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-5659 Filed 3-10-92; 8:45 am]

BILLING CODE 6210-01-F

Fleet/Norstar Financial Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 6, 1992.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Fleet/Norstar Financial Group, Inc., Providence, Rhode Island; to acquire BancNewEngland Mortgage Company, Inc., East Providence, Rhode Island, and thereby engage in acquiring and originating loans for Company's own account and the accounts of others, servicing loans for Company's own account and the accounts of others, and selling mortgage loans to the secondary market pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Big Sioux Financial, Inc., Estelline, South Dakota; to acquire Hamlin County Agency, Hayti, South Dakota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the communities of Hayti and Hazel, South Dakota, both communities with populations of less than 5,000.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Orange National Bancorp, Orange, California; to acquire ONB Mortgage Corporation, Orange, California, and thereby engage in acquiring, selling, and servicing real estate loans for its account and the accounts of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-5658 Filed 3-10-92; 8:45 am]

BILLING CODE 6210-01-F

KSAD, Inc., et al.; Formation of; Acquisition by; or Merger of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 92-4858) published at page 7588 of the issue for Tuesday, March 3, 1991.

Under the Federal Reserve Bank of Chicago, the entry for KSAD, Inc. is revised to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. KSAD, Inc., Council Bluffs, Iowa; to merge with Nevada National Company, Omaha, Nebraska, and thereby indirectly acquire Nevada National Bank, Nevada, Iowa; and Williamsburg Holding Company, Omaha, Nebraska, and thereby indirectly acquire Security Savings Bank, Williamsburg, Iowa. Applicant has also applied to acquire 100 percent of the voting shares of Rainwood Corporation, Omaha, Nebraska, and thereby indirectly acquire Valley State Bank, Rock Valley, Iowa.

Comments on this application must be received by March 30, 1992.

This notice corrects a previous **Federal Register** notice (FR Doc. 91-29132) published at page 63737 of the issue for Thursday, December 5, 1991.

Under the Federal Reserve Bank of Chicago, the entry for John G. Kulhavi is revised to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. John G. Kulhavi, Kingston, Michigan; to acquire 24.99 percent of the voting shares of KSB Financial, Inc., Kingston, Michigan, and thereby indirectly acquire Kingston State Bank, Kingston, Michigan.

Comments on this application must be received by March 17, 1992.

Board of Governors of the Federal Reserve System, March 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-5657 Filed 3-10-92; 8:45 am]

BILLING CODE 6210-01-F

John D. Stephens, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 6, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. John D. Stephens, Stone Mountain, Georgia; to acquire 37.30 percent of the voting shares of The Gwinnett Financial Corporation, Lawrenceville, Georgia, and thereby indirectly acquire Bank of Gwinnett County, Lawrenceville, Georgia.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Jimmie Luecke, Timothy A. Kleinschmidt, as trustee for the Susan Luecke Trust and the Fred Luecke Trust; to acquire 11.52 percent of the voting shares of Giddings Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire First National Bank of Giddings, Giddings, Texas.

Board of Governors of the Federal Reserve System, March 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-5656 Filed 3-10-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Intent To Prepare an Environmental Impact Statement for the Proposed Construction of a New Federal Building—U.S. Courthouse, Minneapolis, MN

The General Services Administration is preparing an Environmental Impact Statement (EIS) for the proposed action to construct a new 300,000 occupiable square foot (osf) Federal Building—U.S. Courthouse in Minneapolis, Minnesota. This new Federal Facility is to be located on the block bounded by Fourth Street, Fourth Avenue, Third Street and Third Avenue in Minneapolis and will include a plaza, owned and maintained by GSA. For employee parking at the Federal Building—U.S. Courthouse, 225 underground parking spaces are included in the project. In addition, the City of Minneapolis and the Minneapolis Community Development Agency (MCDA) will fund construction by GSA of up to 350 municipal parking spaces. To clear the proposed site for the construction of the new Federal Facility and the plaza, all buildings on the block other than the Flour Exchange Building will be demolished, including a City owned parking facility.

The EIS will evaluate potential environmental and socioeconomic impacts resulting from the different project alternatives. The construction of a new Federal Building—U.S. Courthouse, the no action alternative, postponing of action until further study, renovation and/or expansion of existing facilities, acquisition and renovation of existing non-Federal buildings or facilities, alternative sites for construction, and alternatives requiring different actions which would provide similar benefits and different environmental impacts shall be examined. Any alternative eliminated earlier from detailed study will also be described, with reasons for its elimination. Additional alternatives which are identified through the scoping process will be reviewed with GSA as to their appropriateness for detailed analysis.

The physical, socioeconomic, land use, architectural, historical, cultural, urban quality, transportation, utilities and services, and real estate market activity, characteristics of the project area affected by the proposed action will be assessed in the EIS. Potential short-term and long-term impacts will also be discussed.

A scoping meeting is scheduled to provide interested parties with an opportunity to identify the significant issues which will arise as a result of the proposed project and alternatives. The details of the meeting are described below.

Scoping Meeting

Date: Wednesday March 18, 1992.

Time: 6 p.m.

Place: U.S. Courthouse, Conference Room B15, 110 South 4th Street, Minneapolis, Minnesota 55401

All participants are requested to register by mail or in person if they elect to make an oral presentation at the meeting. Oral presentations will be limited to ten (10) minutes. Written comments will be accepted for incorporation into the record at the meeting and for ten (10) workdays following the meeting.

To register to make an oral presentation, or for further information please contact: Sharon Malloy, Planning Staff—5PL, General Services Administration, 230 South Dearborn Street, room 3670, Chicago, Illinois 60604, (312) 353-5610.

Dated: March 3, 1992.

Donald L. Zito,

Regional Administrator, General Services Administration, Region 5.

[FR Doc. 92-5604 Filed 3-10-92; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0065]

Syntex Animal Health; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Syntex Animal Health, Division of Syntex Agribusiness, Inc. The NADA provides for the use of Flucorticin® Aqueous Suspension (penicillin G procaine in dihydrostreptomycin sulfate solution with flumethasone) in cats, dogs, and horses. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: March 23, 1992.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8749.

SUPPLEMENTARY INFORMATION: Syntex Animal Health, Division of Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94303, is the sponsor of NADA 55-029 which provides for the use of Flucorticin® Aqueous Suspension (penicillin G procaine in dihydrostreptomycin sulfate solution with flumethasone) as a prescription, intramuscular injectable antibiotic in treating cats, dogs, and horses. By letter dated November 18, 1991, the sponsor stated that the product is not being marketed and requested withdrawal of approval of the NADA.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 55-029 and all supplements and amendments thereto is hereby withdrawn, effective March 23, 1992.

Dated: March 4, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-5701 Filed 3-10-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91D-0123]

Draft Guideline for Submitting Supporting Chemistry Documentation in Radiopharmaceutical Drug Applications; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to May 18, 1992, the comment period for its draft guideline for the submission of supporting chemistry documentation in radiopharmaceutical drug applications. The notice of availability of this draft guideline was published in the **Federal Register** of December 18, 1991 (56 FR 65737). The draft guideline is intended to furnish drug manufacturers with guidance in submitting to FDA adequate chemistry documentation in marketing applications for radiopharmaceutical drugs. FDA is taking this action in response to two requests for an extension of the comment period.

DATE: Comments by May 18, 1992.

ADDRESS: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rebecca H. Wood, Center for Drug Evaluation and Research (HFD-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4330.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 18, 1991 (56 FR 65737), FDA published a notice of availability of a draft guideline for submitting chemistry documentation in radiopharmaceutical drug applications. This draft guideline is intended to assist drug firms in preparing the chemistry section of marketing applications for radiopharmaceutical drugs under 21 CFR 314.50(d)(1). Interested persons were given until March 18, 1992, to submit written comments on the notice.

FDA has received requests from the Committee on Radionuclides and Radiopharmaceuticals of the U.S. Council for Energy Awareness and the Radiopharmaceutical Division of the du Pont Merck Pharmaceutical Co. to extend the comment period for an additional 60 days to consider the issues and aspects of the guideline and to comment accordingly.

The agency has carefully considered these requests and has decided to extend the comment period in which interested persons may evaluate the draft guideline and submit meaningful comments to the agency. Accordingly, the comment period is extended to May 18, 1992.

Interested persons may, on or before May 18, 1992, submit to the Dockets Management Branch (address above) written comments regarding the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Date: March 5, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-5690 Filed 3-10-92; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Methods for Voluntary Weight Loss and Control; Technology Assessment Conference

Notice is hereby given of the NIH Technology Assessment Conference on "Methods for Voluntary Weight Loss and Control," which will be held on March 30-April 1, 1992 in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the NIH Nutrition Coordinating Committee and the NIH Office of Medical Applications of Research. The conference begins at 8:30 a.m. each day.

Overweight has serious adverse effects on health and longevity. It is associated with elevated serum cholesterol, elevated blood pressure, and noninsulin-dependent diabetes. Overweight also increases risk for gallbladder disease and some types of cancer and has been implicated in the development of osteoarthritis of the weight-bearing joints.

Although a health-oriented definition of overweight is not currently available, overweight clearly affects a large proportion of the U.S. population, and the prevalence of overweight has not declined among adults for more than two decades. The burdens of overweight are borne disproportionately by women, the poor, and members of certain ethnic groups. Overweight is multifactorial in origin, reflecting inherited, environmental, cultural, socioeconomic, and psychological conditions.

Many persons attempt to lose weight employing methods such as caloric restriction, exercise, behavior modification, drugs, or combinations of these methods, with or without medical supervision. Such attempts may be successful in the short term, but most often the weight lost is regained. Repeated weight gain and loss may have harmful physiological, psychological, and economic effects.

The NIH has convened this conference to ascertain the practices being employed to achieve weight loss and control, to evaluate the evidence for the success of various methods for weight loss and control, and to assess the beneficial and adverse effects of weight loss, in order to provide the best possible advice to the public on methods for voluntary weight loss and control.

Following a day and half of presentations by experts and discussion by the audience, an independent, non-Federal panel will weigh the scientific evidence and write a draft statement in response to the following questions:

—How often and in what ways do Americans try to lose weight?

—How successful are various methods for weight loss and control? What are the attributes of and barriers to successful weight loss methods/approaches?

—What are the short- and long-term benefits and adverse effects of weight loss?

—What are the fundamental principles that should be used to select a personal weight loss and control strategy?

—What should be the future directions for research on weight loss and control?

On the third day of the conference, the panel chair will read the draft statement to the audience and invite comments and questions.

Information on opportunities for organizations to submit data regarding the results of weight loss programs to be considered by the panel as part of its deliberations or to provide public comment during the conference may be obtained from: Jerry Elliott, Office of Medical Applications of Research, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-1144.

Information on the program may be obtained from: Janine Joyce, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468-MEET.

Dated: March 3, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92-5704 Filed 3-10-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, March 20, 1992, Marriott Suites Hotel, 6711 Democracy Boulevard, Bethesda, Maryland 20817.

The one-day meeting will be open to the public from 8:30 a.m. to adjourment. Attendance by the public will be limited to space available. The Board will discuss outcomes of the three medical rehabilitation research regional meetings, review and assess ongoing and future Federal research priorities, activities, and findings regarding medical rehabilitation research and finalization on the provisions of the statute-required comprehensive plan for the conduct and support of medical rehabilitation research.

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 396-1485, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. If you have specific disability-related requirements please call.

Dated: March 6, 1992.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 92-5705 Filed 3-10-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4214-10; GP2-1326; OR-48056(WASH)]

Proposed Withdrawal and Opportunity for Public Meeting; Washington.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 110.00 acres of National Forest System lands to protect the Peony, Polepick, and Frank Burge Seed Orchards in the Okanogan National Forest. This notice closes the lands for up to two years from mining. The lands will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by June 9, 1992.

ADDRESS: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208-0039.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, 503-280-7171.

SUPPLEMENTARY INFORMATION: On February 7, 1992, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. ch. 2), subject to valid existing rights:

Willamette Meridian

Okanogan National Forest

T. 35 N., R. 20 E.,
Sec. 12, S½SE¼NW¼, N½NE¼SW¼, and N½S½NE¼SW¼.
T. 33 N., R. 23 E.,
Sec. 23, E½NE¼SE¼ and†E½W¹ ⁄₂NE¼SE¼.
T. 36 N., R. 29 E.,
Sec. 20, E½E½NE¼SE¼;
Sec. 21, W½NW¼SW¼.

The areas described aggregate 110.00 acres in Okanogan County, Washington.

The purpose of the proposed withdrawal is to protect the Peony, Polepick, and Frank Burge Seed Orchards.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, and cooperative agreements, that are compatible with the intended use under the discretion of the authorized officer.

Dated: February 21, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-5666 Filed 3-10-92; 8:45 am]

BILLING CODE 4310-33-M

(ID-020-4320-12)

Meeting and Agenda for Burley District Grazing Advisory Board

AGENCY: Bureay of Land Management, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on April 16, 1992. The meeting will convene at 9:30 a.m. in the conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Range Improvement Funding Sources; (2) NoMan's Land and Basalt Seeding AMP's; (3) Trichomoniasis Testing Requirements; (4) Review FY-92 Proposed Range Improvement Projects; (5) Secretary/Treasurer's Report; (6) Current Drought Situation; (7) Items of Information (a) Districtwide "Resource Management Plan (RMP); (b) Shoshone Creek Pilot Riparian Project Dedication.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 11:30 a.m. or they may file a written statement for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by April 15, 1992 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting wil be maintained in the District Office and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday

thru Friday) within 30 days following the meeting.

DATES: April 16, 1992.

ADDRESSES: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, District Manager, (208) 678-5514.

Dated: March 2, 1992.

Gerald L. Quinn,

District Manager.

[FR Doc. 92-5674 Filed 3-10-92; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-040-7122-09-5441]

Availability of Draft Environmental Impact Statement (DEIS) for Plan of Operations, Case Number A 25564; Gila Resource Area, Graham County, AZ

AGENCY: Bureau of Land Management (BLM), Safford District, AZ., Interior.

ACTION: Notice of availability of DEIS.

SUMMARY: The BLM, Gila Resource Area, has prepared a DEIS for a proposed open pit copper mine near Safford, Arizona. This DEIS was prepared to comply with the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act of 1969 (40 CFR parts 1500-1508) and BLM regulations for surface mining on public lands (43 CFR 3809). The applicant, AZCO Mining, Inc. (AZCO), submitted a Plan of Operations to the BLM Gila Resource Area pursuant to the Federal Land Policy and Management Act of 1976 (90 Stat. 2744; 43 U.S.C. 1701) as implemented by 43 CFR 3809. This DEIS (1) assesses the environmental impacts of the proposed mine as described in the Plan of Operations, other reasonable alternatives, and the No Action Alternative; (2) determines if there are significant and cumulative impacts; and (3) identifies necessary mitigative measures.

DATE: Comments relating to the DEIS will be accepted until May 11, 1992.

ADDRESS: Send comments to the Bureau of Land Management, Safford District Office, Attention: Larry Thrasher, Project Manager, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: The Plan of Operations calls for mining the Sanchez copper orebody, located on 581 unpatented lode and millsite claims at the southeast end of the Gila Mountains, about 10 miles east-northeast of the city of Safford, Graham County, in southeastern Arizona. The orebody will be mined using conventional open pit mining techniques and mining equipment. The planned ore mining rate is 10 million tons per year. Waste rock and alluvium will be mined at an average rate of about 13 million tons per year. The expected life of the mine is 17 years. The pit will ultimately measure about 4,000 feet in diameter and 1,200 feet deep.

Ore from the pit will be transported to a crushing and screening plant prior to being conveyed to leach pads. There, the crushed ore will be treated with a weak sulfuric acid solution. The pregnant leach solution will be piped to a solvent extraction-electrowinning plant, where the copper will be extracted and concentrated.

Reclamation will involve minimizing public safety hazards, ensuring long-term protection of the environment, and restoring the site to a condition consistent with planned long-term use. The BLM would require a reclamation bond be posted prior to any surface disturbances.

Complete records of all phases of the planning process are available for public review at the Safford District Office, 425 4th Street, Safford, Arizona.

FOR INFORMATION CONTACT: Larry Thrasher, Project Manager, BLM Safford District Office, Division of Resource Management, (602) 428-4040.

Dated: March 3, 1992.

Ray A. Brady,

District Manager.

[FR Doc. 92-5667 Filed 3-10-92; 8:45 am]

BILLING CODE 4310-32-M

[AZ 020-02-4212-12 (AZA 26495)]

Realty Action: Exchange of Public Land, Pima Co. AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following described public lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 15 S., R. 11 E.,
  Sec. 12, lands lying south of Ajo Highway in SE¼.
T. 14 S., R. 12 E.
  Sec. 30, lots 17 to 28, incl., lots 45 to 54 incl., lots 65 to 72, incl;
  Sec. 35, lot 7.
T. 15 S., R. 12 E.,
  Sec. 1, lots 24 to 31, incl.;
  Sec. 3, lots 1, 2, 9 to 16, incl. SW¼SE¼NE¼, N½SE¼NE¼, N½SE¼NE¼, SW¼NW¼;
  Sec. 4, lots 9, 10, S½ of lot 1, SE¼NE¼;
  Sec. 7, lots 5 to 15, incl., lots 17 to 20, incl., and that portion of lot 4 and the SE¼SW¼ lying south of Ajo Highway;
  Sec. 8, lots 58 and 59;
  Sec. 9, SW¼SE¼NW¼;
  Sec. 10, lots 89 to 92, incl.;
  Sec. 14, SW¼SE¼SE¼;
T. 15 S., R. 13 E.,
  Sec. 7, lot 64;
  Sec. 19, W½NE¼NW¼.

Final determination on the disposal of the above-described 694.55 acres will await completion of an environmental assessment.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands and minerals from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document coveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 3, 1992.

Henri R. Bisson,

District Manager.

[FR Doc. 92-5668 Filed 3-10-92; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Notice of Availability of the Agency Draft Recovery Plan for Spreading Avens for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for spreading avens (*Geum radiatum*). This rare perennial herb grows in full sun on the shallow acidic soils of high-elevation cliffs, outcrops, and steep slopes on a faw scattered mountaintops in western North Carolina and eastern Tennessee. Only 11 populations of spreading avens

are currently known to exist. The Service solicits review and comment from the public on this draft plan.

DATE: Comments on the draft recovery plan must be received on or before May 11, 1992 to receive consideration by the Service.

ADDRESS: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above addresss.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/665-1195, Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of time and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is spreading avens (*Geum radiatum*). The areas of emphasis for recovery actions are high-elevation mountains in Ashe, Avery, Transylvania, Watauga, Buncombe, Mitchell, and Yancey Counties, North Carolina, and Sevier and Carter Counties, Tennessee. Habitat protection, reintroduction, and preservation of genetic material are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 3, 1992.

Nora A. Murdock

Acting Field Supervisor.

[FR Doc. 92-5671 Filed 3-10-92; 8:45 am]

BILLING CODE 4310-55-M

Availability of the Revised Finding of No Significant Impact Proposed Land Acquisition for National Education and Training Center Vicinity of Harper's Ferry, Shepherdstown, WV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service is proposing to acquire property near Shepherdstown, West Virginia, for the Service's National Education and Training Center (NETC). Based on a review and evaluation of an Environmental Assessment and other supporting documentation, it was determined that the acquisition designated as Site D for the Service's NETC is not a major Federal action which would significantly affect the quality of the human environment with the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, preparation of an environmental impact statement on the proposed action is not required.

EFFECTIVE DATE: February 20, 1992.

ADDRESSES: Comments should be addressed to: Director, United States Fish and Wildlife Service, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Haskett, Acting Chief, Division of Realty, United States Fish and Wildlife Service, 1849 C Street NW., Washington, DC 20240. (703) 358-1713.

SUPPLEMENTARY INFORMATION: An Environmental Assessment (EA) was prepared which addressed five alternative land acquisition sites and a no-action alternative. The acquisition of a selected site is an essential first step in meeting the Service's goal to construct a facility that would provide a training center for Service staff and scientists. General considerations were that the site would accommodate a development envelope of at least 250 acres and that the selected site would fully conform with Federal, state, and local plans and requirements.

A notice of availability for the EA and Finding of No Significant Impact (FONSI) was published in the Federal Register on July 9, 1991. At that time, the selected alternative was Site E—Driggs (Quarry) and Springs Run. However, due to the difficulty in remediating minor contamination on the site, the Service has determined that it is not in the best interest of the government to acquire Site E.

The new selected alternative is Site D—Terrapin Neck. Site D is located approximately three miles north of Shepherdstown, West Virginia. The Potomac River serves as the northern boundary, with Terrapin Neck Road to the east, and Shepherd Grade Road bordering the southwestern sections of the site. The site occupies approximately 525 acres and is comprised of forested land, agricultural land, and open fields.

Site D was selected because it has many of the amenities which would be supportive of the NETC goal. The picturesque site overlooks the Potomac River Valley and is surrounded by a diversity of habitats. Several 18th and 19th century buildings occur on the site that will be maintained for their historical value. Community acceptance of Site D is anticipated to be good. Although some minor improvements may be needed, the capacity of existing roadways appears adequate. We anticipate no adverse impacts to State or Federal rare, threatened, or endangered species that may occur on the site.

The other land acquisition alternatives considered were the Gibson and Capriotti Properties, Cooper Farm, Nalls Property, Driggs (Quarry)/Springs Run, and no-action. The previous plan to include a public education (habitat) component to the NETC has been dropped.

A small portion of riverine wetlands system is located in the northern part of the site and small pond occurs near the farm buildings. All reasonable alternatives were considered in the evaluation of this project. Any project-caused wetland and floodplain impacts will be minor to negligible. The project complies with the provisions of Executive Orders 11988 and 11990.

Dated: March 4, 1992.

Richard N. Smith,

Acting Director.

[FR Doc. 92-5603 Filed 3-10-92; 8:45 am]

BILLING CODE 4310-55-M

Availability of an Environmental Assessment and Receipt of an Application to Amend the San Bruno Mountain Habitat Conservation Plan Pursuant to Section 10(a) of the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The city of Daly City (Daly City) has applied to the U.S. Fish and Wildlife Service (Service) for an amendment to the San Bruno Mountain Habitat Conservation Plan (Plan) and incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The proposed amendment, the Linda Vista II Project Equivalent Exchange Amendment, would authorize for a period of one year incidental take of the endangered mission blue butterfly (*Icaricia icariodes missionensis*) in an area originally designated in the Plan as "conservation habitat." In exchange, a 12,600-square-foot site formerly slated for development will be conserved. The proposed amendment was necessitated by the construction of a natural gas pipeline. The Service has prepared an environmental assessment (EA) for the incidental take permit amendment. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before 30 days from publication.

ADDRESSES: Comments regarding the application or adequacy of the EA should be addressed to Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1823, Sacramento, California 95825-1846.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Nagano, Staff Entomologist, Sacramento Field Office, at the above address (916-978-4866 or FTS 460-4866). Individuals wishing copies of the EA for review should contact the above individual.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act prohibits the "taking" of endangered species, like the mission blue butterfly. However, the Service, under limited circumstances may issue permits to take endangered wildlife species incidental to, and not the purpose of otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

In 1983, the Service issued the county of San Mateo a permit for the incidental take of mission blue butterfly on San Bruno Mountain. The city of Daly City has requested an amendment to section 10(a) permit No. PRT 2-9818 for the San Bruno Mountain Habitat Conservation Plan (SBM HCP). The proposed Equivalent Exchange Amendment is for the Linda Vista II project. The proposed Linda Vista II Equivalent Exchange Amendment would authorize for a permit of one year the incidental take of the endangered mission blue butterfly (*Icaricia icariodes missionensis*) in an 12,600-square-foot area originally designated in the Plan as conserved habitat. In exchange, a 12,600-square-foot area formerly slated for development will be conserved. In an analysis of the impacts resulting from the proposed exchange, the Plan Operator concluded that the value of the new conserved area is "equivalent or greater in biological value" to that of the previously conserved area. The alternatives in the EA to the proposal include: (1) Do not submit an equivalent exchange amendment action and utilize the existing development areas. This was rejected because of logistical reasons. (2) Re-route the pipeline down Carter to Martin Street. This was rejected because of traffic and safety reasons. (3) Re-route the pipeline just to the south of the project site. This was rejected because of logistical reasons.

Author

The primary author of this notice is Mr. Chris Nagano, Staff Entomologist, Sacramento Field Office, at the above address.

Authority: The authority for this action is the Endangered Species Act [16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted].

(Notice: Availability of an Environmental Assessment and Receipt of an Application to Amend a section 10(a) Permit of the Endangered Species Act (PRT 2-9818))

Dated: February 14, 1992.

Don Weathers,

Acting Regional Director.

[FR Doc. 92-5628 Filed 3-10-92; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

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 collections of information and related forms may be obtained by contacting Jeane Kalas at (303) 231-3046. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer at the telephone listed below and to the Office of Management Budget; Paperwork Reduction Project, Washington, DC 20503, telephone (202) 395-7340.

Title: Royalty Rate Reduction Program for Federal Stripper Oil Properties.

Abstract: This is a new information collection. To encourage continued production, provide an incentive for enchanced oil recovery projects, discourage abandonment of properties producing less than 15 barrels of oil each well day, and to reduce operator's expenses, the Bureau of Land Management (BLM) proposes to amend regulations at 43 CFR 3103.4-1 to establish the conditions under which an operator of stripper oil property can obtain a reduced royalty rate. Operators will be required to provide the royalty rate for each property to the Minerals Management Service, Royalty Management Program (RMP) to ensure that the correct rate is used in RMP financial and production auditing systems.

Bureau Form Number: MMS-4377.

Frequency: Annually.

Description of Respondents: Operators of stripper oil properties on Federal lands.

Estimated Completion time: 30 minutes.

Annual Responses: 4,000.

Annual Burden Housr: 2,600.

Bureau Clearance Officer: Dorothy Christopher (703) 787-1239.

Dated: October 3, 1991.

Jimmy W. Mayberry,

Acting Associate Director for Royalty Management.

[FR Doc. 92-5597 Filed 3-10-92; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research, The Bonding Consortium; Notification

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("The Act"), The Bonding Consortium on January 9, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the prupose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

The Bonding Consortium (the "Organization") is a Rhode Island non-profit corporation with its principal place of business in Portsmouth, Rhode Island.

The members of the Organization as of January 9, 1992, are Adtran of Huntsville, Alabama; Ascend Communications, Inc. of Alameda, California; Axxess Communications of Medford, New Jersey; Coastcom of Concord, California; Digital Access Corporation of Reston, Virginia; General Datacom, Inc. of Middlebury, Connecticut; Integrated Network Corporation of Bridgewater, New Jersey; Larse Corporation of Santa Clara, California; Newbridge Networks, Inc. of Kanata, Ontario, Canada; Premisys Communications of Palo Alto, California; Promptus Communications, Inc. of Portsmouth, Rhode Island; Scitec Communications Systems, Inc. of Fremont, California; Telco Systems of Fremont, California, Teleos Communications, Inc. of Eatontown, New Jersey; Timeplex, Inc. of Woodcliff Lake, New Jersey; Transtream, Inc. of Agoura Hills, California; Tylink of Norton, Massachusetts; and Verilink Corporation of San Jose, California.

The purpose of the Organization is to develop and/or adopt common control and synchronization algorithms for dial-up, high bandwidth transmission equipment, the presentation of such algorithms to national and international standards bodies, and the promotion of acceptance and use of such algorithms.

Membership in the Organization remains open, and the Organization intends to file additional written notifications disclosing all changes in membership of the Organization.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-5607 Filed 3-10-92; 8:45 am]

BILLING CODE 4410-01-M

International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA-227 (IPACT-II); National Cooperative Research Notification

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA-227 ("IPACT-II"), on February 7, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of invoking the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The new members of IPACT-II are:

ASTA Medica AG, Frankfurt, Germany;
CIBA-GEIGY Limited, Basel, Switzerland;
Hoffman-La Roche, Inc., Nutley, NJ;
Minnesota Mining and Manufacturing Company, St. Paul, Minnesota; and
Schering Plough Corporation, Madison, NJ

Also, because of a corporate reorganization, the name of Rhone-Poulenc Rorer S.A. has changed to Rhone-Poulenc Rorer Pharmaceuticals, Inc.

No other changes have been made in the membership, objectives or planned activities of IPACT-II.

On February 21, 1991, IPACT-II filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on April 2, 1991, (56 FR 13489).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-5608 Filed 3-10-92; 8:45 am]

BILLING CODE 4410-01-M

National Air Duct Cleaners Association Standards Committee; National Cooperative Research Notification

Notice is hereby given that, on January 21, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C 4301 *et seq.* ("the Act"), the National Air Duct Cleaners Association Standards Committee (the "NADCA Standards Committee") filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the project and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The NADCA Standards Committee project consists of the following parties: National Air Duct Cleaners Association Standards Committee, Washington, DC; Rite Way Co., Cheverly, Maryland; Texas Power Vac, Inc., Waco, Texas; Ductbusters, Dunedin, Florida; Cochrane Ventilation, Wilmington, Massachusetts; and Lester Fox Consultants, Bethesda, Maryland.

The NADCA Standards Committee project will engage in research and development activity to identify and study effective methods for cleaning and inspecting air conveyance systems (including but not limited to ductwork, fans, and coils typically found in heating, ventilating, and air conditioning systems). The results of these activities will guide and inform the NADCA Standards Committee in its efforts to develop voluntary industry standards for cleaning and inspecting air conveyance systems and will validate the resultant NADCA standards. Any entity or individual that is not a party to the project may receive additional information concerning the project or the associated efforts of the NADCA Standards Committee, provided that such entity or individual (1) pay reasonable fees to defray the parties' cost of providing the additional information and (2) respect and protect the intellectual property rights of the parties.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-5609 Filed 3-10-92; 8:45 am]

BILLING CODE 4410-01-M

National Center for Manufacturing Sciences, Inc.; National Cooperative Research Notification

Notice is hereby given that, on January 27, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS"), filed a written notification

simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and describing the status of its research projects. The notification was filed for the purpose of invoking the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies recently were accepted as active members of NCMS:

BAXTER HEALTHCARE CORPORATION, an Illinois corporation, having a principal place of business at 1 Baxter Parkway, Deerfield, Illinois, 60015;

CIMPLEX CORPORATION, a California corporation, having a principal place of business at 1500 East Hamilton, Suite 100, Campbell, California, 95008;

FANAMATION, INC., a Delaware corporation, having a principal place of business at 555 West Victoria Street, Compton, California, 90220;

GKS INSPECTION SERVICES, INC., a Michigan corporation, having a principal place of business at 1330 19 Mile Road, Sterling Heights, Michigan, 48314;

MAINSTREAM SOFTWARE CORPORATION, a Delaware corporation, having a principal place of business at 411 Waverly Oaks Road, Waltham, Massachusetts, 02154–8414;

McSPADDEN ASSOCIATES, INC., a Massachusetts corporation, having a principal place of business at 1 Farmer Street, Suite 200, North Billerica, Massachusetts, 01862; and

UNIVERSITY SCIENCE PARTNERS, INC., a Michigan corporation, having a principal place of business at 717 East Huron Street, Ann Arbor, Michigan, 48104.

The following organizations recently were accepted as affiliate members of NCMS:

CLEVELAND ADVANCED MANUFACTURING PROGRAM, an Ohio corporation, having a principal place of business at 17325 Euclid Avenue, Cleveland, Ohio, 44112;

INSTITUTE OF ADVANCED MANUFACTURING SCIENCES, an Ohio corporation, having a principal place of business at 1111 Edison Drive, Cincinnati, Ohio, 45216;

ROCHESTER INSTITUTE OF TECHNOLOGY, a New York corporation, having a principal place of business at 1 Lome Memorial Drive, P.O. BOX 9887, Rochester, New York, 14623–0887; and

STATE BOARD OF TECHNICAL COLLEGES, a Minnesota corporation, having a principal place of business at 550 Cedar Street, Saint Paul, Minnesota, 55101.

The NCMS membership of the following active members has expired:

THE CINCINNATI GILBERT MACHINE TOOL COMPANY, an Ohio corporation, having a principal place of business at 3366 Beekman Street, Cincinnati, Ohio, 45223–2424; and

TURCHAN ENTERPRISES, INC., a Michigan corporation, having a principal place of business at 12825 Ford Road, Dearborn, Michigan, 48126.

Except as indicated above, no other changes have been made in the membership, objectives, or planned activities of NCMS.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, November 7, 1990, February 5, 1991, March 18, 1991, April 29, 1991, July 25, 1991, and October 31, 1991, notices of which the Department published in the **Federal Register** on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), August 28, 1990 (55 FR 35194), December 10, 1990 (55 FR 50786), March 12, 1991 (56 FR 10444), May 16, 1991 (56 FR 22740), June 13, 1991 (56 FR 27273), September 4, 1991 (56 FR 43796) and February 3, 1992 (57 FR 4062), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–5610 Filed 3–10–92; 8:45 am]

BILLING CODE 4410-01-M

Petroleum Environmental Research Forum; National Cooperative Research Notification

Notice is herby given that, on February 7,1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 90–05 filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing an expanded scope of the research program for Project No. 90–05. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notifications stated that the scope of the testing program for Project No. 90–05 has been expanded to cover the effect of leak rate of valve packing aging over the winter.

The original participants, except for BP Research, Cleveland, Ohio, in this Project have provided their written agreement to participate in the expanded scope. BP Research has indicated its intent to participate, however, written confirmation has not yet been received.

No other changes have been made in either the participants or the planned activities of Project No. 90–05.

On March 19, 1991, the participants in PERF Project No. 90–05 filed their original notifications pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 24, 1991, (56 FR 18837). On June 10, 1991, the participants in PERF Project No. 90–05 filed additional written notifications. The Department published a notice in the **Federal Register** in response to these additional notifications on July 5, 1991, (56 FR 30772).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–5611 Filed 3–10–92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Spray Drift Task Force

Notice is hereby given that, on February 4, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Spray Drift Task Force filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the parties to the Spray Drift Task Force Joint Data Development Agreement. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages

under specified circumstances. The change consists of the addition of the following party of the Spray Drift Task Force: Wilbur-Ellis Company, Fresno, California.

In addition, Task Force member Makteshim-Agan (America), Inc., located in New York, New York, has changed its corporate name to Makteshim-Agent of North America Inc.; Task Force member Mobay Corporation, located in Stillwell, Kansas, has changed its corporate name to Miles, Inc.; and Task Force member Sandoz Crop Protection, located in Corpus Christi, Texas, has become Sandoz Agro Incorporated. No other changes have been made in either the membership, corporate names or planned activities of the venture.

On May 15, 1990, the Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1990, (55 FR 27701). On July 16, 1990, September 17, 1990, March 25, 1991, July 23, 1991, and October 10, 1991, the Spray Drift Task Force filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on August 22, 1990, (55 FR 34357), October 18, 1990, (55 FR 42281), April 24, 1991, (56 FR 18837), August 29, 1991, (56 FR 42759), and November 14, 1991, (56 FR 57903), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-5612 Filed 3-10-92; 8:45 am]

BILLING CODE 4410-01-M

City of Joliet; Lodging of Joint Motion and Stipulation To Modify Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a Joint Motion and Stipulation of the Parties to Modify Consent Decree ("Joint Motion") in *United States v. City of Joliet*, Civil Action No. 88-C-5661, was lodged with the United States District Court for the Northern District of Illinois on February 28, 1992. The Joint Motion arises from violations of a Consent Decree in a civil action brought pursuant to section 309 of the Clean Water Act, 33 U.S.C. 1319. The Joint Motion addresses Joliet's violations of effluent limitations and Joliet's failure to meet a construction schedule for improvements in Joliet's wastewater sewage and treatment facilities. The Consent Decree requires Joliet to pay the United States stipulated penalties in the amount of $90,000, and to comply with a revised planning and construction schedule for the improvements.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Joint Motion. Comments should be addressed to the Chief, Environmental Enforcement Section, Environment and Natural Resources Divison, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Joliet* (N.D. Ill.) and DOJ Ref. No. 90-5-1-1-3155A. The Joint Motion may be examined at the office of the United States Attorney, Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604; the office of the Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, Illinois 60604-3590; and at the Environmental Enforcement Section Document Center, 601 Pennslyvania Avenue, NW., P.O. Box 1097, Washington, DC 20004, (202) 347-2072. 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 $2.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section.

[FR Doc. 92-5606 Filed 3-10-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 90-53]

Richard A. Cole, M.D.; Revocation of Registration

On July 25, 1990, the then-Acting Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to Richard A. Cole, M.D. (Respondent), of 3504 State Street, Erie, Pennsylvania, seeking to revoke DEA Certificate of Registration, AC8141626, and to deny any pending applications for renewal of that registration. The grounds for the issuance of the Order to Show Cause and Immediate Suspension of Registration were that Respondent's continued ⅛ registration is inconsistent with the public interest and would constitute an imminent danger to the public health and safety during the pendency of any administrative proceedings involving his registration. 21 U.S.C. 824(d).

Respondent, through counsel, requested a 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 on November 6 and 7, 1990, in Arlington, Virginia. Proposed findings of fact, conclusions of law and argument were filed by both parties on January 8, 1991.

On April 10, 1991, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent's DEA registration be revoked. On May 2, 1991, the Government filed a Request for *In Camera* Inspection of Information advising that one of the Government's witnesses at the hearing "failed to disclose information in response to certain questions asked during cross-examination." Counsel for the Government also requested permission to file a written statement for *in camera* inspection for the purpose of disclosing the information and to obtain a ruling on issues regarding disclosure to Respondent and relevancy to this proceeding.

Respondent filed an opposition to the Government's request on May 7, 1991, arguing, in part, that due process required the Government to provide the information at issue to the Respondent. Respondent further requested a hearing to determine whether the failure to disclose the information earlier violated his due process rights. On May 16, 1991, following a telephonic conference with counsel, the administrative law judge issued a ruling denying both the Government's request for *in camera* inspection and Respondent's request for a hearing. The administrative law judge then provided the Government with three options: (a) To disclose the information to the administrative law judge and the name of the witness and the subject matter to the Respondent, in which case the judge would determine how much of the information would be disclosed to Respondent; (b) to disclose to both the administrative law judge and Respondent the name of the witness and the subject matter of the information, in which case the judge would strike the witness' related testimony; or (c) to disclose only the name of the witness, in which case the judge would strike the entirety of the witness' testimony and would reconsider her recommended decision in light of the modified record. Government counsel selected the third option and disclosed only the name of the witness. On May 30, 1991, the administrative law judge rescinded her

opinion and recommended ruling, findings of fact, conclusions of law and decision, striking the witness' entire testimony. Both parties were afforded an opportunity to again file proposed findings of fact, conclusions of law and argument on the modified record. Both parties filed briefs and, on August 8, 1991, the administrative law judge issued a second opinion and recommended ruling, findings of fact, conclusions of law and decision, concluding that Respondent's registration was contrary to the public interest and recommending that the Administrator revoke such registration. Counsel for the Respondent filed exceptions to Judge Bittner's opinion and recommended ruling and counsel for the Government filed a response thereto. On September 25, 1991, the administrative law judge transmitted the record of these proceedings, including Respondent's exceptions and the Government's response, to the Administrator.

The Administrator has considered the entire record of this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. After such consideration of the record, the Administrator has adopted the administrative law judge's findings of fact and conclusions of law in their entirety. They are incorporated into this final order as though they were set forth at length herein. The adoption of the judge's opinion is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Administrator finds that in March 1989, investigators reviewed the prescription files at various pharmacies and noted that Respondent had issued a large number of prescriptions for Dexedrine, a Schedule II controlled substance containing dextro-amphetamine sulfate. Subsequently, during the fall of 1989, pharmacists complained to law enforcement authorities that Respondent was issuing prescriptions for Dexedrine and Nardil simultaneously. While Nardil is not a controlled substance, its use in combination with amphetamines is contra-indicated. As a result of the complaints, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Pennsylvania State Police, and local police departments initiated an investigation of Respondent's medical practice.

The investigation revealed that for the period between January 1, 1985 and July 31, 1990, one pharmacy dispensed 94,439 dosage units of Dexedrine pursuant to Respondent's prescriptions. Notations on the prescriptions revealed that seventy-three percent of these drugs were prescribed for the treatment of "idiopathic edema." Another prescription survey, covering the period from January 1989, through May 1990, revealed that Respondent had issued 779 prescriptions for Dexedrine. These prescriptions were issued to 170 patients and totalled 66,322 dosage units of Dexedrine. A review of the evidence shows that 99.6% of the prescriptions bore the specific notation "idiopathic edema", and that 46 of the patients to whom the prescriptions were issued were men. Edema is a collection of fluid outside the circulatory system. Edema has numerous causes, including heart failure, liver and kidney disease, blood and lymphatic disorders, and local injuries. Idiopathic edema has no obvious cause and physicians are unable to attribute its symptoms to any of the several diseases normally associated with edema. Idiopathic edema almost exclusively afflicts women and is rarely encountered in male patients.

As a Schedule II controlled substance, Dexedrine has a high potential for abuse, which abuse may lead to severe physical and psychological dependency. The "physicians' Desk Reference" states that amphetamines, such as Dexedrine, have been extensively abused and should be prescribed in the least amount feasible, particularly to patients with even mild hypertension. The record as a whole establishes that Dexedrine is an extremely dangerous drug which should neither be prescribed, nor taken, carelessly. The record also establishes that the Respondent prescribed huge quantities of Dexedrine, indicating on the prescriptions that they were issued for the treatment of idiopathic edema. Consequently, a major issue in this case is whether the patients who received these prescriptions in fact had idiopathic edema and, if so, whether the Respondent appropriately prescribed Dexedrine to them.

The record in this matter clearly establishes that idiopathic edema is an extremely rare disorder. It is highly unlikely that a large number of Respondent's patients suffered from this condition. Many of Respondent's patients were interviewed during the course of the investigation. Several patients were discussed at length by the administrative law judge who concluded that the record fails to support a finding that any of them had idiopathic edema. Indeed, Judge Bittner concluded that very few of these people suffered from any form of fluid retention. Several of the patients interviewed said that they had no symptoms of idiopathic edema and did not believe they had the condition. Accordingly, it is not unreasonable to conclude that Respondent's diagnosis of idiopathic edema was ruse used to justify the prescribing of amphetamines.

Even if the record supported a finding that a significant number of Respondent's patients suffered from idiopathic edema, the question would remain whether Respondent was justified in prescribing the amount of Dexedrine he did. Amphetamine is not properly prescribed for edema until it is definitively established that the edema is idiopathic and other treatment modalities have been tried without success. To diagnose edema as idiopathic, one must rule out other causes through various diagnostic procedures. Appropriate exclusionary diagnosis would preclude a definitive finding and the prescribing of Dexedrine on a patient's first visit. The administrative law judge found that Respondent made little or no attempt to use other treatments before resorting to amphetamines, concluding that Respondent had no basis for his diagnosis of idiopathic edema and that he was not justified in prescribing Dexedrine. Judge Bittner thus concluded that Respondent prescribed Dexedrine without legitimate medical purpose.

Respondent was inconsistent in what he said to patients about Dexedrine. He warned some patients about the addictive qualities of the drug, did not discuss the matter at all with others, and told still another group that the drug was not addictive. During the course of the investigation, Respondent told an investigator that he did not know that Dexedrine was a Schedule II controlled substance. If Respondent indeed meant what he said, it is most disturbing that a physician who purports to be an expert on the benefits of a Schedule II drug should be so ignorant of the drug's legal status. If, on the other hand, he did not mean what he said, his disingenuous comment reflects at best a cavalier indifference to the responsibilities of a DEA registration.

Respondent prescribed Dexedrine and Nardil simultaneously, although this combination of medications is contraindicated except in extraordinary circumstances not shown in this record. He prescribed Dexedrine to patients with severe hypertension. He took some diabetic patients off of insulin and prescribed Dexedrine to them instead. In some individuals, such lack of concern

for patients' health and safety could be attributed to lack of knowledge. Such was not the case with Respondent. In November 1989, Respondent was formally notified by the then-Chairman of the Department of Medicine at Erie's St. Vincent Health Center of concerns over various aspects of his practice, including his prescribing of Dexedrine. Respondent was unable or unwilling to modify his practice, demonstrating not only a lack of concern for his responsibilities as a registrant, but an abandonment of his responsibilities as a physician. On May 8, 1990, Respondent's privileges at St. Vincent's Health Center were suspended. Several reasons were given for the hospital's action, among them was Respondent's continued use of psychotropic medications, including Dexedrine, in an unacceptable manner, despite a formal warning from the Chairman of the Department of Medicine.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Administrator may revoke a DEA Certificate of Registration and may deny an application for renewal of such registration if he determines that continued registration would be inconsistent with the public interest. Section 823(f) provides for consideration of the following factors in determining where the public interest lies:

(1) The recommendation of the appropriate State licensing board or professional 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 which may threaten the public health or safety.

These factors are to be considered in the disjunctive. That is, the Administrator may properly rely on any one or a combination of those factors, giving each the weight he deems appropriate in determining whether a registration should be revoked, or an application denied. See, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989).

The Administrator finds that the second, fourth and fifth factors are relevant to the adjudication of this matter. The record clearly establishes that Respondent prescribed very large amounts of Dexedrine to patients who were not afflicted with the condition Respondent was purporting to treat. He prescribed without legitimate medical purpose. Respondent used his DEA registration recklessly and irresponsibility. He prescribed a Schedule II amphetamine in contraindicated combinations and in patients whose physical condition required that amphetamines be used with extreme caution. His lack of concern with appropriate medical standards was noticed by his peers and he was warned that his prescribing practices were inappropriate. Respondent's hospital privileges were suspended when he failed to modify his practice. Respondent disregarded both his physician's responsibility for the health of his patients and his legal obligations as a registrant under the Controlled Substances Act. The administrative law judge's conclusion that Respondent has egregiously abused the privileges conferred by his DEA registration is supported by overwhelming evidence. As far as the record indicates, Respondent has never acknowledged that any of his conduct was improper. The administrative law judge concluded the Respondent's continued registration is not in the public interest. The Administrator concurs in this evaluation and further concludes that consideration of the public interest demands that Respondent's registration be revoked.

Extensive exceptions to the administrative law judge's opinion, findings and conclusions have been filed on behalf of the Respondent. The Government has responded to those exceptions. Having considered the entirety of the record, including the aforementioned exceptions and response, the Administrator finds no merit in Respondent's exceptions to the administrative law judge's opinion and rulings. As previously stated, the exceptions were extensive. They are part of the record and shall not be restated at length herein.

Given the unusual circumstances which arose in this case, the Administrator finds that Respondent was not prejudiced by the process which resulted in the exclusion of all testimony given by, or relating to, a Government witness, as well as all documentary evidence introduced through her testimony. When the administrative law judge struck the entirety of the witness' testimony, including tape recordings of undercover conversations between the witness and the Respondents, it was as though the testimony had never been given. Accordingly, there could be no prejudice to Respondent's defense strategy. Upon discovering that the witness had failed to disclose certain information during cross-examination, Government counsel notified the administrative law judge and proposed an *in camera* inspection to allow the judge to determine whether the information should be disclosed. Alternatively, counsel suggested a conference during which the information could be disclosed subject to a protective order. Respondent opposed both of these suggestions and they were rejected by the administrative law judge. As stated above, the judge gave the Government three options, one of which ultimately resulted in the striking of the entirety of the witness' testimony and the exclusion of all related testimony and documentary evidence. Respondent could have accepted one of the two suggestions offered by Government counsel, permitting either *in camera* inspection by the judge or protected disclosure, either of which would have allowed a determination as to whether the information was exculpatory or otherwise favored Respondent. Respondent rejected these suggestions.

Respondent's exceptions with respect to the judge's recommended findings pertaining to idiopathic edema and the treatment thereof are likewise without merit. The administrative law judge was of course present during the testimony of the Government's medical witness and she very clearly considered the opposing evidence introduced through the affidavit of the Respondent's medical expert. The judge adequately discussed her reasons for crediting one witness' opinion over that of the other. In reviewing the evidence herein, the Administrator reaches the same conclusions regarding the rarity of idiopathic edema and the appropriateness of Respondent's treatment thereof.

Likewise, the Administrator finds no merit in Respondent's exception to the judge's ruling excluding Respondent's affidavit explaining notations in his patient charts. The affidavit was not timely tendered and was objected to on that basis. Counsel knew, or should have know, that there would be testimony concerning Respondent's medical records and therefore should have disclosed in advance the information concerning Respondent's medical recordkeeping or testimony as part of Respondent's case-in-chief. Respondent chose not to do so and the Administrator will not now disturb the judge's ruling on the objection.

Respondent has cited numerous prior DEA cases in which a registration was revoked based upon a felony conviction or such conviction supported a finding that continued registration was contrary to the public interest. Conviction of a crime relating to controlled substances

is indeed a separate ground for revoking a registration and a factor to be considered as part of the public interest ground for such action. Conviction is not, however, the only ground or factor. Respondent's experience in dispensing controlling substances, his compliance with laws relating to these drugs and other conduct which may threaten the public health and safety may likewise support the revocation of a registration. The evidence supporting the administrative law judge's findings, conclusions and recommended decision were indeed substantial. Based on that evidence, the judge has recommended revocation. While less onerous sanctions may exist, revocation is an allowable remedy in cases such as this one. Accordingly, the Administrator rejects Respondent's exceptions.

Respondent asserts that the administrative law judge erred in not considering alternative "punishments" short of the complete revocation of Respondent's registration. The revocation of a physician's controlled substance registration is a remedy of substantial impact. It is not a remedy which the Administrator entertains lightly or without due consideration of alternatives. The remedies or sanctions authorized by section 824 are not punitive. This is not a panel measure. The Administrator is charged with protecting the public from the harm which can result from the improper prescribing of legitimately produced controlled substances. In this case, the Administrator has concluded that Respondent has prescribed extremely large quantities of a Schedule II controlled substance without medical justification. The public health and safety is endangered by such practices and revocation of a registration is a justifiable remedy designed to prevent such danger.

As stated above, the Administrator has adopted the recommended rulings, findings of fact, conclusions of law and decision of the administrative law judge. The Administrator has determined that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4) and the concluded that protection of the public health and safety requires that Respondent's registration be revoked.

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, AC8141626, previous issued to Richard A. Cole, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective immediately upon publication in the **Federal Register.**

Dated: March 4, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-5619 Filed 3-10-92; 8:45 am]

BILLING CODE 4410-09-M

Mortimer Levin, D.O., Denial of Application

On November 27, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mortimer Levin, D.O., 1746 Shore Club Drive, St. Clair Shores, Michigan 48080, proposing to deny his application, dated August 23, 1990, for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action is that granting such a registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

By undated letter, received by DEA on January 13, 1992, Dr. Levin specifically waived his opportunity for a hearing and, instead, filed a written statement regarding his position on the matters of fact and law involved. 21 CFR 1301.54(c). The Administrator has considered the entire record in this matter, including Dr. Levin's written statement and the enclosures received therewith. The Administrator hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth. 21 CFR 1301.57.

The Administrator finds that Dr. Levin previously submitted an application for a DEA Certificate of Registration in November 1988. The then-Administrator of the DEA, after finding that the issuance of a registration would be inconsistent with the public interest, denied Dr. Levin's application. See, *Mortimer B. Levin, D.O.*, Docket No. 89-58, 55 FR 8209 (March 7, 1990). The Administrator hereby adopts his predecessor's findings of fact and conclusions of law and incorporates herein the above-referenced final order as though it was set forth at length.

Dr. Levin has a long criminal record. In 1980, he was convicted of violating 42 U.S.C. 1395NN, a felony relating to the Medicare program and, in 1985, he was convicted of violating 21 U.S.C. 843(a)(2), a felony offense under the Controlled Substances Act. In 1983 and 1984, the Federal Bureau of Investigation (FBI) conducted an investigation of Dr. Levin's practice. The investigation revealed that he was responsible for diverting thousands of dosage units of Schedule II controlled substances and that he was interested in opening a "script mill" which he hoped would produce $10,000 to $15,000 a month. During the course of the investigation, Dr. Levin prescribed hundreds of dosage units of Dilaudid, a potent Schedule II narcotic, to an undercover FBI Special Agent who was at that time seven months pregnant. Had the Agent take the drugs prescribed, she would have endangered both herself and her unborn child.

With the written statement he filed in the instant case, Dr. Levin submitted a volume of documents including letters and affidavits of support authored by colleagues and documents which were part of the record of his reinstatement hearing before the Michigan Department of Licensing and Regulation, Board of Osteopathic Medicine and Surgery. These documents were also filed in the previous DEA matter. Dr. Levin now admits the error of his past prescribing practices. However, while he states that economic circumstances do not excuse his actions, Dr. Levin continues to state that he was driven to prescribe controlled substances outside of the course of his medical practice by circumstances which included bad investments, fraud and the advent of health maintenance organizations which competed with his practice. Dr. Levin maintains that he did not believe that he was endangering the pregnant FBI Agent when he gave her prescriptions for massive quantities of narcotics since he thought that she would sell them, and not use them herself.

In requesting that he now be registered, Dr. Levin states that he has been severely penalized for his past deeds. He writes that he has served a term of imprisonment, his reputation has been damaged, and he has suffered inconvenience in his practice, limited employment opportunity and denial of medical malpractice insurance due to his conviction and lack of a DEA registration. Dr. Levin states that he has behaved responsibly since his medical license was reinstated.

In granting or denying an application for registration, the Administrator must consider the factors which are set forth in 21 U.S.C. 823(f). Those factors are: (1) The recommendation of the appropriate state licensing board or professional 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; and (5) Such other conduct which may threaten the public health and 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, for example, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 44 FR 16422 (1988).

In this case, the state licensing authority has reinstated the applicant's medical license. While the licensing board's action has been given considerable weight, reinstatement is not dispositive. While a medical board must consider a large number of factors, including an applicant's medical ability as well as any past misconduct, the Controlled Substances Act requires that the Administrator of the DEA make an independent determination as to whether the granting of controlled substance privileges would be in the public interest.

Dr. Levin's past experience in handling controlled substances is dismal at best. In his quest for money, he resorted to prescribing the most dangerous of controlled substances without any medical justification. He allied himself with persons of unsavory character and reputation, and carefully conceived a plan to maximize his profits by establishing a prescription mill. While Dr. Levin now admits the error of his past practices, he continous to attribute his misconduct to economic misfortune and attempts to minimize the prescribing of narcotics to a pregnant woman by asserting that he believed she was a dealer, not a user. Dr. Levin's misconduct led to his indictment and eventual conviction of a felony relating to controlled substances. His prescribing practices endangered the health and safety of both his patients and the community in which he practiced. In view of all of the preceding, the Administrator concludes that Dr. Levin cannot be entrusted to handle potentially dangerous controlled substances responsibly. The granting of his application would not be in the public interest.

Having concluded that there are lawful bases for the denial of Dr. Levin's application, and having concluded that such application must be denied, 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 the application for registration executed by Mortimer Levin, D.O., on August 23, 1990, be, and it hereby is, denied.

This order is effective March 11, 1992.

Dated: March 4, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-5620 Filed 3-10-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Susbtances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on November 15, 1991, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Adminstrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 10, 1992.

Dated: March 3, 1992.

Gene R. Haislip,

Deputy Assistant Adminstrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-5617 Filed 3-10-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on December 2, 1991, Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, Texas 78759, made written request to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance normorphine (9313).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47. The firm plans to manufacture small quantities of this material to make exempt deuterated drug reference standards.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 10, 1992.

Dated: March 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-5618 Filed 3-10-92; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 90-61]

Samuel Kump Roberts, M.D.; Revocation of Registration

On November 16, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued on Order to Show Cause to Samuel Kump Roberts, M.D., (Respondent), proposing to revoke his DEA Certificate of Registration, AR8137158, as a practitioner under 21 U.S.C. 824(a)(4), and deny any pending applications for renewal of registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause was issued alleging that Respondent's continued registration would be inconsistent with the public interest.

By letter dated November 21, 1990, Respondent, through counsel, requested a 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 before Judge Bittner in Washington, DC on June 4 and 5, 1991. On October 3,

1991, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On December 4, 1991, Respondent filed exceptions to the recommendation of the administrative law judge, filing an addendum to his exceptions on December 10, 1991. On December 16, 1991, the Government responded to the Respondent's exceptions and the addendum thereto, objecting to the addendum. On December 23, 1991, the administrative law judge entered into the record a memorandum to counsel and rulings, refusing to consider the addendum to Respondent's exceptions, but noting that the addendum would be transmitted to the Administrator with the remainder of the record. On January 2, 1992, the administrative law judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby adopts the findings, conclusions and recommendations of the administrative law judge and issues his final order in this matter.

The administrative law judge found that the Respondent had both used and supplied cocaine, and had illegally prescribed controlled substances to at least four individuals, one of whom was an obvious addict. The record reflects that the Respondent did not deny his use of cocaine, but claimed that he had been rehabilitated. Further, the record indicates that the Respondent pled guilty in the United States District Court for the Southern District of West Virginia to five misdemeanor counts of possession of cocaine, and was sentenced on October 30, 1987, to a suspended sentence with a five year probation and various conditions, including counseling and fluid testing.

Nowhere in the record is there any indication of Respondent's incentive rehabilitation therapy such as that commonly seen in cocaine addiction cases. Rather, Respondent relied on his treatment by a professional in addictionology as evidence of his rehabilitation. The record further indicates that the Respondent underwent a relatively insignificant number of urine screens during his rehabilitation efforts, and that he was not subjected to the rigorous monitoring and screening which would have given a clear indication of Respondent's dedication to his rehabilitation.

The administrative law judge found that the Respondent failed to acknowledge any wrongdoing, denying that he had provided cocaine and illegal prescriptions for controlled substances to the individuals about whom testimony was provided by two West Virginia State Troopers. The Respondent testified on his own behalf that he had written prescriptions for controlled substances to two of the named individuals, but that the prescriptions had been for a legitimate medical purpose. The record indicates otherwise. As was noted by the administrative law judge, the Respondent appears to have tailored his testimony to fit his defense theory.

The factors to be considered by the Administrator are set forth in 21 U.S.C. 823(f) and in the opinion and recommended ruling of the administrative law judge. The administrator has considered all of the factors and concludes that the Respondent's DEA Certificate of Registration must be revoked. Respondent's illegal behavior was proven in the record before the administrative law judge. Respondent's efforts to prove rehabilitation fell well short of a convincing threshold. Due to the overwhelming evidence in the record, the public interest is best served by a revocation of Respondent's registration. The Respondent presented evidence that he serves a much neglected portion of the population in rural West Virginia. The Drug Enforcement Administration does not propose to deplete the already lacking number of health care professionals in rural communities; however, the administrator cannot allow a practitioner to continue to handle controlled substances when it is those very controlled substances which proved to be a burden too great for the practitioner to bear. The DEA cannot allow such an individual as the Respondent to continue to handle controlled substances.

The Respondent raised several procedural issues which must be addressed herein. The Respondent, in his exceptions, argued that he had not been afforded his right to due process, remaining uninformed throughout the administrative proceedings of the details of the action against him. This argument could not be further from the true state of the administrative procedures herein. The administrative proceedings provide for the filing of detailed documentation prior to the hearing of proposed testimony of witnesses for both the Government and the Respondent and there has been no indication that the Government did not comply with the mandates of the administrative law judge in this case. The Respondent can hardly argue that he was unprepared to defend himself when the testimony presented at the hearing was set forth almost verbatim in prehearing documents.

The Respondent also claimed that he was prejudiced by the refusal of the administrative law judge to allow him to present testimony of a witness when the Government was not given advance notice that the witness would appear. The Respondent had ample opportunity to provide the Government notice that the witness would be presented, yet failed to do so, waiting until late in the proceedings to give any indication that the witness would be called. The administrative law judge was correct in her ruling that the witness should not have been allowed to testify under the circumstances. Had the Respondent complied with the rules relating to prehearing procedures, the Government would have had no grounds to object to the production of the contested witness. As it happened, the Respondent failed to comply with those procedures and the administrative law judge's decision was appropriate.

The record further indicates that the Respondent filed an addendum to his exceptions, to which the Government objected. 21 CFR 1316.66(c) clearly states that each party is entitled to only one filing under the section providing for exceptions. The Respondent had his opportunity to file exceptions, which opportunity was extended in length on at least two occasions and culminated in the filing of the initial exceptions. In keeping with the rules provided in the Code of Federal Regulations, the Administrator will not consider the addendum to exceptions filed by the Respondent.

Based on the record herein, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him under the provisions of 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AR8137158, previously issued to Samuel Kump Roberts, M.D., be, and it is hereby, revoked. It is further ordered that any pending applications for renewal of that registration be, and they are hereby, denied.

This order is effective April 10, 1992.

Dated: March 4, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-5621 Filed 3-10-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-26,573]

Lynchburg, Foundry Co., Radford, VA; Affirmative Determination Regarding Application for Reconsideration

On February 25, 1992, Local #2969 of the United Steelworkers of America (USW) with Congressional support requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on February 6, 1992 and published in the **Federal Register** on February 25, 1992 (57 FR 6528).

The union claims that one of Lynchburg Foundry's customers decreased its purchases of crankshaft castings from Lynchburg in 1991 and increased its import purchases of crankshaft castings from a Canadian foundry.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 3rd day of March 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-5713 Filed 3-10-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,236]

Telechron, Inc., Ashland, MA; Notice of Revised Determination on Reopening

On October 21, 1991 the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance to workers of Telechron, Inc., in Ashland, Massachusetts. The notice was published in the **Federal Register** on October 29, 1991 (56 FR 55690).

The Department, at the request of Local #205 of the United Electrical Workers, reopened the investigation for workers of Telechron, Inc., in Ashland, Massachusetts.

Investigation findings show that the workers produce timers and motors and that they were not separately identifiable by product. The findings show that the revenues from timers accounted for a substantial percent of total production in 1989, 1990 and in 1991.

New findings on reopening show that timer sales declined substantially in 1990 compared to 1989.

Other findings on reopening show that Telechron lost an important customer of timers in 1990. The customer ceased purchasing from Telechron in 1990 and began purchasing its timers from a corporate plant in Mexico. Worker separations and production declines resulting from the loss of this customer began in August, 1990. The loss of this customer accounted for a substantial portion of Telechron's 1990 sales decline of timers.

U.S. aggregate imports of Measuring and Controlling Instruments which include timers increased absolutely and relative to domestic shipments in 1990 compared to 1989.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with timers produced by Telechron, Inc., in Ashland, Massachusetts contributed importantly to the total or partial separation of workers at Telechron, Inc. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Telechron, Inc., in Ashland, Massachusetts who became totally or partially separated from employment on or after July 8, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of March 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-5714 Filed 3-10-92; 8:45 am]

BILLING CODE 4510-30-M

Emergency Unemployment Compensation; General Administration Letter for Implementing Title I of the Emergency Unemployment Compensation Act of 1991

On November 15, 1991, the President signed into law the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102-164), which in Title I created the Emergency Unemployment Compensation (EUC) program. On December 4, 1991, the President signed into law Public Law 102-182, which provided amendments to the Emergency Unemployment Compensation Act of 1991, as if such amendments were included in that Act, as of its effective date (weeks of unemployment beginning on and after November 17, 1991). On February 7, 1992, the President signed into law Public Law 102-244, further amending the Emergency Unemployment Compensation Act of 1991, effective for weeks of unemployment beginning after the date of enactment.

In its role as principal in the EUC program, the Department of Labor issued controlling guidance for the States and cooperating State agencies in the operating instructions set forth in the Attachments to GAL 4-92, dated November 27, 1991. Based on issues raised by the States and cooperating State agencies, GAL 4-92, Change 1 was issued February 10, 1992, providing changes to, and clarifications of, the operating instructions set forth in the Attachments to GAL 4-92. In order to assure knowledge to the public of these operating instructions, both of these documents were published in the **Federal Register** on February 14, 1992 (57 FR 5472).

GAL 4-92, Change 2 was issued February 13, 1992, providing changes to the operating instructions set forth in the Attachments to GAL 4-92 because of the amendments enacted February 7, 1992 (Pub. L. 102-244).

Therefore, GALs 4-92: 4-92, Change 1; and 4-92, Change 2 (or any subsequent or supplemental operating instructions) provide the essential operating instructions to the States, which administer the EUC program pursuant to agreements between the States and the Secretary of Labor.

Since the States and cooperating State agencies may not vary from the operating instructions in GALS 4-92; 4-92, Change 1; and 4-92, Change 2 (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor, GAL 4-92, Change 2 is published below as a continuation of assuring public notification of the required procedures.

Signed at Washington, DC on March 3, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

Classification UI/EUC

Correspondence Symbol TEUMI

Date: February 13, 1992.

Directive: General Administration Letter No. 4-92, Change 3

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator for Regional Management

Subject: Emergency Unemployment Compensation Act of 1991, as Amended by Public Law 102-244

1. *Purpose.* To provide implementing instructions for States and State Employment Security Agencies (SESAs) for the administration of the provisions of title I of the Emergency Unemployment Compensation Act of 1991, as amended by Public Law 102-244.

2. *References.* Title I of the Emergency Unemployment Compensation Act of 1991, Public Law 102-164, as amended by Public Law 102-182 and Public Law 102-244 (H.R. 4095); the Federal-State Extended Unemployment Compensation Act of 1970, as amended; 20 CFR part 615; GAL 4-92 and GAL 4-92, Change 1; UIPL 9-92 and Changes.

3. *Background.* Title I of the Emergency Unemployment Compensation Act of 1991 created the Emergency Unemployment Compensation (EUC) program. The EUC program, as established by Public Law 102-164, provided 13 or 20 weeks of benefits depending on the State's total unemployment rate or a combination of the State's insured unemployment rate and exhaustions. EUC is payable to individuals who have no rights to regular, extended, or additional benefits under any State or Federal law. Except where inconsistent with the operating instructions in GAL 4-92 (and changes thereto), the terms and conditions of State law which apply to claims for extended benefits and to the payment thereof shall apply to claims for EUC.

Public Law 102-164 was enacted November 15, 1991 and the EUC program became effective in all States for weeks of unemployment beginning on and after November 17, 1991. The Employment and Training Administration issued controlling guidance for the States and State agencies in the operating instructions in GAL 4-92, dated November 27, 1991 and GAL 4-92, Change 1, dated February 10, 1992.

Based on enactment of Public Law 102-244, which was signed by the President on February 7, 1992, this Change 2 to GAL 4-92 includes changes to, and clarifications of, the operating instructions set forth in the Attachments to GAL 4-92.

Title I of the Emergency Unemployment Compensation Act of 1991, as amended by Public Law 102-244, provides, for weeks of unemployment after the date of enactment (February 7, 1992), a maximum of 26 or, in the case of a State triggered "on" a "high unemployment period", 33 weeks of benefits for individuals who were, are, or will become eligible for a payment of EUC through a week of unemployment including June 13, 1992. In addition, the account established for the above individuals must be based on the lesser of 130 percent of their original claim for regular compensation entitlement or their average weekly benefit amount (as determined under 20 CFR 615.6(a)) times the maximum number of weeks available in the State.

For individuals establishing entitlement to EUC for a week of unemployment beginning after June 13, 1992, or for individuals paid EUC for the week including June 13, 1992, who do not claim consecutive weeks thereafter up to the week including July 4, 1992, an account reflecting a maximum 13 or 20 weeks of benefits times the individual's average weekly benefit amount may be payable depending on whether or not the State is triggered "on" a "high unemployment period", or if lesser, 100 percent of the individual's original regular State UI claim entitlement (reversion back to the provisions of Public Law 102-164). The amendments also provide that the ending date of the EUC program is extended to July 4, 1992.

The operating instructions in GAL 4-92, GAL 4-92, Change 1, and this Change 2 (including Attachments A, B, and C) are issued to the States and the cooperating State agencies and constitute the controlling guidance provided by the Department of Labor in its role as the principal in the EUC program. As agents of the United States, the States and the cooperating State agencies may not vary from the operating instructions in GAL 4-92 and GAL 4-92, Change 1 or this Change 2 (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor.

4. *Attachment A—Changes to Operating Instructions.*

a. On page 1 of Attachment A, change the heading of Section I. to read:

"I. *Section-by-Section Explanation of Title I of Public Law 102-164, as amended by Public Law 102-182 and further amended by Public Law 102-244.*"

b. In section I.B.5. of Attachment A (pg. 2), entitled *"Election."*, delete the phrase "in a 13 or 20 week period".

c. In section I.C.2.a. of Attachment A (pg. 2), change the phrase "100 percent" to read "130 percent".

Note: As provided below, and discussed in this Change 2, any individual filing a new EUC claim for a week of unemployment beginning after June 13, 1992, will have entitlement computed based on a reversion back to the 100 percent factor.

d. In section I.C.3. of Attachment A, entitled *"Applicable Limit."* (pgs. 2-3), change paragraph "a." (top of pg. 3) to read, "33, in the case of weeks beginning during a high unemployment period." Change paragraph "b." to read, "26 in the case of weeks not beginning during a high unemployment period."

In addition, add the following new paragraph "c.":

"c. Reduction For Weeks After June 13, 1992—In the case of weeks beginning after June 13, 1992—

(i) substitute 20 for 33 in paragraph a. and 13 for 26 in paragraph b., and

(ii) substitute 100 percent for 130 percent in paragraph a. in section I.C.2. [above—on pg. 2].

In the case of an individual who is receiving EUC for a week which includes June 13, 1992, the above provisions [(i) and (ii)] shall not apply in determining the EUC payable to such individual for consecutive weeks thereafter in which the individual meets the eligibility requirements of the Act."

Note: The above provision requires consecutive weeks after June 13, 1992 to the week of expiration of the program (July 4, 1992). Therefore, if an individual does not have consecutive weeks after the week including June 13, 1992, and before the week including the expiration date of the program, such individual must be recomputed in accordance with the provisions stated above (i.e., maximum of 13 or 20 weeks utilizing the 100 percent factor).

e. In section I.C.4. of Attachment A (pg. 3), entitled, *"No Reduction of Applicable Limit."*, add the following phrase at the beginning of the paragraph, "Except as provided in 3.c.," [above] and change the capitalized word "An" to "an".

f. In section I.C.8. of Attachment A (pg. 3), entitled *"Periods."*, delete the designation of paragraph "a.". Then, in the paragraph, change the phrase "20-week period" to read "high unemployment period" and substitute thereafter in the paragraph, the phrase "high unemployment" for "20-week". In addition, delete paragraph "b." entirely.

g. In section I.C.9. of Attachment A, entitled *"Special Rules."* (pg. 4), delete all of paragraphs "a." and "b." and replace with the following new paragraph "a.".

"a. *Minimum Duration.* A high unemployment period shall last for not less than 13 weeks."

In addition, redesignate paragraph "c." as paragraph "b." and replace the phrase "20-week period or a 13-week period" with the phrase "high unemployment period".

h. In section I.C.10. of Attachment A, entitled, *"Effective Dates."* (pg. 4), replace the language in paragraph "b." with the following:

"b. The program terminates July 4, 1992 and no new claims for EUC may be approved for any week of unemployment beginning after such date. Provided, however, that any individual paid EUC for the week including July 4, 1992, and who still has a remaining balance in his/her EUC account, may be paid EUC for consecutive weeks thereafter until such individual has no remaining balance or does not meet the eligibility requirements under the Act.".

i. In section I.C.12. of Attachment A, entitled *"Transitional and Special Rules."* (pg. 5), substitute for the phrase "20-week period", the phrase "high unemployment period", as appropriate.

j. In section I.G.2. of Attachment A, entitled *"Period of Eligibility."* (pg. 7), change the date in paragraph "b." from "June 13, 1992" to "July 4, 1992."

k. In sections II. and II.A., beginning on page 8, numerous references are made to a "20-week period" or a "13-week period". Throughout these sections, such phrases should be changed to reflect a "high unemployment period" or "not in a high unemployment period", or similar language as appropriate. In addition, the Table beginning on page 11 provides obsolete data but is not changed, as later data is available.

l. In section III.A., definition 3., "Period of Eligibility" (pgs. 12-13), the date of "June 13, 1992" should be changed to "July 4, 1992".

m. On page 15 of Attachment A, in the third paragraph under section III.B., change the "June 13, 1992" dates in the paragraph to "July 4, 1992".

n. In section III.C.3. of Attachment A (pg. 18), first paragraph, the date of "June 13, 1992" should be changed to "July 4, 1992".

o. In section III.E.1. of Attachment A (pg. 22), entitled *"Accounts." insert the following new paragraph "a." after the phrase "lesser of":*

"a. *For EUC claims filed for weeks beginning after February 7, 1992 through the week which includes June 13, 1992.* (i) 130 percent of the total entitlement to regular benefits (including dependents' allowances) payable to the individual with respect to the most recent benefit year, from which the individual received benefits, or

(ii) The maximum EUC payable in the State as prescribed by the applicable limit."

In the same section, redesignate existing paragraphs "a." and "b." as subparagraphs "(i) and (ii)". In addition, insert the following phrase as newly designated paragraph "b." and before newly designated subparagraph "(i)":

"b. *For EUC claims filed for a week beginning after June 13, 1992.*".

p. In section III.E.2. of Attachment A (pg. 22), entitled *"Maximum EUC Payable in a State—Applicable Limit."*, remove existing subparagraphs "a." and "b." and substitute the following new paragraphs "a." and "b.":

"a. *For EUC claims filed for weeks beginning after February 7, 1992 through the week which includes June 13, 1992.* (i) *Twenty-six weeks.* The maximum amount of EUC payable is *up to* 26 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that *are not* in a high unemployment period, or

(ii) *Thirty-three weeks.* The maximum amount of EUC payable is *up to* 33 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that *are* in a high unemployment period.

(iii) Any individual who files a new EUC claim or whose existing EUC claim has been redetermined under the provisions of paragraph a. in section III.E.1. and this section III.E.2., subparagraphs (i) and (ii), shall have the amount in his/her account reduced to be in accord with Section III.E.1.b. and this section III.E.2.b., if such individual does not have consecutive weeks of EUC paid after the week including June 13, 1992 and beginning before the week of expiration of the EUC program. *Provided,* any such individual, so redetermined, shall have their maximum account balance reduced by the amount of EUC paid for weeks prior to such week, but not below zero. If no balance remains, such individual shall not be entitled to any further EUC.

b. *For EUC claims filed for a week beginning after June 13, 1992.* (i) *Thirteen weeks.* The maximum amount of EUC payable is *up to* 13 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that *are not* in a high unemployment period, or

(ii) *Twenty weeks.* The maximum amount of EUC payable is *up to* 20 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that *are* in a high unemployment period."

5. *Attachment B—Fiscal Instructions.*

a. In section 1.b., add the following paragraph at the end of the Section (pg. 2) before section 2.:

State agencies will receive additional administrative funds to perform monetary redeterminations on current EUC claimants due to a change in trigger status (change to a "high unemployment period") and law changes (e.g., P.L. 102-244) through the contingency funding process. Staffyears earned for redetermination of EUC claims will be computed by using an MPU value of no more than 20 minutes. States have the option to use a lesser value MPU if they deem appropriate. This information should be included on line 5 of the regular UI-3 worksheet, Section B. States should show this calculation and the calculation for UCX redeterminations at the bottom of the additional costs worksheet. Staffyears used for this activity should be included on line 1, Section A.

6. *Action Required.* SESA Administrators shall:

a. Provide the above controlling guidance to appropriate staff.

b. Ensure that a public notice in the appropriate news media in the State is issued announcing the changes due to enactment of Public Law 102-244.

c. Ensure that current EUC claimants are notified of the changes and recalculate their EUC entitlement based on the amendments.

d. Review files to identify EUC claimants who have exhausted EUC.

e. Notify and advise EUC exhaustees of the new limits and recalculate EUC eligibility and/or process a reopened, additional or new claim, as appropriate.

f. Perform all other actions needed for proper payment of EUC to eligible individuals.

7. *Inquiries.* Direct questions to the appropriate Regional Office.

[FR Doc. 92-5717 Filed 3-10-92; 8:45 am]
BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-8797, et al.]

Proposed Exemptions; Edward S. Lane, D.D.S., Target Benefit Plan, 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 certain of 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 requests 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 application 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 FR 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.

Edward S. Lane, D.D.S. Target Benefit Plan (the Plan), Located in Memphis, Tennessee [Application No. D-8797].

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, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and 406(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) of the Act through (E) of the Code shall not apply to the past and continuing loan made by the Plan to Edward S. Lane, D.D.S. (Dr. Lane), a trustee of the Plan and a party in interest with respect to the plan, provided the following conditions are satisfied: (1) The Loan represents less than 25 percent of the assets of Dr. Lane's account (the Account) in the Plan; (2) the interest rate for the loan was at terms at least as favorable to the Plan as those required by a third party lender at the time the loan was entered into; (3) the loan is collaterized by real property having an appraised fair market value not less than 1½ times the principal amount of the loan; and (4) Dr. Lane is the only participant in the Plan to be affected by the transaction.

EFFECTIVE DATE: If this proposed exemption is granted, it will be effective December 31, 1990.

Summary of Facts and Representations

1. The Plan is a target benefit plan with four participants. As of December 31, 1990, the Plan had total assets of approximately $775,820. Of those assets, Dr. Lane's Account amounted to $759,637.

2. On July 31, 1980, a loan of $47,000 was made from the Memphis Periodontal Group, P.C. Profit Sharing Trust (the PS Plan) to Dr. Lane, a participant in the PS Plan. The loan was to be paid off in 240 equal monthly payments of principal and interest, beginning September 1, 1980. The interest rate for the loan was 13 percent.

3. On December 31, 1990, Dr. Lane sold ownership of the Memphis Periodontal Group, P.C. to his son and became the owner of the sole proprietorship, Edward S. Lane, D.D.S. The PS Plan and the then-existing target benefit plan were merged effective December 31, 1990, and Edward S. Lane, D.D.S. became the sponsor of the remaining Plan. The loan thus became an investment of the Plan.

4. The applicant represents that the original loan was made in accordance with the conditions contained in the statutory exemption contained in section 408(b)(1) of the Act. However, as of December 31, 1990, the employer sponsoring the Plan, Edward S. Lane, D.D.S., has been a sole proprietorship. As a result, Dr. Lane, as an owner-employee, was precluded under section 408(d) of the Act from taking a participant loan. Thus, the loan became a prohibited transaction under section 406 of the Act.[1]

5. Dr. Lane ascertained the loan terms required by a local bank, Home Federal Savings Bank (the Bank) of Memphis, Tennessee, at the time the loan was consummated. As of August 1, 1980, the Bank would have loaned the money to Dr. Lane at an interest rate of 12.75 percent per annum, plus a 3 percent commitment fee. The applicant represents that the interest rate of 13 percent paid to the Plan would provide a better return to the Plan over the duration of the loan than the terms required by the Bank.

6. The loan has been secured by real property (the Property) consisting of a condominium located at Unit #5, Yorkshire Gardens Condominiums, 5676 Quince #8, Memphis, Tennessee. The Deed of Trust evidencing the Plan's security interest in the Property was recorded with the Recorder of Deeds for Shelby County, Tennessee. The Property has been appraised by Mr. E. Roger Hansen, of Statewide Appraisal Service, an independent appraiser in Memphis, Tennessee, as having a fair market value of $56,500 as of December 1, 1991. This value is more than 1½ times the principal balance of the loan, which was $34,428.89 as of that date.

7. In summary, the applicant represents that the subject transaction has satisfied and will continue to satisfy the criteria of section 408(a) of the Act because: (1) The loan represents approximately 4.8 percent of the assets in the Account; (2) the interest rate on the loan exceeded the rate required by a third party lender at the time the loan was made; (3) the Property securing the loan has been appraised by a qualified independent appraiser as having a fair market value more than 1½ times the principal balance of the loan; and (4) Dr. Lane is the only Plan participant to be affected by the transaction, and he desires that the loan be continued as an investment of the Account.

Notice to Interested Persons: Because Dr. Lane is the only Plan participant to be affected by the transaction, it has been determined that it is not necessary to distribute this notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Ricks Exploration, Inc. 401(k), Trust (the Plan), Located in Oklahoma City, Oklahoma [Application No. D-8894].

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, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 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 by the Plan of a Guaranteed Investment Contract (the GIC) of Mutual Benefit Life Insurance Company (MBL) to Ricks Exploration, Inc. (Ricks), a party in interest with respect to the Plan, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GIC at the time of the transaction; (3) the Plan's independent fiduciary, PW Trust Company (PW) has determined that the proposed sales price is not less than the current fair market value of the GIC; and (4) PW has determined that the proposed transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. Ricks, the Plan's sponsor, is a corporation that engages in oil and gas exploration. It is headquartered in Oklahoma City, Oklahoma. The Plan is a Code section 401(k) defined contribution plan which had 29

[1] Although a loan between a plan and a party in interest may meet the statutory exemption under section 408(b)(1) of the Act when entered into, if the party in interest later becomes an owner-employee pursuant to section 408(d), the loan, as a continuing transaction, becomes a prohibited transaction, for which no relief is available under section 408(b)(1). The Department is providing no views herein as to whether the original loan met the conditions of section 408(b)(1).

participants and assets with a fair market value of approximately $50,411 as of November 7, 1991.

2. One of the investment options offered to participants under the Plan is a fixed income fund which includes the GIC issued by MBL. The GIC was issued by MBL on April 1, 1991 as Contract No. GA-8242, and provides a guaranteed rate of interest of 7.25%. The GIC has a maturity date of March 31, 1994. As of December 31, 1991, the par value of the GIC (face value plus accrued interest) was $4,364.04.

3. On July 16, 1991, MBL by court order was placed in conservatorship under the supervision of the New Jersey Commissioner of Insurance. As a result of the conservatorship, all of the assets of MBL have been frozen. The applicant represents that as a result of this development, Ricks is concerned about MBL's ability to honor its contractual obligations under the GIC.

4. Ricks proposes to protect the interests of the affected participants by purchasing the GIC from the Plan at face value plus accrued interest through the date of purchase, at the GIC's guaranteed interest rate of 7.25%. PW, the Plan's independent trustee, has determined that the proposed purchase price for the GIC equals or exceeds the current fair market value of the GIC in light of the financial condition of MBL. PW, an affiliate of PaineWebber Incorporated, has been retained by the Plan as independent fiduciary to review the proposed transaction in order to determine whether the transaction is appropriate for the Plan.

5. The applicant represents that it has reviewed MBL's rating as an insurer and as an issuer of GICs. As of September 30, 1991, A.M. Best Company rated MBL as NA-10, Under State Supervision; Duff & Phelps Credit Rating Company suspended MBL's rating; and Moody's Investors Service rated MBL as Caa—Very Poor. PW represents that under these circumstances, it has determined that the proposed sale of the GIC to Ricks is appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The Plan will receive cash for the GIC in the amount of the face value of the GIC plus accrued interest as of the sale date, which PW has determined to be equal to or in excess of the fair market value of the GIC; (2) the transaction will enable the Plan to avoid any risk associated with the continued holding of the GIC and to redirect assets to safer investments; (3) the Plan will not incur any expenses related to the transaction; and (4) PW has determined that the proposed sale of the GIC by the Plan to Ricks at the proposed price is in the best interests of the participants and beneficiaries of the Plan.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Hi-Tech Communications Defined Benefit Trust, Located in Dickinson, Texas [Exemption Application No. D-8858].

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, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale, for not less than $79,000, of certain real property (the Property) by the Hi-Tech Defined Benefit Trust (the Plan) to Hi-Tech Communications, Inc. (Hi-Tech), the employer and sponsor of the Plan, provided that: (a) The sales price of the Property will be based on an appraisal performed by an independent, qualified appraiser; (b) the terms of the sale will permit the Plan to receive cash in the amount of $79,000, or the fair market value at the time of the sale, whichever is higher; and (c) the Plan will incur no real estate commissions or fees in connection with the sale.

Summary of Facts and Representations

1. Hi-Tech is located in Dickinson, Texas and is engaged in the business of installing, maintaining, and selling microwave communications systems and equipment. Its customers include several domestic and overseas corporations and various governmental bodies such as the United States Coast Guard and the United States Forest Service.

2. The Plan is a defined benefit plan created through the termination and merger of the Hi-Tech Communications, Inc., Profit Sharing Plan and the Hi-Tech Communications, Inc., Defined Benefit Plan. All assets of the two previous plans were transferred to the Plan on October 1, 1989. As of October 1, 1990 the Plan's total assets were $255,766 and its total number of participants were eighteen. The trustees of the Plan (the Trustees) are Paul V. Duffy, President of Hi-Tech, and Billie J. Duffy, Secretary and Treasurer of Hi-Tech. Investment decisions for the Plan are made solely by the Trustees.

3. Among the assets of the Plan is the Property which consists of 6.472 acres of unimproved land. The Property is located on the corner of Avenue F and 17th Street in League City, Texas. The Plan purchased the Property from an unrelated third party on April 17, 1990 for $52,831. The applicant represents that the Plan purchased the Property because they believed that a multi-million dollar automobile raceway was to be constructed at a site near the Property.[2] Subsequent to the purchase, however, the raceway's sponsor permanently withdrew plans to construct the raceway due to community opposition to its construction.

The applicant represents that once plans to construct the raceway were abandoned, the Plan has no other use for the Property. In addition, the Plan was required to pay holding costs associated with the Property in the amount of $2,490 per year. For these reasons the Trustees of the Plan decided it was in the best interests of the participants and beneficiaries of the Plan to divest the Property from the Plan's assets. The employee and sponsor of the Plan has agreed to purchase the Property from the Plan.

4. On December 21, 1990, after the raceway's sponsor permanently withdrew plans to construct the raceway, the Property was appraised by Tarin & Coon, Inc. (Tarin & Coon) real estate appraisers of Houston, Texas. The applicant represents that Tarin & Coon is qualified to conduct real estate sales and appraisals and is independent of the sponsor and the Trustees of the Plan. Tarin & Coon inspected the Property, the area surrounding the Property and comparable property sales in the area to determine the fair market value of the Property. Tarin & Coon placed the Property's fair market value at $79,000 as of December 11, 1990.

5. The Plan proposes to sell the Property to Hi-Tech for cash in the amount of $79,000, or the fair market value at the time of the sale, whichever is higher. The applicant represents that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries because: (a) The terms of the sale will permit the Plan to receive cash proceeds equivalent to the

[2] The Department expresses no opinion herein as to whether the acquisition of the Property constitutes a violation of any of the provisions of part four of Title I.

current fair market valuation of the Property; (b) the sale will enable the Plan to divest itself of an asset producing no income and avoid further holding costs associated with the Property; (c) the Plan will incur no real estate commissions or fees in connection with the sale; and (d) the sale will enable the Plan to improve its liquidity position and enable diversification of the Plan's investments into income-producing assets. 6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price of the Property will be based on an independent appraisal; (c) the terms of the sale will permit the Plan to receive cash in the amount of $79,000, or the fair market value at the time of the sale, whichever is higher; (d) the sale will enable the Plan to divest itself of an asset producing no income and avoid further holding costs associated with the Property; (e) the Plan will incur no real estate commissions or fees in connection with the sale; (f) the sale will allow the Plan to improve it liquidity position and enable diversification of the Plan's investments into income-producing assets; and (g) the applicant represents that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Jean Anderson of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Prison Fellowship Ministries; Prison Fellowship International; and Justice Fellowship, Located in Reston, Virginia, Application Nos. D-8816, D-8817, and D-8818.

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, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Prison Fellowship Ministers Unit Benefit Pension Plan (the Plan) of a note (the Note) to the Pension Fellowship Ministries, one of the contributing employers to the Plan and the holder of another note secured by the same collateral that secures the Note, provided that the following conditions are met: (a) The fair market value of the Note is determined by an independent qualified appraiser, (b) the Plan receives on the date of the sale the greater of the fair market value of the Note, or the principal balance plus accrued interest due under the Note; and (c) the sale will be for cash and the Plan will pay no costs of expenses associated with the transaction.[3]

Summary of Facts and Representations

1. Prison Fellowship Ministries (PFM), Prison Fellowship International (PFI), and Justice Fellowship (JF) are public charities and non-profit corporations incorporated under the laws of the District of Columbia with offices in Reston, Virginia. It is represented that the Internal Revenue Service has determined that PFM, PFI, and JF are exempt from Federal income tax, as organizations described in section 501(c)(3) of the Code. PFM, PFI, and JF employ individuals to assist the church in the prisons and in the community. PFM provides assistance to prisoners and ex-prisoners and their families and promotes biblical standards of justice. PFI shares the same purpose as PFM but on an international scale. JF promotes biblical standards of justice in the American criminal justice system.

For their eligible employees, PFM, PFI, and JF each sponsor the Plan. As employers any of whose employees are covered by a plan, PFM, PFI, and JF (collectively, the Employers) are parties in interest with respect to the Plan, as defined in section 3(14)(C) of the Act.

2. The Plan is a defined benefit pension plan which, as of December 31, 1990, had assets of approximately $923,393. There are 146 participants and beneficiaries of the Plan, including active employees, retirees, and vested terminated participants. The Plan holds its assets in a common trust (the Trust). The trustees of the Trust (the Trustees) also serve on the Board of Directors of PFM. The Trustees are Dois Rosser Jr. Jack Eckerd, and Edwin J. Simcox.

3. On September 30, 1988, the Trustees, on behalf of the Plan, entered into a five (5) year loan agreement (the Loan) with third party obligers. The principal amount of the loan was $340,000 which at that time constituted approximately 75.5% of the assets of the Plan. The interest rate on the note was 10.5%. Payments of interest only in the amount of $2,975 are due monthly with the principal of $340,000 due on September 30, 1993. The Loan was secured by real property and improvements known as South Towne Apartment Complex (the Property) located in Fulton County, Georgia and by the assignment of rents from the Property. The Property consists of 18.5 acres of land which are improved with 37 buildings containing 148 one and two bedroom apartments. The Loan was evidenced by the Note. The Note was one of two five (5) year notes executed on the same day with the same third party obligors under identical interest rates and other terms, except that the principal amount of the other note was $460,000. Both the notes were secured by the same Property. The holder of the other note is PFM.[4]

4. The Employers decided to terminate the Plan, effective December 31, 1990. Notice of termination was filed March 27, 1991. In connection with the Plan's termination, all of the Plan's assets will be liquidated, including the Note. Accordingly, it is proposed that the Plan sell its interest in the Note to PFM for cash in an amount equal to the greater of (a) the current principal balance of the Note, plus accrued interest at the time of the sale, or (b) the fair market value of the Note on the date of the sale. The fair market value of the Note constitutes approximately 36.8% of the total assets of the Plan, as of September 3, 1991.

It is represented that the assets of the Plan, including the cash proceeds from the sale of the Note, will be distributed to the participants upon termination of the Plan, and will be available for investment in other assets or for rolling over into individual retirement accounts. The proposed transaction is in the interest of participants in that it would avoid: (a) The forced sale of the Note for a reduced price, and (b) the distribution in kind of unmarketable fractional interests in the Note.

PFM represents that it will pay all the costs associated with the sale of the Note, and that the Plan will not pay any of the costs involved in the proposed transaction.

[3] For purposes of this proposed exemption references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[4] The Department notes that the decisions of the Trustees, on behalf of the Plan, in connection with the making of the Loan, the holding of the Note, and the operation of the Plan's investment portfolio under circumstances where PFM, a party in interest with respect to the Plan, was a holder of another note secured by the same collateral, are governed by the prohibited transaction provisions and fiduciary responsibility requirements of part 4, subpart B, of title I. The Department expresses no opinion, herein, as to whether any of the relevant provisions of part 4, subpart B, of title I have been violated regarding such investment and no exemption for such provisions is proposed herein.

5. The value of the Note has been determined by independent, qualified appraisers, Henry J. Wise, MAI, and Thomas A. Plunkett of Pritchett, Ball & Wise, Inc. (formerly, Pritchett, Ball, and White, Inc.) of Atlanta, Georgia. According to the appraisers, the fair market value of the Note, as of August 1, 1991, is $289,000.

In determining the value of the Note, the appraisers reviewed a April 16, 1991 appraisal of the fee simple value of the Property, prepared by Joe W. Ball, M.A.I. and Thomas A. Plunkett of the same firm. The April 16th appraisal determined the value of the Property to be $1,320,000. After inspecting the Property and reviewing its rent roll and operating data for the first six months of 1991, the appraisers concluded that there had been no significant change in the value of the Property and that the fair market value of the Property, as of August 1, 1991, remained $1,320,000. It is represented that the principal value ($340,000) of the Note represents 25.8% of the value of the Property and that the amount of the entire debt ($800,000) on the Property represents only 60.6% of its value.

In discounting the face value of the Note to present value, the appraisers selected a rate of 15%. In setting the discount rate, the appraisers took into consideration the following factors: (a) The nature and condition of the real estate market, (b) the quality and condition of the collateral, including the value of the Property and the assignment of the rents, (c) the significant decrease in the value of the Property since the Plan acquired the Note, (d) the financial condition of the obligors, and (e) the fact any third party purchaser would share a first mortgage interest in the collateral with PFM. In the opinion of the appraisers, the discount rate selected is reasonable, even though PFM is not an unrelated third party purchaser, because in acquiring the Note, PFM would not receive any additional benefits from having a 100% interest in the collateral.

6. In summary, the Employers, as the applicants, represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(a) The sale of the Note is a one time transaction for cash;

(b) the Plan will receive the greater of the fair market value of the Note or the principal balance (plus accrued interest) due under the Note;

(c) the sales price is based on a fair market appraisal of the Note as prepared by independent, qualified appraisers;

(d) the Plan will pay no commissions or fees in regard to the transactions; and

(e) the Plan participants will receive timely distributions of their accrued benefits from the cash proceeds of the sale of the Note.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (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;

(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; and

(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 6th day of March 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-5898 Filed 3-10-92; 8:45 am]

BILLING CODE 4510-29-M

[Application Number T-7940]

Amendment to Prohibited Transaction Exemption (PTE) T88-1 Involving Class Exemptions for the Thrift Savings Fund

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Adoption of amendment to PTE T88-1.

SUMMARY: This document amends PTE T88-1. PTE T88-1 adopted, for purposes of the prohibited transaction provisions of section 8477(c)(2) of the Federal Employees' Retirement System Act of 1986 (FERSA or the Act), certain prohibited transaction class exemptions (the Class Exemptions) which were granted pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA). The amendment affects participants and beneficiaries of the Thrift Savings Fund (the Fund), a fund established pursuant to provisions of FERSA, and parties in interest with respect to the Fund.

EFFECTIVE DATE: The amendment to PTE T88-1 is effective as of January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, (202) 523-8971 (this is not a toll-free number), or Cynthia Caldwell Weglicki, Plan Benefits Security Division, Office of the Solicitor, (202) 523-9592 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 3, 1991, notice was published in the Federal Register (56 FR 25140) of the pendency before the Department of Labor (the Department) of a proposed amendment to PTE T88-1 (53 FR 52383, December 29, 1988). PTE T88-1 adopted, for purposes of the prohibited transaction provisions of section 8477(c)(2) of FERSA, certain prohibited transaction class exemptions which were granted pursuant to section 408(a) of ERISA.[1] The Class Exemptions were

[1] The following class exemptions were adopted in Prohibited Transaction Exemption T88-1: PTE 75-1 (40 FR 50845, October 31, 1975), exempting certain classes of transactions involving employee benefit plans and certain broker-dealers, reporting dealers

Continued

adopted only to the extent that they provide exemptive relief from the restrictions of section 406(b) of ERISA or subsections thereunder, which are parallel to those of section 8477(c)(2) of FERSA.

The amendment adopted by this notice was proposed pursuant to the authority of the Secretary of Labor (the Secretary) established in section 8477(c)(3) of FERSA. Subparagraph (E) of section 8477(c)(3) provides that the Secretary may adopt exemptions granted for any class of fiduciaries or transactions under section 408(a) of ERISA for purposes of section 8477(c)(2) of FERSA, upon publication of notice in the **Federal Register**. The Department proposed the amendment on its own motion in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), specifically section 2570.32 of that Procedure. The notice of pendency gave interested persons an opportunity to comment on the proposal. No public comments were received.

The amendment modifies PTE T88-1 to include, for purposes of applying the Class Exemptions to the prohibitions of section 8477(c)(2) of FERSA, any amendments of the Class Exemptions which are granted pursuant to section 408(a) of ERISA unless the Department expressly determines, as part of the proceeding to amend the class exemption under consideration, that the amendments shall not apply for FERSA purposes.[2]

and banks; PTE 78-19 (43 FR 59915, December 22, 1978), exempting certain transactions involving insurance company pooled separate accounts; PTE 80-26 (45 FR 28545, April 29, 1980, technically corrected at 45 FR 35040, May 23, 1980), exempting certain interest free loans to employee benefit plans; PTE 80-51 (45 FR 49709, July 25, 1980, technically corrected at 45 FR 52949, August 8, 1980), exempting certain transactions involving bank collective investment funds; PTE 82-63 (47 FR 14804, April 6, 1982, technically corrected at 47 FR 16437, April 16, 1982), exempting certain payments of compensation to plan fiduciaries for the provision of securities lending services; and PTE 86-128 (51 FR 41686, November 18, 1986, amended at 52 FR 8676, March 19, 1987), exempting certain securities transactions involving employee benefit plans and broker-dealers. Subsequent to the adoption of PTE T88-1, PTE 78-19 and PTE 80-51 were amended and redesignated as PTE 90-1, 55 FR 2891, January 29, 1990, and PTE 91-38, 56 FR 31966, July 12, 1991, respectively. As a result of the amendment adopted with today's notice, both will be applicable to FERSA.

[2] The Department notes that PTE T88-1 adopted the Class Exemptions only to the extent that they provide exemptive relief from the restrictions of section 406(b) of ERISA or subsections thereunder, which are parallel to those of section 8477(c)(2) of FERSA. Therefore, an amendment to a Class Exemption will be applicable with respect to FERSA only to the extent that the amendment relates to the provision of exemptive relief from the restrictions of section 406(b) of ERISA.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption from the prohibitions of section 8477(c)(2) of FERSA, pursuant to section 8477(c)(3) of FERSA, does not relieve a fiduciary from any other provisions of FERSA, including, but not limited to any prohibited transaction provisions to which the exemption does not apply, and the general fiduciary responsibility provisions of section 8477(b) of FERSA. Among other things, this section requires a fiduciary to discharge his duties respecting the Fund solely in the interest of participants and beneficiaries and in a prudent manner in accordance with section 8477(b)(1)(B) of FERSA.

(2) Before an exemption may be granted under section 8477(c)(3) of FERSA, the Department must find that the exemption is administratively feasible, in the interests of the Fund and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the Fund.

(3) The amendment is supplemental to, and not in derogation of any other provisions of FERSA.

(4) The fact that a transaction is subject to an administrative exemption pursuant to section 8477(c)(3) of FERSA is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The Class Exemptions are applicable to particular transactions only if the conditions specified in the particular exemption are satisfied.

(6) The Department's record with respect to any amendment to a class exemption, including, but not limited to applications for such amendment, notices of the proposal of the amendment, public comments received by the Department with respect to such proposals, and testimony which was part of any public hearing held with regard to any of the amendments and notices of the granting of the amendments shall constitute the record for purposes of the adoption of this amendment.

Exemption

Accordingly, under the authority of section 8477(c)(3) of FERSA and in accordance with the procedures set forth in 29 CFR part 2570 subpart B, the Department is amending PTE T88-1 as set forth below.

Section II, Specific Terms, is amended to read as follows: For purposes of applying the Class Exemptions to the prohibitions of section 8477(c)(2) of FERSA, (1) Any amendment to one of the Class Exemptions granted pursuant to section 408(a) of ERISA and the procedures in 29 CFR part 2570, subpart B (55 FR 32736, 32847, August 10, 1990) relating to the relief provided from the prohibitions of section 406(b) of FERSA or subsections thereunder, shall be deemed to apply for purposes of FERSA, unless the Department expressly determines, as part of the proceeding to amend such class exemption, that the amendment is not applicable with respect to the Fund. (2) Any reference in the Class Exemptions to "section 406," "section 406 of the Act," "section 406(b)" or "section 406(b) of the Act" shall be deemed to apply to section 8477(c)(2) of FERSA. Reference to subsections of section 406(b) of ERISA shall be deemed to apply to the corresponding subsection of section 8477(c)(2) of FERSA. Thus, reference to "section 406(b)(1)" shall mean section 8477(c)(2)(A) of FERSA; reference to "section 406(b)(2)" shall mean section 8477(c)(2)(B) of FERSA; and reference to "section 406(b)(3)" shall mean section 8477(c)(2)(C) of FERSA. (3) The term "fiduciary" as used in the Class Exemptions shall be construed to mean "fiduciary" as defined in section 8477(a)(3) of FERSA. (4) The terms "employee benefit plan(s)" and "plan(s)" shall be construed to mean "Thrift Savings Fund" as established under section 8437 of FERSA. (5) The term, "party in interest" shall be construed to mean "party in interest" as defined in section 8744(a)(4) of FERSA. (6) Reference in the Class Exemptions to "section 502(i) of the Act" shall be deemed to apply to section 8477(e)(1)(B) of FERSA. (7) References in the Class Exemptions to "subsections (a)(2) and (b) of section 504 of the Act" shall be deemed to apply to section 8478a of FERSA. (8) References in the Class Exemptions to section 4975 of the Internal Revenue Code (the Code) or subsections thereunder are not applicable with respect to the Fund, pursuant to sections 4975(g) and 414(d) of the Code. (9) For purposes of section I(b)(2) of PTE 86-128, the term "relative (as defined in section 3(15) of ERISA)" shall mean any spouse, ancestor, lineal descendant, or spouse of a lineal descendant. (10) For purposes of PTE 78-19 (redesignated as PTE 90-1, 55 FR 2891, January 29, 1990) and PTE 80-51 (redesignated as PTE 91-38, 56 FR 31966, July 12, 1991), the phrase "by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act," shall mean "by reason of a relationship to a service provider

described in section 8477(a)(4)(F), (G), (H), (I) or (J) of FERSA."

Signed at Washington, DC, this 5th day of March, 1992.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefit Administration, U.S. Department of Labor.

[FR Doc. 92-5699 Filed 3-10-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-19]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by April 10, 1992. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0052), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-9897.

Reports

Title: NASA FAR Supplement, Part 18-27, Patents, Data and Copyrights.
OMB Number: 2700-0052.
Type of Request: Extension.
Frequency of Report: As reportable action occurs.
Type of Respondent: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Number of Respondents: 2,247.
Responses per Respondent: 1.2.
Annual Responses: 2,696.
Hours per Response: 8.
Annual Burden Hours: 21,568.
Abstract-Need/Uses: Records and reports regarding patents and data are required to comply with statutes and the OMB and NASA implementing regulations.

Dated: March 5, 1992.

D. A. Gerstner,

Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 92-5652 Filed 3-10-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by April 10, 1992.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: International Fellows Pilot Program.
Frequency of Collection: One time.
Respondents: State or local governments; non-profit organizations.
Use: Guidelines instructions and applications elicit relevant information from arts organizations that apply for funding under specific International Program catagories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.
Estimated Number of Respondents: 100.
Average Burden Hours per Response: 12.
Total Estimated Burden: 1,200.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92-5650 Filed 3-10-92; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #1 Section) to the National Council on the Arts will be held on March 18-19, 1992 from 9 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of

section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-5739 Filed 3-10-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross-Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

NAME: Special Emphasis Panel in Cross-Disciplinary Activities.

DATE AND TIME: March 23, 1992 8:30 a.m. to 5 p.m.

PLACE: National Science Foundation 1800 G. Street, NW., Washington, DC 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON: John C. Cherniavsky, Acting Head, Office of Cross-Disciplinary Activities, Room 436, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7349.

PURPOSE OF MEETING: To provide advice and recommendations concerning research proposals submitted to NSF for financial support.

AGENDA: Panel to review and evaluate research proposals.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: March 5, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-5613 Filed 3-10-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-528-OLA-3, 50-529-OLA-3, 50-530-OLA-3, ASLBP No. 92-654-01-OLA-3 (Automatic Closure Interlock for Shutdown Cooling Valves)]

Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3); Cancelling Prehearing Conference

March 4, 1992.

Please take notice that the prehearing conference in the above-identified proceeding scheduled for March 24, 1992, in Phoenix, Arizona, has been cancelled.

The Petition for Leave to Intervene and Request for Hearing submitted by Allan L. Mitchell and Linda E. Mitchell, dated November 25, 1991, has been denied by the Licensing Board in view of Petitioners' failure to comply with the Licensing Board's prehearing Order issued on January 2, 1992. The Licensing Board dismissed Petitioners from this proceeding and terminated the proceeding in a Memorandum and Order entered on March 4, 1992.

Issued at Bethesda, Maryland, this 4th day of March 1992.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 92-5681 Filed 3-10-92; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 39—Licenses and Radiation Safety Requirements for Well Logging.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every five years. Reports are submitted as events occur.

5. Who will be required or asked to report: Applicants for and holders of specific licenses authorizing the use of licensed radioactive material in well logging.

6. An estimate of the number of responses: An average of slightly over 10 annually per respondent for 85 respondents. The estimated total number of responses annually for the industry is 863.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 0.3 hours per response for reports, plus approximately 214 hours annually per recordkeeper. The industry total burden is 18,419 hours annually.

8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: NRC regulations in 10 CFR part 39 establish radiation safety requirements for the use of radioactive material in well logging operations. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0130), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084. The NRC Clearance officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 26th day of February 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official, for Information Resources Management.

[FR Doc. 92-5675 Filed 3-10-92; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S): (1) *Collection title:* Repayment of Debt.

(2) *Form(s) submitted:* ID–22 and G–145.

(3) *OMB Number:* 3220–0165.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Revision of currently approved collection.

(6) *Frequence of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 225.

(9) *Total annual responses:* 225.

(10) *Average time per response:* .053 hours.

(11) *Total annual reporting hours:* 12.

(12) *Collection description:* Section 2 of the Railroad Unemployment Insurance Act (RUIA) provides unemployment and sickness benefits for qualified railroad workers. When the RRB determines that an overpayment of RUIA benefits has occurred, it initiates prompt action to notify the claimant of the overpayment and to recover the amount owed the RRB. The collection obtains information needed by the RRB to allow for the repayment of the amount owed by the claimant by means of a credit card, in addition to the customary form of payment by check or money order.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Officer Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–5673 Filed 3–10–92; 8:45 am]

BILLING CODE 7905–01–M

SECURITES AND EXCHANGE COMMISSION

[Release No. 34–30445; File No. SR–Amex–91–25]

Self-Regulatory Organizations; the American Stock Exchange, Inc.; Order Approving Proposed Rule Change, Granting Accelerated Approval to Amendment No. 1 and Notice and Order Granting Accelerated Approval to Amendment No. 2 Relating to New Listing Standards for an Emerging Company Marketplace

March 5, 1992.

I. Introduction

On October 1, 1991, the American Stock Exchange ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Amex's Company Guide to add a new section establishing listing criteria for an Emerging Company Marketplace ("ECM"). The ECM would be a new marketplace designed to accommodate the listing of companies which are currently too small to meet the Exchange's regular listing criteria. Notice of the proposal appeared in the **Federal Register** on October 30, 1991.[3] The Commission received four comment letters regarding the proposal rule change.[4] On February 4, 1992, the Amex amended the proposal.[5] Notice of that amendment appeared in the **Federal Register** on February 13, 1992.[6] The Commission received one comment letter on the amended proposal.[7] Thereafter, the Amex further amended the proposal on February 18, 1992.[8] This order approves the proposal.

II. Description of the Proposal

A. Overview

The ECM would consist of a new "junior" tier of listed securities that would not meet the Amex's current listing standards, but would otherwise be subject to many of its Exchange's regulatory requirements (*e.g.*, last sale reporting, trading and specialist allocation rules, certain corporate governance requirements, and surveillance procedures). The Amex believes that enabling these smaller companies, most of which are trading currently in the over-the-counter ("OTC") market,[9] to list their equity securities on the Amex would provide them with the opportunity to have their securities traded in an auction market and would raise their profits in the investment community.

B. Initial and Continued Listing Criteria

The proposed ECM listing criteria are comparable to the present eligibility standards for NASDAQ/non-NMS securities, but with more stringent

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] Securities Exchange Act Release No. 29851 (October 23, 1991), 56 FR 61288.

[4] See letters from Thomas S. Sayles, Commissioner of Corporations, State of California, Department of Corporations, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 8, 1992; Stephen D. Hickman, Secretary, National Association of Securities Dealers, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 16, 1992; Robert M. Lam, Chairman, Pennsylvania Securities Commission, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 21, 1992; and Richard D. Latham, Securities Commissioner, State of Texas, State Securities Board, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated February 4, 1992. See *infra* notes 41–55 and accompanying text for a discussion of the specific comments.

[5] Amendment No. 1 amends: (1) Amex Rule 462, concerning margin, to require 100 percent maintenance margin for ECM securities (unless the securities would satisfy the criteria for inclusion in the Federal Reserve Board's Over-the-Counter Margin List); and (2) the text of the Company Guide to clarify that: (a) the numerical criteria for ECM securities are mandatory requirements that will be applied strictly and not waived; and (b) that the Exchange will delist the securities of any issuer if those securities fail to remain "eligible securities" under the Consolidated Tape Plan. The Amendment also clarifies that transactions in ECM stocks will be consolidated through the Consolidated Tape Association ("CTA") on a real time basis.

[6] Securities Exchange Act Release No. 30348 (February 6, 1992), 57 FR 5280.

[7] See letter from Thomas S. Sayles, Commissioner of Corporations, State of California, Department of Corporations, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated February 20, 1992.

[8] Amendment No. 2 revises the text of the Company Guide in three respects. First, the text will be clarified to state that the public float requirement will be calculated exclusive of the holdings of officers, directors, controlling shareholders and other concentrated or family holdings. Second, the text will reflect that the term "capital and surplus" refers to stockholders' equity. Finally, the text will state that the Exchange will delist the issues of any company which fails to take appropriate steps to ensure that no ECM-listed securities are sold in its behalf in reliance upon the exemption from state securities registration which is otherwise available to companies listed on the Exchange.

[9] The term "OTC market" encompasses all non-exchange traded securities. It is composed of several distinct sub-groups of securities, including securities that are traded in the NASDAQ system [NASDAQ securities may be designated as National Market System ("NMS") securities, and thus subject to real-time trade reporting, or as non-NMS securities], securities that are quoted on the NASD's Bulletin Board Service, and securities quoted in the Pink Sheets. The Bulletin Board Service provides a real-time quotation medium for OTC securities that are not included in the NASDAQ system. The Pink Sheets, which are distributed by the National Quotation Service of the National Quotation Bureau, Inc., provide quotations and the names of brokers and market-makers for many OTC equity securities that are not quoted on NASDAQ.

public float and market value requirements. The proposed ECM criteria are described below.[10]

1. Numerical Listing Criteria

a. Basic Criteria. Under the Amex proposal, companies presently traded in the NASDAQ system)[11] and currently satisfying the National Association of Securities Dealers, Inc.'s ("NASD") standards for continued inclusion on NASDAQ are eligible to apply for a listing on the ECM if they also have a public float of at least 250,000 shares)[12] and outstanding shares with a total market value of at least $2,500,000. Companies that are not presently trading on NASDAQ, but that meet the NASDAQ initial eligibility criteria, would be eligible to apply for a listing on the ECM if they have a public float of at least 250,000 shares and outstanding shares with a total market value of at least $2,500,000. Amex ECM listing standards would require at least 150,000 shares in public float and $1,500,000 in minimum market value more than current NASDAQ/non-NMS standards.

The Amex believes that companies with a higher aggregate market value generally have a more significant investor following and a greater demonstrated ability to raise necessary capital. Consequently, the Amex believes that requiring distribution and market value criteria higher than the comparable NASDAQ standards should help assure that only those issues that already have attracted significant investor interest, and thus are likely to benefit from auction market trading, would be eligible for an ECM listing. The Amex believes that these companies are often research and development-type ("R&D") companies which issue large numbers of shares to finance their growth. Moreover, the Amex states that its proposed criteria reflect its judgment that, in cases where companies have a large public distribution and a high market value of shares, the "price per share" and "capital and surplus"[13] criteria are less important as indicators of future viability.

b. Alternate Criteria. In addition to the basic criteria, the Amex proposes separate alternate criteria for companies presently traded on NASDAQ and for companies not presently traded on NASDAQ. For companies traded on NASDAQ, the Amex proposes a higher capital and surplus requirement and a lower minimum price per share. Similarly, for companies not presently traded on NASDAQ, the Amex proposed lower total assets and minimum price per share requirements, with higher public float and minimum market value requirements.[14] For instance, if an issuer is presently trading on NASDAQ and fails to meet one of the ECM criteria applicable to these issuers (*e.g.*, the issuer's security is currently trading at a price below $1), then the issuer would be required to satisfy the alternate criteria for companies presently traded on NASDAQ. Similarly, if an issuer is not presently trading on NASDAQ and fails to meet any of the criteria applicable to these companies (*e.g.*, the market value of the issuer's outstanding shares is not at least $2,500,000), then the issuer would have to meet the alternate listing criteria for companies not presently traded on NASDAQ.

c. Other Listing Criteria and Amex Review Process. Potential ECM issuers would be subject to a two-tiered screening process. First, as is the case with any potential candidate for a regular Exchange listing, financial analysts in the Exchange's Corporate Finance and Analysis Department would review issuers seeking an ECM listing to determine whether they meet the numerical criteria. The Exchange's proposed numerical criteria, whether basic or alternative, would be mandatory standards that must be satisfied by an issuer in order to be eligible for an ECM listing.[15] Upon a favorable recommendation (*i.e.*, the applicant satisfies the relevant numerical criteria), the application of the ECM candidate would be submitted to a new "Blue Ribbon" Committee to be appointed by the Exchange for the sole purpose of making final listing determinations on ECM issuers. The Blue Ribbon Committee would evaluate the prospects and suitability of each potential ECM issuer for auction market trading by considering such factors as: the nature of the company's business; its commercial prospects and future outlook; the reputation of its management; its historical record and pattern of growth; and its financial integrity. The Exchange states that members of the Blue Ribbon Committee would have expertise in evaluating the prospects and trading characteristics of small issuers.[16]

2. Maintenance Criteria

In order to satisfy the Amex's proposed criteria for continued listing on the ECM ("maintenance criteria"), ECM issuers must meet the present NASDAQ eligibility standards for continued inclusion and also have a public float of at least 250,000 shares and outstanding shares with a total market value of at least $500,000.[17] As with the initial ECM listing criteria, the Amex proposes alternate maintenance criteria for ECM issuers with greater capital and surplus and a higher market value for publicly-held shares, but which have a lower minimum price per share.[18]

3. Delisting Procedures

As with its initial listing criteria, the Amex's maintenance criteria for ECM issuers would be enforced strictly by the Exchange. This, if an ECM-listed company failed to adhere to the maintenance listing criteria, the Exchange would promptly notify that

[10] Exhibit A to this approval order sets forth the proposed numerical ECM initial and maintenance listing criteria.

[11] Current NASDAQ non-NMS standards for initial inclusion are: total assets of $4,000,000; capital and surplus of $2,000,000; a minimum price per share of $3; minimum market value of publicly-held shares of at least $1,000,000; 300 public shareholders; public float of at least 100,000 shares; and at least two market makers registered to trade in the issue. Current NASDAQ non-NMS standards for continued inclusion are: total assets of $2,000,000; capital and surplus of $1,000,000; a minimum price per share of $1 (or $1,000,000 in market value and capital and surplus of $2,000,000); a minimum market value of publicly-held shares of at least $200,000; 300 public shareholders; public float of at least 100,000 shares; and at least two market makers registered to trade in the issue. See NASD By-Laws, Schedule D.

[12] The public float is the total number of publicly-held outstanding shares of a particular issue. For the purposes of the ECM criteria, this requirement will be calculated exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings. See Amendment No. 1. A concentrated holder is a holder of 5 percent or more of a security. See Distribution and Trading Information Form (ECM-2).

[13] For the purposes of the ECM criteria, the terms "capital and surplus" refer to stockholders' equity. See Amendment No. 2.

[14] See Exhibit A for a complete description of the alternate listing criteria. The Amex believes that smaller companies meeting these alternate criteria may be bona fide companies worthy of an ECM listing.

[15] See Amendment No. 1 to the filing which amends the text of the new rule to make clear that the numerical criteria are mandatory requirements that will be strictly applied and not waived. See also letter from James F. Duffy, Senior Vice President and General Counsel, Legal and Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated December 26, 1991 (reiterating that numerical criteria are mandatory standards).

[16] See Amendment No. 1 which discusses the standards that will be used by the Blue Ribbon Committee in evaluating potential issuers.

[17] The Amex uses the same rationale for requiring higher public float and outstanding share maintenance requirements than the comparable NASDAQ standards as it used for requiring higher public float and market value requirements for its initial listing standards, namely that companies that are able to build and maintain an investor following and meaningful level of market capitalization generally have, or are developing, a bona fide product.

[18] See Exhibit A to this approval order which describes the proposed ECM numerical maintenance listing criteria.

issuer, in writing, of the deficiency. Under the proposal, if a deficiency in market value or price continues for 10 consecutive trading days, Amex would delist the securities 90 calendar days thereafter, if the market value or price did not meet or exceed the maintenance criteria. Companies with a deficiency in any other maintenance requirement would be subject immediately to delisting proceedings in accordance with the Exchange's procedures for delisting a security set forth in Part 10 of the Company Guide.

In addition, the CTA plan provides that a security will no longer be eligible for reporting through CTA if "during the immediately preceding 12-month period less than 25% of the transactions in that security * * * have been executed on national securities exchange * * *." Therefore, the Amex proposal provides that the Exchange will delist an ECM security if it does not remain eligible for reporting through CTA facilities.[19] Further, as described in greater detail below, the Exchange will delist the issues of any ECM company which fails to take appropriate steps to ensure that its securities are not sold in reliance upon the exemption from state securities registration which is otherwise available to companies listed on the Exchange.[20]

C. State Law Concerns

Under the proposal, ECM issuers would not be permitted to avail themselves of the exemption from state securities registration requirements normally accorded to securities listed on the Amex under state "blue sky" laws. Thus, unless registration is not required, or the ECM issuer is otherwise exempt (other than by virtue of listing securities on the Amex), any offering of securities by an ECM issuer or an underwriter on its behalf would have to be registered with the appropriate state securities regulatory agency in each state in which the securities would be sold.

Amex has taken steps to ensure that ECM issuers would continue to remain fully subject to state registration and rules.[21] As stated above, under the proposal, the Amex criteria for continued listing on the ECM would state that the Exchange will delist the issues of an ECM company which fails to take appropriate steps to ensure that its securities are not sold in reliance upon the exemption from state securities registration which is otherwise available to companies listed on the Exchange.[22] Similar language would be included in the ECM listing agreement.[23]

ECM companies would be approved for listing on separate, non-Amex letterhead. The letter would advise the issuer that the exemption from state securities registration requirements applies only to regular Amex-listed securities and not to ECM companies. ECM securities also would not be approved for listing "upon notice of issuance." [24] Finally, the Amex states that it intends to monitor the activities of ECM issuers by obtaining a copy of the underwriter's "blue sky memorandum" to ensure that the memorandum reflects accurately the unavailability to ECM issuers of the listed security exemption.

Further, the Amex will provide to its membership an Information Circular advising that neither the initial nor the secondary trading "blue sky" exemption from state registration requirements for regular Amex-listed companies will be available for transactions in ECM securities, and requiring member firms that do a retail business to institute appropriate procedures to assure that such transactions are effected in compliance with applicable state law.[25] The Amex represents that it has the authority under its existing rules to bring a disciplinary action against a member organization that allowed an ECM-listed security to be sold in reliance on the regular Amex exemption from state "blue sky" laws.[26] Specifically, Article V, Section 4(h) of the Amex Constitution, which allows the Exchange to suspend or expel from membership any member who engages in conduct inconsistent with just and equitable principles of trade, would provide Amex with the authority needed to undertake such an action.

D. Trading Environment and Applicable Governance Requirements

1. Trading Environment

Securities listed on the ECM would be allocated to a specialist unit and traded in the same way as regular Amex-listed equity securities.[27] The quality of the specialist unit's performance would be considered in evaluating its eligibility for further allocations of both regular Amex-listed securities and ECM securities.[28]

Trades in ECM securities would be subject to the full panoply of both the Commission's and the Amex's trading rules. In particular the tick test of rule 10a–1 under the Act ("short sale" rule) would apply to trades in ECM securities that occur on the Exchange or on NASDAQ or in the OTC markets.[29] In addition, the Amex's own short sale rule (Amex Rule 7) would apply to trades effected on the Exchange. Furthermore, all of the Exchange's equity surveillance procedures would be applied to ECM transactions.

Transactions in ECM securities, whether effected on an exchange or OTC, would be consolidated and disseminated on Network B of the CTA

[19] The Amex added this provision to the text of the Company Guide to ensure that the Amex is able to attract a minimum level of market share if ECM stocks are traded in multiple markets. *See* Amendment No. 1 and discussion *infra*.

[20] See Amendment No. 2 and discussion *infra*.

[21] Amex has implemented several safeguards, as described in greater detail below, after discussions with the North America Securities Administrators Association ("NASAA").

[22] See Amendment No. 2.

[23] The listing agreement for ECM companies would be different from the listing agreement for regular Amex-listed companies.

[24] Many state jurisdictions provide an automatic exemption from state securities registration requirements for subsequent securities issuances for securities listed "upon notice of issuance."

[25] See Information Circular No. 92–2 (January 6, 1992).

[26] See letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Exchange Regulation, SEC, dated February 14, 1992.

[27] The Amex states that the Exchange will use its existing systems to operate the ECM. The Amex represents that system capacity and operation on the Exchange during trading hours will not be affected adversely by implementation of the ECM. Similarly, the Amex represents that the Exchange's current system capacity is sufficient to meet expected demand. The Amex represents further that security and contingency plans for existing trading systems would be unaffected by the ECM. Accordingly, the Amex represents that, based upon previously conducted tests, it has concluded that its systems should not be adversely affected by the listing of these additional issues.

[28] Currently, the Amex has in place procedures for the evaluation of specialist performance and for the allocation and reallocation of securities. These procedures are designed to measure, among other things, the quality of specialist performance utilizing certain performance-based criteria and to provide an incentive for quality performance both through the Exchange's allocation process and through the imposition of nondisciplinary sanctions, including the reallocation of stocks for continued unsatisfactory specialist performance.

[29] Paragraph (a) of Rule 10a–1 covers transactions in any security registered on, or admitted to unlisted trading privileges ("UTP") on, a national securities exchange ("exchange-traded securities"), if trades in such security are reported pursuant to an effective transaction reporting plan. Paragraph (a), therefore, also applies to OTC transactions in exchange-registered securities (*i.e.*, third market transactions) that are reported pursuant to an effective transaction reporting plan. Since trades in ECM securities will be reported pursuant to an effective transaction reporting plan (*i.e.*, to the Consolidated Tape), transactions in these securities, whether effected on the Amex or otherwise, will be subject to paragraph (a). *See infra* notes 30–32 and accompanying text.

("Tape B") [30] on a real-time basis.[31] Under the proposal, specialists would be required to post firm quotations in ECM issues. Furthermore, the Exchange will delist any issue which fails to remain an "eligible security" under the CTA Plan.[32] Transactions in ECM securities would be identified separately by an ".EC" suffix in the ticker symbol so that they can be distinguished on the Tape from other Amex issuers. The Amex anticipates that closing prices and volume in ECM transactions would be published in all newspapers which carry the Amex stock table.

2. Corporate Governance Requirements

ECM issuers would be subject to some of the Exchange's corporate governance requirements.[33] For instance, ECM issuers would be required to file annual and quarterly reports with the Exchange (and with the Commission). These issuers would be held to the same standards of corporate disclosure as are other Amex-listed companies, including immediate and thorough public disclosure of material information, clarification or confirmation of rumors and reports, response to unusual market action, and prohibitions on insider trading. ECM issuers also would be required to solicit proxies, hold annual shareholder meetings, and maintain transfer and registry facilities for their listed securities.[34]

Under the proposal, ECM issuers would not be subject to the Exchange's requirements for independent directors, audit committees, shareholder quorums, shareholder approval, common stock voting rights, and conflicts of interest, as well as certain other governance requirements. The Amex believes that these exemptions from the corporate governance standards applicable to regular Amex-listed issuers will result in standards comparable to the standards for NASDAQ/non-NMS issuers and will reduce costs to ECM issuers compared to issuers of non ECM Amex-listed securities.[35]

E. Marginability of ECM Securities

In general, securities registered on a national securities exchange are deemed "margin securities" pursuant to Regulation T of the Board of Governors of the Federal Reserve System ("FRB").[36] Consequently, upon listing on the Amex, ECM securities would become margin securities in accordance with the provisions of Regulation T and would be subject to the FRB's initial margin requirements [37] and the Amex's maintenance margin requirements.[38] In contrast, NASDAQ/NON-NMS securities are not marginable unless they are included in the FRB's List of Margin Stocks.

The Amex has determined to amend its maintenance margin rule to place ECM issuers in a status analogous to NASDAQ/NON-NMS issuers. Specifically, the proposal would amend the Amex's margin rule, Exchange rule 462, to require that companies listed on the ECM be subject to a 100% maintenance margin requirement. If the Amex determines, however, that an ECM company meets the criteria under Regulation T of the FRB for initial inclusion on the FRB's List of OTC Margin Stocks (with the exception that ECM securities would not have to meet the market maker criterion),[39] then it would apply its existing maintenance margin requirement of 25%. To continue to be subject to the 25% maintenance margin standard, such ECM security would have to meet the FRB's criteria for continued marginability.[40]

Under the Amex proposal, the Exchange would determine which ECM stocks satisfy the FRB criteria for marginability, and publish periodically a list of all ECM stocks which are eligible for margin credit ("ECM Margin List"). The Amex ECM Margin List likely would be published concurrently with the FRB's quarterly publication of the OTC Margin List. Moreover, under the proposal, if an ECM stock or its issuer ceases to be listed on the ECM or the stock no longer meets the criteria for continued inclusion on the OTC Margin list, the Exchange would remove the stock from the ECM Margin List.

F. Listing Fees

Under the Amex proposal, issuers applying for an ECM listing would be required to pay an original listing fee of $5,000. The fee would not be charged to any company approved for listing prior to the date on which the ECM's inaugural trades take place. If an ECM company applies later to become a regular Amex-listed issuer, it would receive a credit for the ECM original listing fee. Annual listing fees for ECM issuers would be computed using the same schedule applicable to regular Amex-listed companies.

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[30] The Consolidated Tape, operated by the CTA, compiles current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. Amex-listed stocks and qualifying regional listed stocks are reported on CTA Tape B.

[31] It is possible that an issuer could remain listed on NASDAQ and, at the same time, become listed on the Amex's ECM. *See infra* for a discussion of how trades in ECM securities that are effected on NASDAQ would be reported.

[32] See section VI(c)(iii) of the CTA Plan.

[33] The specific sections of the Amex Company Guide that would be applicable to ECM issuers are: part 1, sections 130 (Original Listing Applications), 141 (Annual Fees), and 144 (Refunds of Listing Fees); part 2, sections 201–214 and 217–222 (Original Listing Procedures); part 3, sections 340–343 (Subscription Rights, Backdoor Listing, Paired Securities); part 4 (Disclosure Policies); part 5 (Dividends and Stock Splits); part 6 (Accounting, Annual, and Quarterly Reports); part 7, sections 701–704 (Shareholders' Meetings) and 720–726 (Voting by Exchange Members, Transmission of Proxy Materials); part 8 (Transfer Facilities, Certificate Requirements); part 9, Sections 902–994 (Treasury Shares); Part 10, sections 1001–1002 (General Suspension and Delisting Policies), 1010–1011 (Delisting Procedures); and part 11 (Guide to Filing Requirements) (all sections, except "Additional Listing Applications").

[34] In the original rule filing, Part 8 of the Company Guide, which sets forth the Exchange's transfer and registry requirements, was not made applicable to ECM issuers. Subsequently, the Amex amended the filing to make part 8 applicable to ECM issuers. See letter from Michael S. Emen, Vice President and Counsel, Securities Division, Amex, to Elizabeth a. Pucciarelli, Attorney, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated October 25, 1991.

[35] The Amex believes that the ECM will attract issuers which have not been exposed to the level of regulation imposed on regular Amex-listed issuers. Therefore, because of the potentially burdensome costs associated with regulatory compliance by small issuers, Amex does not want to impose corporate governance requirements on ECM companies which exceed the comparable level of regulation required for NASDAQ/non-NMS issuers.

[36] 12 CFR 220.2(q)(1) and 220.2(x)(1) (1991).

[37] The FRB's current margin requirement for equity securities is 50 percent of the current market value of the security or the percentage set by the regulatory authority, whichever is greater. 12 CFR 220.18(a) Upon listing on the Amex, ECM securities also would become subject to the Amex's initial margin requirement which provides that margin deposits must be equal to the greater of $2,000 or the initial margin requirement specified by the FRB. Amex Rule 462(a).

[38] The margin which must be maintained in margin accounts of customers is 25% of the current market value of the security. Amex Rule 462(b).

[39] For inclusion on the FRB's OTC Margin List, a stock must meet the following requirements: have at least four market makers; have a minimum average bid price of $5 per share; be registered under Section 12 of the Act (or registered under the Investment Company Act of 1940, if applicable) or be the stock of an issuer required to file reports under Section 15(d) of the Act; have daily quotations for both bid and asked prices for the stock that are continuously available to the general public; have been publicly traded for at least six months; have $4,000,000 in capital, surplus and undivided profits; have a public float of 400,000 shares and 1,200 holders of record; and have an issuer or a predecessor in interest that has been in existence for at least three years. 12 CFR 220.17(a) (1991).

[40] For continued inclusion on the List, a stock must: have at least three market makers; have a minimum average bid price of $2; be registered under section 12 of the Act (or registered under the Investment Company Act of 1940, if applicable) or be the stock of an issuer required to file reports under section 15(d) of the Act; have daily quotations for both bid and asked prices for the stock that are continuously available to the general public; have been publicly traded for six months; have $1,000,000 of capital, surplus, and undivided profits; and have a public float of 300,000 shares and 800 holders of record. 12 CFR 220.17(b) (1991).

In its filing, the Amex states that it is hopeful that companies which reach financial maturity on the ECM would choose eventually to become regular Amex-listed companies. In those cases, companies would be required to apply to list on the Amex and meet the same requirements as other companies.

III. Comments

The Commission received comment letters from the NASD and the securities commissioners in California, Pennsylvania, and Texas [specifically, the State of California, Department of Corporations ("CDOC" or "California letter"), the Pennsylvania Securities Commission ("PSC" or "Pennsylvania letter"), and the State of Texas, State Securities Board ("TSB" or "Texas letter")]. These letters raised various issues and concerns with respect to the Amex proposal.[41]

The Amex responded to the concerns raised by the NASD in a letter dated February 3, 1992.[42] The Amex responded to the concerns raised by the CDOC in a letter dated January 31, 1992.[43] The Amex states that, because its response letter to the CDOC also addresses the concerns raised by the PSC, the Exchange did not respond separately to the PSC letter. The Amex responded to the second comment letter submitted by the CDOC in a letter dated February 24, 1992.[44]

In its letter, the NASD raises several issues that it believes the Amex proposal does not address fully, including consolidated quotations and transaction reporting facilities, CTA standards, off-board trading restrictions, mandatory listing standards, and blue sky and margin treatment of ECM securities. First, the NASD states that, because an issuer could remain listed on NASDAQ and, at the same time, become listed on the Amex's ECM, the Amex proposal should address the issues of consolidated quotation and trade reporting.[45] Second, because it believes that ECM securities would not be "listed" securities and thus would not meet the CTA Plan definition of "eligible securities," the NASD believes that ECM securities would not be eligible for Tape B reporting. Third, the NASD asks the Commission to clarify the extent to which rule 19c-3 [46] under the Act would apply to ECM securities.

Fourth, the NASD expressed concern that confusion may arise with regard to the blue sky and margin treatment afforded to ECM securities. The NASD does not believe that a separate designator identifying trades in ECM securities will be adequate to make the distinction between regular Amex-listed securities and Amex ECM securities. In addition, the NASD expresses concern about the margin treatment of ECM securities.[47]

The NASD also expresses concern that the delisting restrictions applicable to ECM companies found in Section 1011 of the Amex *Company Guide* may impose an unnecessary competitive burden on issuers. The NASD believes that requiring an issuer that has left NASDAQ, joined the ECM, and subsequently has elected to relist on NASDAQ to file a delisting application stating that it is no longer eligible for continued dealings on the Exchange may restrict free movement back to NASDAQ.[48] Finally, the NASD letter expresses concern that the Amex proposal does not make clear that the proposed ECM numerical criteria would be mandatory standards, not merely financial guidelines that the Exchange would consider in evaluating a company for potential listing.[49]

The CDOC, PSC, and TSB letters express concerns about the possible availability of blue sky registration exemptions to ECM issuers, as well as general concerns relating to various provisions of the Amex proposal. The primary concern articulated by these state securities commissioners is that the ECM proposal does not provide adequate restrictions to prevent ECM issuers from relying on the exemption from state securities law registration requirements available to securities listed on the Amex. Because they believe that questions will arise as to the scope of the state securities law exemptions for Amex-listed securities, the CDOC and the TSB urge the Amex to clarify that the ECM is a separate marketplace from the regular Amex marketplace, similar to the separation existing between the NASDAQ/NMS and non-NMS marketplaces.[50] In addition, the PSC suggests that the Amex adopt as a delisting criterion a provision that would result in the delisting of an ECM issuer that seeks to rely upon the exemption afforded to exchanges from state registration requirements.[51]

The California letter raises additional issues in connection with the Amex proposal. First, the CDOC states that the name the Amex has chosen for its new marketplace—the Emerging Company Marketplace—is inappropriate and misleading because the implication of the use of the word "emerging" is that a company will continue to grow, thereby providing a significant investment

[41] See letters from Thomas S. Sayles, Commissioner of Corporations, CDOC, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 8, 1992; Stephen D. Hickman, Secretary, NASD, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1992; Robert M. Lam, Chairman, PSC, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 21, 1992; Richard D. Latham, Securities Commissioner, State of Texas, State Securities Board, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated February 4, 1992; and Thomas S. Sayles, Commissioner of Corporations, CDOC, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated February 20, 1992.

[42] See letter from Michael S. Emen, Vice President and Counsel, Securities Division, Amex, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated February 3, 1992.

[43] See letter from Michael S. Emen, Vice President and Counsel, Securities Division, Amex, to Honorable Thomas S. Sayles, Commissioner of Corporations, CDOC, dated January 31, 1992.

[44] See letter from Michael S. Emen, Vice President and Counsel, Securities Division, Amex, to Honorable Thomas S. Sayles, Commissioner of Corporations, CDOC, dated February 24, 1992.

[45] The Amex has amended the filing to clarify that all transactions in ECM securities would be consolidated through CTA. See Amendment No. 1 and *supra* notes 30–32 and accompanying text for a discussion of consolidated reporting of ECM trades.

[46] 17 CFR 240.19c-3 (1991). Rule 19c-3 prohibits exchanges from extending off-board trading restrictions to reported securities listed on the exchange or traded subject to UTP after April 1979. For the purposes of Rule 19c-3, a reported security is any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan.

[47] Subsequent to the filing of the NASD comment letter, the Amex amended the ECM proposal to require that members maintain 100% margin in the margin accounts of their customers. See Amendment No. 1.

[48] In its letter responding to the NASD's comments, the Amex states that the NASD's comment in this area is based upon a misreading of the Amex rules. *See* letter from Michael S. Emen, Vice President and Counsel, Securities Division, Amex, to Honorable Thomas S. Sayles, Commissioner of Corporations, CDOC, dated January 31, 1992. In the letter, the Amex states the provision in Section 1011 of the Company Guide providing that an issuer is required to state that it is ineligible for further dealings on the Exchange is applicably only to companies which no longer meet the Exchange's listing standards and desire to voluntarily delist prior to being delisted by the Exchange. Companies that meet Amex's ECM maintenance criteria but nonetheless have determined to delist their securities may do so without making any such statement.

[49] As clarified by Amendment Number 1, the ECM numerical criteria would be mandatory standards which an issuer would be required to satisfy in order to be considered for an ECM listing. See *supra* note 15 and accompanying text.

[50] The Commission believes that the identifying suffix that will mark ECM trades ".EC" will assist members, issuers, and others in differentiating between transactions in ECM securities and transactions in regular Amex-listed securities. See discussion *infra*.

[51] Amex subsequently amended the text of the Company Guide to state that the Exchange will delist the issues of any company which fails to take appropriate steps to ensure that no ECM-listed securities are sold in its behalf in reliance upon the exemption from state securities registration which is otherwise available to companies listed on the Exchange. See Amendment No. 2.

opportunity for an investor. Because not all ECM companies will grow, the CDOC believes the Amex should choose another, more accurately descriptive name for its new marketplace.[52]

Second, the CDOC expresses concern that the proposal does not articulate the specific standards that would be used by the Exchange's Blue Ribbon Committee to evaluate potential ECM issuers.[53] Third, the CDOC asserts that the Amex proposal does not state explicitly that, in calculating the publicly-held shares requirement, the Exchange would subtract from total shares outstanding the shares held by officers, directors, and other beneficial owners.[54]

In addition, the CDOC believes that the delisting procedures for ECM securities are unclear. The CDOC letter also questions Amex's decision to exempt ECM issuers from the requirements of Sections 120–125 and 320–21 of the Company Guide. Those sections concern conflicts of interest, independent directors, common voting rights, quorum requirements, stock options and stock dividends, preferred voting rights, and remedies available to bondholders upon default. Finally, the CDOC letter states that the Amex proposal does not contain criteria for convertible debt or for shares of a foreign issuer/American Depository Receipts.[55]

The CDOC submitted an additional comment letter in response to Amendment Number 1. The CDOC believes that the proposed rule change should be amended so that the text of the new language in the Company Guide describing the ECM would clearly and accurately present the requirements for listing ECM securities. The CDOC believes that this change would ensure that all the criteria and policies applicable to ECM companies would be located in one place.[56]

IV. Discussion

A. Introduction

After careful consideration of the comments received and applicable statutory provisions, the Commission believes that the Amex's proposal to create an ECM is reasonably designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and remove impediments to and perfect the mechanism of a free and open market and a national market system. For these reasons and for the additional reasons set forth below, the Commission finds that approval of the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(4), 6(b)(5) and 11A.[57]

B. Benefits of the ECM

The Commission believes that the Amex's ECM proposal will provide small companies with the opportunity to list their securities on an exchange. The Commission believes further that the availability of an exchange listing as an alternative to solely OTC trading will provide alternative trading mechanisms and could increase capital committed to trading ECM securities, increase the liquidity of ECM securities, and enhance ECM issuer access to U.S. capital markets.

Smaller companies listing on the ECM also will secure additional benefits attendant to an exchange listing. For instance, as discussed above, transactions in ECM stocks would be consolidated through Tape B of the CTA on a real-time, last-sale basis. This real-time reporting and wide dissemination of transactions in ECM securities should result in a more efficient and fair market for these securities.

Another important benefit is that trading in ECM issues will be subject to the Amex's trading and surveillance rules. Furthermore, the Amex will allocate ECM securities to an Amex specialist in accordance with the Exchange's specialist evaluation and allocation rules and thereafter will evaluate the performance of specialists in their dealings in ECM securities using the same rules and procedures the Exchange uses currently to evaluate specialist performance in regular Amex-listed issues. This should help assure the quality of market making in ECM securities.

While the Amex will apply only some of its corporate governance standards to ECM issuers, the standards that will be applied to ECM companies are equivalent to those applicable to NASDAQ/non-NMS issuers and are higher than those applicable to non-NASDAQ OTC securities. Because the companies listing on the ECM will not be NMS-quality issuers, it is not unreasonable for the Amex to require corporate governance standards similar to the NASDAQ/non-NMS standards. Moreover, ECM issuers that subsequently become regular Amex companies will be subjected to all of the Amex's corporate governance standards.[58]

C. Listing and Maintenance Criteria

The development and enforcement of adequate standards governing the initial and continued listing of equity securities of an exchange is important to ensure that only bona fide companies with substantial public float, investor base, and trading interest will be listed. These standards enable an exchange to assure that a fair and orderly market can be maintained in the security and to verify the bona fides of the company.

The Commission believes that the initial listing and maintenance criteria

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[52] In an additional comment letter, the CDOC reiterates its concern that the name—Emerging Company Marketplace—is confusing. The CDOC suggests that a more appropriate name would be the "Tier 1" or "incubator" marketplace. See letter from Thomas S. Sayles, Commissioner of Corporations, CDOC, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated February 20, 1992.

[53] In its letter responding to the CDOC's concerns, the Amex notes that the criteria are set forth in the Company Guide. See letter from Michael S. Emen, Vice President and Counsel, Securities Division, Amex, to Honorable Thomas S. Sayles, Commissioner of Corporations, CDOC, dated January 31, 1992. The CDOC also notes that the proposed ECM criteria do not define the terms "total assets" and "surplus and capital." In Amendment No. 2, however, the Amex defines the terms "capital and surplus" for the purposes of the ECM criteria to mean "stockholders' equity." Because the term "stockholders' equity" is a uniform standard devoid of subjectivity and is used in accordance with generally accepted accounting principles ("GAAP"), the Commission believes that the Amex's reference to it in the text of the Company Guide is adequate to make clear to potential issuers the standards that the Exchange will use in determining whether an issuer satisfies the "capital and surplus" criterion. Furthermore, the Commission believes that it is unnecessary for the Amex to define the term "total assets" in the Company Guide because the GAAP meaning of that term is clear.

[54] Subsequent to the CDOC letter, the Amex amended the text of the new rule to state that public float will be calculated exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings. See Amendment No. 1. See also note 12.

[55] In its response letter to the CDOC, the Amex states that it has no present plans to list debt securities on the ECM. See letter from Michael S. Emen, Vice President and Counsel, Securities Division, Amex, to Honorable Thomas S. Sayles, Commissioner of Corporations, CDOC, dated January 31, 1992. If the Exchange later determines to list debt securities on the ECM, however, it will file a proposed rule change with the Commission.

[56] The CDOC also reiterated its concern that the name—Emerging Company Marketplace—is inappropriate and misleading.

[57] 15 U.S.C. sections 78f(b)(4), (b)(5) and 78k–1 (1988).

[58] The Commission believes that, in addition to its regular surveillance procedures, the Amex should monitor carefully any companies currently listed on the Amex that seek to change their listing status from that of an Amex-listed issuer to that of an ECM issuer in an attempt to avoid certain Amex corporate governance standards applicable only to regular Amex-listed companies. In this regard, the Amex should consider adopting a policy to prohibit regular Amex-listed issuers from delisting with a view to listing on the ECM.

for ECM issuers, as described above, are consistent with sections 6(b)(5) and 11A of the Act in that these criteria should help to ensure the maintenance of fair and orderly markets on the ECM, as well as enhance benefits and protections for investors who trade in these securities.[59] The proposed criteria are comparable to the present NASDAQ/non-NMS eligibility standards for initial and continued inclusion, but with more stringent public float and market value requirements. These criteria should help ensure a wider public distribution of the securities of ECM issuers. This in turn should decrease the opportunities for manipulation, as well as help create a more liquid market for trading.

The Commission recognizes that the listing standards for ECM issuers are significantly lower than those for regular Amex-listed issuers and that the markets for ECM securities may not be as liquid and deep as those for regular Amex-listed or NASDAQ NMS securities. Nevertheless, the Commission believes that the ECM listing standards are adequate to ensure that fair and orderly markets can be maintained.[60] Indeed, this conclusion is reinforced by the Amex's decision not to grant any waivers to the ECM numerical listing criteria. The Commission believes that making the listing criteria mandatory standards should help to safeguard the integrity of the exchange market by ensuring that the numerical listing criteria are true minimum standards and not subject to arbitrary waiver. The Commission also believes that the expertise of the members of the Blue Ribbon Committee, combined with application of these factors, should act as a useful means to ensure the bona fides of ECM applicants. Moreover, affixing the identifying suffix (".EC") to transactions in ECM securities should help alert investors that these securities are of a different quality than securities on the regular Amex list.

D. State Law Concerns

The Commission believes that the safeguards Amex has established respond adequately to the state law concerns raised by the NASD and the securities commissioners from the states of California, Pennsylvania, and Texas. These safeguards should make clear to Amex members, issuers, and the bar that the offer and sale of ECM securities are subject to state registration and rules.

The Amex proposal would prohibit ECM issuers from using the exemption from registration requirements which the securities laws of most states currently make available to other Amex-listed companies. To accomplish this, the Amex has included in its proposal various safeguards designed to ensure that ECM issuers remain fully subject to state review. For instance, the ECM listing agreement and the letter approving the listing of securities on the ECM would state clearly that ECM issuers would not be able to take advantage of existing exemptions in state securities registration requirements accorded to regular Amex-listed securities. In addition, the text of the Company Guide would require the Exchange to delist the issues of any company which fails to take appropriate steps to ensure that no ECM-listed securities are sold on its behalf in reliance upon the exemption from state securities registration which is otherwise available to companies listed on the Exchange. The Commission believes these steps should help put issuers on notice of the "blue sky" status of ECM securities and should serve further to ensure that ECM issuers do not avail themselves of the "Amex exemption" from state blue sky laws.[61]

Moreover, the Commission believes that the new Information Circular to members will be of additional assistance in providing information regarding the "blue sky" status of ECM securities. The Information Circular, which is directed to Amex members and member organizations, states that firms doing a retail business are obligated to initiate appropriate procedures to assure that primary and secondary offerings of ECM-listed securities are effected in compliance with applicable state law. Furthermore, the Commission believes that the identifying suffix that will mark ECM trades ".EC" will assist members, issuers, and others in differentiating between transactions in ECM securities from transactions in regular Amex-listed securities. Finally, the Amex has represented that it has the authority and commitment to discipline a member organization that allows an ECM-listed security to be sold in reliance on the regular Amex exemption from state "blue sky" laws will be of additional assistance in preventing use of blue sky exemptions for transactions in ECM securities.[62] As discussed above, Article V, Section 4(h) of the Amex Constitution, which allows the Exchange to suspend or expel from membership any member who engages in conduct inconsistent with just and equitable principles of trade, would provide the Amex with the authority needed to undertake such an action.

E. Marginability of ECM Securities

As discussed above, the Exchange proposes to amend rule 462 to require that companies listed on the ECM be subject to a 100% maintenance margin requirement. ECM companies that the Amex finds meet the criteria under Regulation T of the FRB for initial inclusion on the FRB's List of OTC Margin Stocks (with the exception that ECM securities would not have to meet the market maker criterion) would be subject to the Amex's regular maintenance margin of 25%. Under the proposal, the Exchange would determine which ECM stocks satisfy the criteria for marginability and would publish periodically an ECM Margin List indicating all of the ECM stocks that are eligible for margin credit.

The Commission agrees with the maintenance margin approach proposed by the Amex. The ECM is intended to be a new marketplace of the Amex that attracts issuers that otherwise would trade OTC. It is logical that the maintenance margin treatment for OTC non-NMS securities would apply to ECM issuers, rather than the treatment accorded regular Amex companies. Currently, non-NMS OTC securities are not marginable, unless they are included in the FRB's OTC Margin List. Establishing a maintenance margin of 100% for ECM securities will place ECM

[59] The Commission recognizes that the NASD may amend its listing criteria from time to time. Because the proposed ECM numerical listing criteria are comparable to the present NASDAQ/non-NMS standards, the Commission would expect that if the NASD modified any of its listing standards, the Amex would submit a proposed rule change under Rule 19b-4 of the Act to ensure that the ECM standards remain adequate to maintain the integrity of the ECM.

[60] Amex's proposed two-tiered screening process for ECM issuers also will help to ensure further the quality of the ECM. The sole responsibility of the Blue Ribbon Committee will be to evaluate the prospects of companies for potential ECM listing. The Amex has set forth specific standards to be used by the Blue Ribbon Committee to evaluate these companies, including the nature of a company's business; its commercial prospects and future outlook; its commercial prospects and future outlook; the reputation of its management; its historic record and pattern of growth; and its financial integrity.

[61] Furthermore, if an ECM issuer were to rely on the Amex's present exemptions under state "blue sky" laws, and the Amex did not promptly act to delist the issuer, it would raise concerns as to whether the Amex abdicated its regulatory responsibility as a national securities exchange with regard to the enforcement of its rules concerning the securities approved for listing and trading on the exchange, in violation of Sections 19(g)(1) and 19(b)(4) of the Act. [15 U.S.C. §§ 78s(g)(1) and (b)(4) (1988)].

[62] See letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Exchange Regulation, SEC, dated February 14, 1992.

securities in a comparable posture to that of non-marginable OTC securities. For those ECM securities that would meet the FRB's requirements for inclusion in the OTC Margin List, it is reasonable to accord them the same maintenance margin treatment. Because ECM issuers will be assigned to a specialist, who will be subject to the affirmative and negative market making obligations with respect to the assigned ECM security, the FRB's market maker requirement for inclusion in the OTC Margin List is unnecessary.[63]

F. Transaction Reporting

As discussed above, the Amex will report trades in ECM-listed securities through CTA, Network B facilities.[64] The CTA Plan ("Plan") provides that any security "registered on [Amex] * * * and which * * * substantially meets the original listing requirements of the * * * Amex" is an "eligible security" and is reportable pursuant to the terms of the Plan.[65] The Plan requires that all trades in eligible securities, wherever effected, be reported and disseminated through CTA facilities. Thus, the proposal provides for consolidated reporting of all trades in ECM securities through the Network B facilities.

In its comment letter the NASD raised concerns about consolidated trade reporting for transactions in ECM-listed stocks. The NASD argued that the Plan, by its terms, should not apply to transactions in ECM-listed securities because the ECM listing requirements are not the Amex's "original listing requirements" referred to in the CTA plan and that these securities thus cannot be "eligible securities" under the Plan.

The Commission believes that the Amex correctly interprets the Plan's definition of "eligible securities" to be broad enough to include ECM securities. The Plan has, since it was originally approved by the Commission, always contained the above standard for determining the eligibility of a security to be included in CTA.[66] The term "original listing requirements" has always been understood to refer to those listing standards that a security must meet to be listed on the Amex, as distinguished from maintenance standards, which set minimum criteria for continued listing. In addition, the Plan quite clearly anticipates that the original listing requirements of the Amex will be amended from time to time.

The Amex has adopted different listing requirements in the past to accommodate new types of stocks and warrants listed on the Amex [67] and those securities have always been deemed to be CTA-eligible. The Commission believes that the adoption of the ECM listing standards is analogous to those earlier amendments to the Amex's listing standards.

Finally, the Commission believes that policy reasons exist for including ECM securities in the CTA reporting stream. Issuers that are included in the ECM must affirmatively choose to list their securities on the Amex. Where an issuer makes that choice, the Commission is hard-pressed to conclude, assuming that the Amex is the primary market for these securities, that CTA Network B is an inappropriate vehicle for reporting trades in these securities. The Commission reserves judgment, however, on the question of such reporting if the Amex were not the primary market for these securities and there were currently a mechanism in place that would permit consolidation through OTC facilities.[68]

An important basis for the conclusion that it is not inappropriate to include ECM securities in CTA, however, is the fact that the Plan provides that a security will no longer be eligible for reporting through CTA if, "during the immediately preceding 12-month period less than 25% of the transactions in that security * * * have been executed on national securities exchange * * * ." [69]

The Commission believes that this requires appropriately that some minimum level of trading be effected on the exchanges as a condition of continued CTA eligibility. Nevertheless, the Commission raised concerns that this provision could operate to permit trading of ECM stocks in multiple markets without consolidated reporting, if the Amex were unable to attract a minimum level of market share. Accordingly, the Amex amended the filing to provide that it would delist an ECM security if it was no longer eligible for reporting through CTA facilities.

G. Other Issues Raised By Commenters

The Commission is satisfied that the Amex has addressed adequately all of the remaining issues and concerns raised by the commentators.

1. Rule 19c–3

In its comment letter, the NASD asked the Commission to clarify the applicability of rule 19c–3 to ECM securities. In response, the Amex states that ECM securities are "reported securities" and therefore are subject to the requirements of Rule 19c–3.

The Commission concurs in the Amex's statement of the applicability of rule 19c–3. As discussed above, ECM securities would be eligible securities in accordance with the Plan and trades in those securities during reporting hours would be reported via Tape B of the CTA. Therefore, because ECM securities would be "reported" securities for the purposes of rule 19c–3, the Rule's prohibition on the extension of off-board trading restrictions would apply to ECM securities.

2. Name

The CDOC states that the name the Amex has chosen for its new marketplace—the Emerging Company Marketplace—is inappropriate and misleading. The Commission will not interfere with an Exchange's decision so long as the name is not misleading to members, issuers, and the investing public. In light of the Amex's ECM listing standards and selection procedures, the Commission does not believe that the name ECM, by itself, is misleading.

3. Delisting Procedures

In its comment letter, the CDOC states that the delisting procedures for ECM securities are unclear. In response, the Amex states that, if an issuer falls below the ECM maintenance standards for price or market value and fails to satisfy the relevant criteria within 90 days, that issue would be delisted

[63] See supra note 39.

[64] In addition, quotes in ECM securities will be reported through Consolidated Quotation System ("CQS")

[65] See section VI(c)(iii) of the CTA Plan.

[66] See Securities Exchange Act Release No. 10787 [4 SEC Docket (CCH) 271 (1974)].

[67] For example, the Amex has adopted alternate listing standards for certain foreign issuers and for certain domestic growth companies that could not meet some of the Amex's listing requirements. See Securities Exchange Act Release No. 15376 [16 SEC Docket (CCH) 33 (1978)].

[68] The NASD has filed a proposed rule change to provide for real-time reporting of all NASDAQ securities, which is currently pending before the Commission. See Securities Exchange Act Release No. 30392 (February 21, 1992). In addition, the exchanges and the NASD have, over the course of several years, negotiated the terms of a consolidated trade reporting plan for NASDAQ/NMS securities traded on an exchange. See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917. The terms of that plan do not extend to NASDAQ/non-NMS securities, however, and there is thus no current OTC mechanism in place that could consolidate trade reports in these securities. Of course, if the Commission approves the NASD's NASDAQ trade reporting proposal, the OTC/UTP plan could be amended. The Commission specifically reserves for later consideration the issue of which consolidated system would be most appropriate if, in the future, a significant amount of trading in ECM securities is occurring in the OTC market.

[69] See Section VI(c) of the CTA plan.

immediately. The Amex notes that a delisting for failure to comply with the financial maintenance criteria would be processed in accordance with the provisions set forth in Section 1010 of the Amex *Company Guide*. The Commission believes that these proposed delisting procedures, which are similar to the delisting procedures for regular Amex-listed companies, are sufficiently clear.

H. Amendments Number 1 and 2

Finally, the Commission finds good cause for approving Amendment Numbers 1 and 2 prior to the 30th day after the date of publication of notice of filing thereof. As discussed above, both amendments clarify various aspects of the proposal; neither amendment modifies the proposal in any substantive manner. In addition, the Amex has responded to the various concerns and issues raised by the commenters. Therefore, the Commission finds that accelerated approval of Amendment Numbers 1 and 2 is necessary in order for the Exchange to have the necessary rules in place before trading begins on the ECM.

Interested persons are invited to submit written data, views and arguments concerning Amendment Number 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-91-25 and should be submitted by April 1, 1992.

For the reasons described above, the Commission finds that the Amex's proposed rule change creating an ECM is consistent with the requirements of sections 6(b)(4), 6(b)(5) and 11A of the Act and the rules and regulations thereunder. Accordingly, the proposed rule change is approved.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[70] that the proposed rule change is approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

PROPOSED NUMERICAL CRITERIA

	Original		Companies presently traded in NASDAQ		Maintenance (all)	
	Companies not presently traded in NASDAQ					
	Regular	Alternate	Regular	Alternate	Regular	Alternate
Total assets	$4M	$3M	$2M	$2M	$2M	$2M.
Capital & surplus	$2M	$2M	$1M	$2M	$1M	$2M.
Total mkt. value	$2.5M	Over $10M	$2.5M	$2.5M	$500,000	$1M.
Public float	250,000 shs	400,000 shs	250,000 shs	250,000 shs	250,000 shs	250,000 shs.
Public shareholders	300	300	300	300	300	300.
Minimum price	$3	$2	$1	Below $1	$1	Below $1.

[FR Doc. 92-5727 Filed 3-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30447; File No. SR-NASD-91-65]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Permitting Direct Participation Program Principals and Representatives to Offer and Sell Direct Participation Program Debt

March 4, 1992

The National Association of Securities Dealers, Inc. ("NASD") submitted on November 27, 1991 a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder to amend Parts II and III of Schedule C to the NASD By-Laws to permit Direct Participation Program ("DPP") principals and representatives to offer and sell direct participation program debt.

Notice of the filing and the terms of substance of the proposed rule change, as modified by amendment 1, was given by the issuance of a Commission release (Securities Exchange Act Release No. 30279, January 22, 1992) and by publication in the **Federal Register** (57 FR 3451, January 29, 1992.)

The Commission received no comment letters on the proposed rule change. The proposed rule change permits persons who are registered as DPP principals and representatives to offer and sell direct participation program debt instruments. Specifically, the proposed rule change amends part II, section 2(e)(i)a and part III, section 2(c)(i) a of Schedule C to add language specifying that a person may register as a DPP principal or representative, respectively, if his securities activities are "limited solely to the solicitation, purchase and/or sale of equity interests in or the debt of direct participation programs * * *." This change would specify that the sale of both DPP equity and debt instruments is permissible under the limited DPP registrations.

Schedule C currently allows a person to qualify to sell all types of securities by passing the Series 7 examination or to qualify to sell a specific category of security by passing a more limited examination such as the Series 22 (DPP examination). The current definition of direct participation program contained in Schedule C does not specify debt securities as instruments which a DPP registered person is permitted to sell.

The NASD believes, while DPP salesmen must be familiar with the structure and tax consequences of a DPP offering, selling a DPP debt security does not require general market knowledge or knowledge of the debt securities market because DPP debt securities are typically sold to retirement plans that intend to hold

[70] 15 U.S.C. 78s(b)(2) (1988).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

them to maturity. Consistent with this position, the proposed rule change would not permit a DPP registered person to buy or sell DPP debt securities in the secondary market. The NASD believes that there is no discernable difference between the knowledge required for the initial sale of debt and equity instruments issued by a DPP and, accordingly, believes that DPP principals and representatives should be permitted to offer and sell such instruments.[3]

The Commission believes that permitting associated persons who have successfully completed the DPP representative or principal exam to sell DPP debt, is reasonable.[4] The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with the provisions of section 15A(b)(3) of the Act [5] in that the proposed rule change allows persons engaged in specific types of activity (the offer and sale of DPP debt instruments), without being required to pass the more extensive Series 7 examination, to become associated with NASD members.

It is therefore ordered, pursuant to section 19(b)(2) of he Act, that SR-NASD-91-65 be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-5728 Filed 3-10-92; 8:45 am]

BILLING CODE 8010-01-M

[3] The NASD indicated that DPP syndicators are offering debt securities of DPP's to pension plans and other institutional accounts which are considered "qualified plans" under the Employee Retirement and Income Security Act ("ERISA"). The NASD also indicated that it has been informed that syndicators are offering such debt instruments in order to avoid having distributions classified as "unrelated business taxable income" under Internal Revenue Service Regulations.

[4] DPP registered persons are not permitted, by this proposal, to buy or sell DPP debt securities in the secondary market.

[5] Section 15A(b)(3) of the Act requires, in pertinent part, that "the rules of the Association provide that any registered broker or dealer may become a member of such Association and any person may become associated with a member thereof."

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2550]

Commonwealth of Puerto Rico; Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated February 8, 1992, to the President's major declaration of January 22, to include the municipality of Gurabo in Commonwealth of Puerto Rico as a disaster area as a result of damages caused by severe storms and flooding which occurred January 5-6, 1992.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 23, 1992, and for economic injury until the close of business on October 22, 1992.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Date: March 2, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-5647 Filed 3-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2545]

Texas Amendment #4, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated February 21, 1992, to the President's major disaster declaration of December 26, to include the counties of Matagorda and Robertston in the State of Texas as a disaster area as a result of damages caused by severe thunderstorms and flooding beginning on December 20, 1991 and continuing through January 14, 1992.

The Notice of Amendment cited above was issued less than 30 days from the February 24 deadline for filing applications for physical damage. Therefore, applications for physical damage for victims located in Matagorda and Robertston Counties will be accepted until the close of business on March 24, 1992. The termination date for filing applications for economic injury remains the close of business on September 28, 1992.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: March 2, 1991.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-5648 Filed 3-10-92; 8:45 am]

BILLING CODE 8025-01-M

Small Business Administration Licensee Surrender

Wilbur Venture Capital Corp.

[License No. 09/09-0372]

Notice is hereby given that Wilbur Venture Capital Corporation, 4575 South Palo Verde, suite 305, Tucson, Arizona, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Wilbur Venture Capital Corporation was licensed by the Small Business Administration on May 11, 1987.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the licensee was accepted on March 3, 1992 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 5, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-5646 Filed 3-10-92; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly

to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (EB 4B), Chattanooga, TN 37402-2801; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Input Card for TVA Recreation Areas.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 8000.

Estimated Total Annual Burden Hours: 400.

Estimated Average Burden Hours Per Response: .05.

Need For and Use of Information: This information collection asks visitors to selected TVA public use areas to provide feedback on the condition of the facilities they used and the services they received. The information collected will be used to evaluate current maintenance, facility, and service practices and policies and to identify new opportunities for improvements.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 92-5670 Filed 3-10-92; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Knox County, NE and Bon Homme County, SD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge project over the Missouri River between Knox County, Nebraska and Bon Homme County, South Dakota.

FOR FURTHER INFORMATION CONTACT: Mr. Philip E. Barnes, District Engineer, Federal Highway Administration, Federal Building, room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 437-5521. Mr. Arthur Yonkey, Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479-4795.

Mr. Lawrence Weiss, Chief Road Design Engineer, South Dakota Department of Transportation, Transportation Building, 700 East Broadway, Pierre, South Dakota 57501, Telephone: (605) 773-3433.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the South Dakota Department of Transportation, and the Nebraska Department of Roads will prepare an environmental impact statement (EIS) for a proposal to construct a bridge over the Missouri River. The proposed project would connect Bon Homme County, South Dakota, and Knox County, Nebraska, in the vicinity of Niobrara, Nebraska.

Alternatives under consideration include (1) taking no action; and (2) constructing the proposed project.

The proposed project would consist of constructing a two-lane highway which would include a bridge and appropriate approach roadways to tie into the existing highway systems, all on new location. Project length will vary with alternatives developed. The project would cross the Missouri River flood plain, and encroachment on wetlands is anticipated.

A scooping meeting will be held. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the meeting and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the address provided.

(Catalog of Federal Domestic Assistance Project Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program)

Philip E. Barnes

District Engineer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 92-5665 Filed 3-10-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 6, 1992.

The Department of the 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.

Internal Revenue Service

OMB Number: 1545-1163.

Form Number: IRS Form 8822.

Type of Review: Revision.

Title: Change of Address.

Description: Forms 8822 is used by taxpayers to inform IRS of their change of address. IRS will use this information to update the taxpayer's address of record.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 1,500,000.

Estimated Burden Hours Per Respondent: 16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 390,626 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-5693 Filed 3-10-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: March 5, 1992.

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.

Departmental Offices

OMB Number: 1505-0131.

Form Number: None.

Type of Review: Extension.

Title: Registration of Claims of U.S. Citizens Against Cambodia.

Description: The information will be used to conduct negotiations concerning normalization of relations with Cambodia.

Respondents: Individuals or households, Businesses or other for profit.

Estimated Number of Respondents: 30.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Other (single report).

Estimated Total Reporting Burden: 60 hours.

Clearance Officer: Lois K. Holland (202) 566-6579, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

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. 92-5694 Filed 3-10-92; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

[Delegation Order No. 67 (Rev. 20)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The specific authorization to sign the name of, or on behalf of, Shirley D. Peterson, Commissioner of Internal Revenue. The text of the Delegation Order appears below.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Melvin M. Mitchell, PR:P:D, Room 3139, 1111 Constitution Avenue, NW., Washington DC 20224 (202) 566-4273 (Not a Toll-Free Telephone call).

Order No. 67 (Rev. 20)

Effective date: 2-3-92.

Signing the Commissioner's Name or on Her Behalf.

Effective 10 a.m., February 3, 1992, all outstanding authorizations to sign the name of, or on behalf of, Fred T. Goldberg, Jr., Commissioner of Internal Revenue, are hereby amended to authorize the signing of the name of, or on behalf of, Shirley D. Peterson, Commissioner of Internal Revenue.

Delegation Order No. 67 (Rev. 19) effective July 5, 1989, is superseded.

Dated: February 25, 1992.

Approved:

Shirley D. Peterson,

Commissioner.

[FR Doc. 92-5616 Filed 3-10-92; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 48
Wednesday, March 11, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Monday, March 16, 1992, 9 a.m.-5 p.m.

PLACE: United States Commission on Civil Rights, 1121 Vermont Avenue, NW., Room 512, Washington, D.C. 20425.

STATUS: Open to the Public.

March 16, 1992

I. Approval of Agenda
II. Announcements
III. Planning for Future Hearings
IV. Review of the Hearing Manual

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376-8312.

Dated: March 5, 1992.

Emma Monroig,

Solicitor.

[FR Doc. 92-5859 Filed 3-9-92; 3:50 pm]

BILLING CODE 6335-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10 a.m., March 16, 1992.

PLACE: 5th Floor, Conference Room 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED

1. Approval of the minutes of the last meeting.

2. Thrift Savings Plan activities report by the Executive Director.

3. Review of the KPMG Peat Marwick audit report entitled "Pension and Welfare Administration Review of the Thrift Savings Plan System Enhancements and Software Change Controls at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: March 6, 1992.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92-5734 Filed 3-6-92; 4:50 pm]

BILLING CODE 6760-01-M

federal register

Wednesday
March 11, 1992

Part II

Department of Transportation

Coast Guard

33 CFR Part 154
Facility Response Plans; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 154

[CGD 91-036]

RIN 2115-AB82

Facility Response Plans

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is soliciting comments relating to facility response plans and required pollution response equipment. This advance notice of proposed rulemaking (ANPRM) addresses all marine transportation-related offshore facilities, except pipelines, and marine transportation-related onshore facilities that could be reasonably expected to cause substantial harm to the environment by the discharge of oil into or on the navigable waters of the United States, adjoining shorelines, or the exclusive economic zone. Regulations requiring response plans and discharge removal equipment are mandated by the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990. The purpose of requiring response plans and discharge removal equipment is to enhance private sector planning and response capabilities to minimize the environmental impact of spilled oil.

DATES: Comments must be received on or before April 27, 1992.

ADDRESSES: Comments must be in writing and may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-036), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Walter Hunt, Project Manager, Oil Pollution Act (OPA 90) Staff, (G-MS-1), (202) 267-6740. This telephone is equipped to record messages on a 24 hour basis and will do so if the project manager is not available.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in the early stages of this rulemaking by submitting written views, data, or arguments. It is recommended that you closely examine all sections of this ANPRM and consider how you will be involved or affected by the rulemaking. Persons submitting comments should include their name and address, identify this specific ANPRM (CGD 91-036) and the specific section of the ANPRM being addressed or the issue to which each comment applies, and give the basis for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before proposed rules are drafted. Late submittals will be considered to the extent practicable without delaying the publication of proposed rules.

At this time, the Coast Guard has not scheduled any public hearings. Persons may request a public hearing by writing to the Executive Secretary, Marine Safety Council at the address under **ADDRESSES**. Requests should indicate why a public hearing is considered necessary. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Walter (Bud) Hunt, Project Manager, and Mary-Jo Cooney Spottswood, Project Counsel, Oil Pollution Act (OPA 90) Staff, (G-MS-1).

Background and Purpose

In recent years several catastrophic oil spills have threatened the marine environment of the United States. Among these were the EXXON VALDEZ in Prince William Sound, the AMERICAN TRADER in California's coastal waters, the MEGA BORG in the Gulf of Mexico, and the major discharge from the Ashland Oil Terminal into the Monongahela River at Floreffe, Pennsylvania. These spills had extensive impact on the marine environment, including the loss of fish and wildlife.

In response to these disasters and others, Congress passed the Oil Pollution Act of 1990 (OPA 90), Public Law 101-380. Section 4202(a) of OPA 90 amended section 311(j) of the FWPCA (33 U.S.C. 1321(j)) and sets out as sections 311 (j)(5) and (j)(6) the requirements for tank vessel and facility response plans and discharge-removal equipment. Section 4202(b)(4) of OPA 90 established an implementation schedule for these provisions of section 311(j) of the FWPCA.

The new section 311(j)(5) of the FWPCA requires owners and operators of certain facilities to submit individual response plans to the President. This requirement applies to all marine transportation-related offshore facilities and marine transportation-related onshore facilities, including marine facilities transferring oil in bulk, that could be reasonably expected to cause "substantial harm" to the environment by the discharge of oil or a hazardous substance into or on the navigable waters of the United States, adjoining shorelines, or the exclusive economic zone.

The President is required to issue regulations implementing the new FWPCA requirements for facility response plans. This authority has been delegated by Executive Order 12777 to the Administrator of the Environmental Protection Agency (EPA), the Department of Interior's Minerals Management Service (MMS), and the Secretary of the Department of Transportation. In anticipation of being delegated the responsibility assigned to the Secretary of Transportation for transportation-related facilities, the Coast Guard is soliciting public comments on implementing regulations for facility response plans for marine transportation-related offshore facilities, except pipelines, and marine transportation-related onshore facilities.

Federal agencies recognize the need for cooperative efforts and a consistent approach to facility response plan requirements. As a result, an interagency group has been meeting to discuss and coordinate development of regulations for facility response plans based on the delegation of authorities for section 311 of the FWPCA contained in Executive Order 12777. These regulations will be the subject of several separate rulemaking actions. The EPA is drafting regulations for non-transportation-related fixed onshore facilities. MMS is drafting regulations for response plans for non-transportation-related offshore facilities and transportation-related pipelines linking oil production platforms to onshore facilities. The Department of Transportation is responsible for drafting regulations for transportation-related onshore facilities and deepwater ports subject to the Deepwater Ports Act

of 1974, as amended (33 U.S.C. 1501 *et seq.*). Within the Department of Transportation, the Coast Guard is drafting regulations for marine transportation-related facilities, both onshore and offshore (including deepwater ports), as discussed in this ANPRM.

This ANPRM addresses sections 311 (j)(5) and (j)(6) of the FWPCA, as amended by OPA 90. The requested information will assist the Coast Guard in developing proposed rules to implement requirements for facility response plans. It will also assist in developing requirements for availability and inspection of facility discharge removal equipment.

This ANPRM also addresses section 5005 of OPA 90 which contains requirements for facilities located in Prince William Sound, Alaska, and which are permitted under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 *et seq.*). These are in addition to the requirements imposed by sections 311 (j)(5) and (j)(6) of the FWPCA, as amended by OPA 90.

The FWPCA requires that owners or operators of facilities develop response plans for "oil or hazardous substance" discharges. However, section 4202(b)(4)(B) of OPA 90 prohibits the handling, storage, or transportation of oil after February 18, 1993, if a response plan has not been submitted. Under this rulemaking, the Coast Guard intends to require facility response plans for marine transportation-related facilities that handle, store, or transport oil and could reasonably be expected to cause either "substantial harm" or "significant and substantial harm" to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone. Response plans for marine transportation-related facilities that handle, store, or transport hazardous substances will be the subject of a separate rulemaking at a later time.

A separate ANPRM has been published in the **Federal Register** addressing tank vessel response plans and associated spill removal equipment. See CGD 91-034/CGD 90-068, 56 FR 43534, August 30, 1991.

Facility Response Plans

Section 311(j)(5) of the FWPCA creates two specific facility response plan categories that provide for different treatment of onshore facilities based on the expected impact of a discharge into or on the navigable waters, adjoining shorelines, or the exclusive economic zone. As addressed in this ANPRM, these response plan categories are as follows:

(1) Any marine transportation-related onshore facility that, because of its location, could reasonably be expected to cause "substantial harm" to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone will be required to prepare and submit a response plan to the Coast Guard;

(2) Any marine transportation-related onshore facility that, because of its location, could reasonably be expected to cause "significant and substantial harm" to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone will be required to prepare and submit a response plan that will require review by the Coast Guard. The Coast Guard will return for amendment any plan that does not meet the requirements set forth under the provisions of the amended section 311(j)(5) of the FWPCA and approve any plan that does comply with those provisions.

OPA 90 does not provide a definition of the terms "substantial harm" or "significant and substantial harm." The OPA 90 Conference Report (Report 101-653) states that the President is to develop nationwide criteria to determine those facilities which could reasonably be expected to cause "substantial harm" and are therefore required to submit plans. The report also states that the criteria should result in a broad requirement for facility owners and operators to prepare and submit response plans. Additional criteria are to be developed to select those onshore facilities which could cause both "significant and substantial harm" to the environment. The intent is to require only some proportion of all submitted onshore facility response plans to be reviewed and approved. In the case of a facility that could reasonably be expected to cause "substantial harm", and is required only to submit a response plan, neither OPA 90 nor the Conference Report are clear as to how the adequacy of the response plan is determined if the plans are not reviewed. There is also a question as to how to implement the requirement for a facility that could reasonably be expected to cause "substantial harm" to resubmit a plan for approval of each significant change, as specified in section 311(j)(5)(C)(vi) of the FWPCA if the original plan is not reviewed and approved. The public is requested to comment on Coast Guard review of response plans for facilities that are only required to submit plans under section 311(j)(5)(B)(iii).

The Coast Guard and EPA have been discussing alternative methods to determine whether a discharge from a specific facility that could reasonably be expected to cause either "substantial harm" or "significant and substantial harm" to the environment. These terms are in the process of being defined. Various methods are being discussed to determine those facilities that have to prepare and submit a response plan and those facility plans that need to be reviewed and approved by the Coast Guard.

The EPA has been developing a screening document based on facility-specific and location criteria to determine whether a discharge from a specific facility could reasonably be expected to cause either "substantial harm" or "significant and substantial harm" to the environment in the event of a spill or discharge. The criteria being considered include: Type of facility; storage capacity and material stored; number of tanks; age of tanks; presence of secondary containment; proximity to navigable waters and public water supply intakes or wells; proximity to sensitive environmental areas; spill history; and the likelihood for the occurrence of natural disasters such as floods, hurricanes, or earthquakes.

The Coast Guard will also use this screening document but modify it to include additional criteria deemed appropriate to marine transportation-related facilities, In addition to the above mentioned criteria, the Coast Guard is considering operational criteria for marine transportation-related facilities such as: Number of annual tank barge or tank vessel transfers; type and quantity of product transferred annually; and the ability of the facility to conduct multiple transfers. The Coast Guard will consider additional risk factors to identify facilities required to submit response plans. For marine transportation-related facilities, the Coast Guard Captain of the Port (COTP) will review this information to determine whether a response plan will be required and whether it will be reviewed and approved by the COTP.

Section 311(j)(5) of the FWPCA requires that in a facility response plan, an owner or operator identify and ensure by contract, or other means approved by the President, the availability of private personnel and equipment sufficient to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent substantial threat of such a discharge. A worst case discharge for an onshore of offshore facility is defined in section 311(a)(24) of the FWPCA, as

amended by section 4201 of OPA 90, as the largest foreseeable discharge in adverse weather conditions. The Coast Guard and EPA are developing general criteria that will quantify the largest foreseeable discharge from any given facility.

A major intention of the amendments made by section 4202(a) of OPA 90 is to create a system in which private parties supply the majority of any personnel and equipment needed for oil spill response in a given area. Additional cleanup resources will be required by vessels and facilities to meet the intent of the national planning and response system. For example, the response plans must identify and ensure the availability of personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge, including a discharge from fire or explosion. If a response plan lists a port's municipal fire-fighting capabilities as part of its spill response plan in the case of fire or explosion, then it may be necessary to assess the port's municipal fire-fighting capabilities in order to determine the adequacy of the response plan.

Many facilities and vessels will rely primarily on private spill contractors and spill cooperatives. The equipment, training, and experience of these organizations are likely to be central to any successful pollution response effort. The Coast Guard is concerned that some contractors may overstate or misrepresent their capabilities or have insufficient training and experience. To minimize problems associated with contractor reliability, the Coast Guard is interested in examining a pollution contractor certification process. Preliminary discussions have identified three possible sources of certification: Federal Government, State government, or third party certification.

OPA 90 has mandated several deadlines with regard to facility response plans. After February 18, 1993, a facility required to have a response plan may not handle, store, or transport oil unless a plan has been submitted. After August 18, 1993, a facility required to have a response plan may not perform any of these three functions unless it is operating in compliance with that plan. The responsible regulatory agency under Executive Order 12777 may authorize a facility that has submitted a response plan to continue to operate for up to two years without agency approval of the response plan. However, the owner or operator of the facility must certify to the regulating agency that the owner or operator has ensured by contract or other means acceptable to the agency the availability of private personnel adequate to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge.

Equipment Requirements and Inspection

Section 311(j)(6) of the FWPCA requires periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges to begin not later than August 18, 1992. Comments are requested on the major discharge removal equipment that should be inspected, and the frequency, and timing of inspection.

The Coast Guard and EPA seek consistency in the amount of equipment required to respond to a pollution incident. This may result in guidelines or standards for the Coast Guard COTP or EPA Regional Administrator (RA) to apply in determining whether a facility has sufficient equipment to respond to a specified scenario. The Coast Guard specifically requests comments on methods to determinate the quantity of equipment required considering factors such as geography, climate, petroleum products handled, and facility size. Comments are also solicited on other factors that influence the amount of required equipment.

Areas of Regulation Under Consideration

Regulations covering the following areas are being considered to implement the response plan requirements of section 311(j) of the FWPCA. Comments and suggestions from interested parties are invited.

1. Facility Response Plans

(a) Using criteria under development by the Coast Guard, the COTP will determine those facilities which could reasonably be expected to cause "substantial harm" to the environment in the event of a discharge. These facilities will be required to prepare and submit response plans. These plans will be useful in drafting and updating the Area Contingency Plan. These criteria will also be used by the COTP to determine those facilities which could reasonably be expected to cause "significant and substantial harm" to the environment in the event of a discharge. Response plans from these facilities will require subsequent review and approval by the COTP. The Coast Guard expects that, using these criteria, most marine transportation-related facilities will reasonably be expected to cause "significant and substantial harm" to the environment in the event of a discharge. Therefore, marine transportation-related facilities identified in 33 CFR 154.100(a), which handle oil and possess a Letter of Adequacy from the COTP under 33 CFR 154.325, will be required to prepare and submit response plans which will be reviewed and approved by the COTP. In addition, the Coast Guard may identify additional marine transportation-related facilities handling oil and regulated under 33 CFR 154.100(b) which will be required to prepare and submit response plans.

(b) Upon request from the COTP, the RA will consult with the COTP to comment on response plans for non-transportation-related facilities located in the zone where the Coast Guard COTP is the predesignated Federal On-Scene Coordinator (Coastal zone as defined in 40 CFR 300.5). The Coast Guard does not intend to comment on response plans for all non-transportation-related facilities located in the coastal zone. However, a mechanism must be established to identify response plans for those facilities determined by the COTP, on a case-by-case basis, to be specifically considered in the preparation of the Area Contingency Plan under the COTP's cognizance. The RA will retain authority for required plan approval for non-transportation related facilities. Similarly, upon request from the RA, the COTP will extend the opportunity for the RA to review response plans for marine transportation-related facilities located in the zone where EPA provides the predesignated Federal On-Scene Coordinator (Inland zone as defined in 40 CFR 300.5). The Coast Guard will retain authority for plan approval for these facilities.

(c) Some oil facilities are composed of both transportation-related and non-transportation-related facilities as defined in the 1971 Memorandum of Understanding between the Environmental Protection Agency and Department of Transportation (36 FR, No. 244, Dec 18, 1971). This combination of transportation-related and non-transportation-related facilities will be considered a complex and will be subject to multi-agency jurisdiction. A response plan will be required for a complex that could reasonably be expected to cause either "substantial harm" or "significant and substantial harm" to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone. The Coast Guard, the EPA, and other Federal agencies are discussing which agency will have ultimate responsibility for response plan requirements for such a complex.

(d) Each plan will be required to address a response to a worst case discharge of oil and substantial threat of such a discharge. Responsible Federal agencies are currently discussing three different criteria to establish the worst case discharge: (1) Loss of the entire facility; (2) loss of the single largest tank or battery of tanks within the same secondary containment system; or (3) the criteria stated in option (2) plus an additional quantity based on risk factors associated with the facility. In addition to the worst case discharge, the Coast Guard is considering a requirement that two other scenarios also be addressed in the plan. They include planning for an average discharge and a maximum most probable discharge. Definitions for these other two discharge scenarios are still under discussion.

(e) Response plans will be required to be consistent with the requirements in the National Contingency Plan (40 CFR part 300) and the Area Contingency Plan.

(f) A qualified individual must be identified in the response plan with authority to activate the plan and obligate funding. A "qualified individual" is a representative of the facility, with written authority to engage in contracting with response companies and to obligate necessary funds from the facility owner or operator to carry out cleanup activities. This individual should have sufficient training to implement initial removal actions.

(g) The response plan will be required to contain a communications network, such as a spill response telephone list, to identify those parties which must be contacted (i.e. Federal, State, and local officials, contractors, and company personnel) and how those communications channels will be established. The individual qualified to activate the response plan must have the means for immediate communication with the appropriate Federal official and the persons providing personnel and equipment for discharge removal.

(h) Facility owners or operators will be required to identify and ensure, by contract or other means acceptable to the Coast Guard, the availability of private personnel and equipment necessary to respond to a discharge. It may be advantageous for facilities to have retainers with cleanup contractors or spill cooperatives for their services. The Coast Guard intends to provide guidelines regarding what type and amount of equipment are required for a spill from a facility of a given capacity. Other factors such as location, environmental sensitivity, and proximity to drinking water supplies will also be considered in determining the type and amount of required response equipment.

(i) The Coast Guard anticipates an oversight and enforcement role in verifying the contractual availability of equipment and personnel between pollution contractors and facilities. The local COTP representative will have the responsibility to determine that local contractors do in fact possess, and maintain in a ready condition, the necessary response inventory to handle the size of spills for which they contract. Some other form of contractor certification may also be considered. In addition, as permitted in section 311(j)(5)(F) of the FWPCA, the Coast Guard will review the contract arrangements between the facility and contractor for the interim period when the response plans are submitted but not yet approved.

(j) The plan will be required to address training, equipment testing, periodic unannounced drills, and the response actions of facility personnel. The regulations will specify criteria describing acceptable levels of training and the frequency of tests and drills. Response actions and assigned personnel will be listed in the facility response plan.

(k) All plans will be required to follow a specific format which has not yet been established. The Coast Guard and EPA have been working together to develop a format that is appropriate for facilities regardless of the agency to which the plan is submitted. Each plan will be required to contain at least the following information:

- Facility—specific information (description, location, owner or operator).
- Emergency notification procedure (name/phone number of Federal, State, local officials to be notified).
- Name of facility response coordinator (qualified individual who can implement the response plan).
- List/location of spill response/fire extinguishing equipment (including equipment staged at facility, spill cooperative equipment, spill contractor equipment, municipal equipment).
- Training of facility response personnel and contractor response personnel.
- Cargo hazard identification including any hazardous chemicals stored in bulk at the oil facility.
- Emergency response procedures, i.e. containment, countermeasures and cleanup activities to be undertaken by facility and/or spill contractor.
- Emergency response scenarios, i.e. worst case discharge, maximum most probable discharge, average discharge, fires/explosions.
- Waste disposal.
- Worker health and safety.
- Potential threat to environment, public health, and safety for each response scenario.
- List of prioritized actions to be initiated for each response scenario.

(l) Facilities required to submit response plans to the COTPs for approval will be required to resubmit plans for approval of each significant change. Examples of significant changes include: A change in facility capacity, configuration or type of oil handled, the name of the person qualified to activate the response plan, or contracting with new cleanup operators. The COTP may also request a facility owner or operator to revise and resubmit a response plan due to a recent discharge from the facility.

(m) Response plans will be required to be updated periodically. Required updating and review by the COTP (when necessary) will be in conjunction with the annual facility inspection conducted by the COTP.

2. Facilities Permitted Under the Trans-Alaska Pipeline Authorization Act

Section 5005 of OPA 90 is a free standing provision establishing additional oil spill removal requirements for a tank vessel transiting Prince William Sound or a facility permitted under the Trans-Alaska Pipeline Authorization Act. The statute does not impose any direct requirements on a vessel or facility or specify which is responsible for the additional equipment, personnel, and training. It does specify that the response plan for each facility or tank vessel shall "provide for" the additional requirements. The Coast Guard does not interpret this section as requiring each individual vessel to independently provide prepositioned equipment and personnel. The Coast Guard's position is that these requirements can be met by a consortium of vessel owners, by a facility, or by independent organizations. This section also requires two practice exercises per year for the additional equipment and personnel in the Prince William Sound area, not to each vessel transiting Prince William Sound. The Coast Guard does intend, however, that the practice exercises involve the participation of facilities and one or more vessels to ensure a realistic exercise.

(a) The response plan for a facility will be required to cover the use of prepositioned oil spill containment and removal equipment in strategic locations

within the geographic boundaries of Prince William Sound, including: escort vessels with skimming capability; barges to receive recovered oil; heavy duty sea boom, pumping, transferring, and lightering equipment; and other equipment to protect the environment and fish hatcheries.

(b) The response plan for a facility will be based on the following:

(i) Establishment of an oil spill removal organization with resources located at appropriate locations in Prince William Sound, consisting of trained personnel in sufficient numbers to immediately remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater.

(ii) Training in oil removal techniques for local residents and individuals engaged in cultivation or production of fish or fish products in Prince William Sound.

(c) A facility permitted under the Trans-Alaska Pipeline Authorization Act and owners or operators of vessels transiting Prince William Sound will be required to participate in practice exercises scheduled by the Coast Guard.

3. Containment and Removal Equipment

The regulations for the containment and removal equipment may address the following areas:

(a) The type, quantity, and capacity of containment and removal equipment required to be available in the event of a spill by the facility.

(b) The periodic inspection, testing, and certification of containment and removal equipment, including the standards of inspection to apply for containment and removal equipment.

(c) The method for enforcement, whether through required record-keeping or other means including Federal, State, or third party monitoring or inspection.

(d) Pollution contractor certification by Federal, State, or third party.

Questions

To adequately address these issues, additional information is needed. Responses to the following questions will be particularly useful in developing a future Notice of Proposed Rulemaking.

Response Plans

1. What information should be required for the facility response plans?

2. How often should the response plans be reviewed and updated?

3. Who should be designated as the qualified individual capable of activating the response plan at a facility?

4. Should operating personnel at a facility be required to do more than attempt to control or stop the discharge and simultaneously report the incident to the Coast Guard, State authorities, local authorities, and the owner/operator of the facility?

5. Should oil spill cleanup contractors listed by a facility (as a condition of approving the facility's response plan) be required to develop a local response plan consistent with the Area Contingency Plan?

6. (a) What is an acceptable response time for spills defined in the National Contingency Plan (40 CFR 300.5) as minor, medium, major or for a worst case discharge, as defined in § 311(a) of the FWPCA?

(b) What is an acceptable response time for an average discharge or maximum most probable discharge?

(c) How is response time best determined? Is response time best measured by distance of the response equipment from the spill, distance from the closest equipment launching facility, or by another means?

7. What criteria should be used in response plans to identify the amount of oil that may be discharged during an average discharge and the maximum most probable discharge?

8. (a) Is a general or corporate response plan adequate for all facilities operated by a facility owner or operator?

(b) Is it preferable for a facility owner or operator to develop and maintain a response plan for each operating facility?

(c) Is it advantageous for the facility owner or operator to develop and maintain an abbreviated local plan, in addition to the general or corporate response plan, for site-specific issues at the facility?

9. Is there an advantage to incorporating response plans as an annex to the facility Operations Manual required under 33 CFR part 154, subpart B?

10. Should plans require an assessment of a local port's municipal capabilities to respond to an oil spill, including fire-fighting capabilities?

11. What additional methods, other than contractual, should the Coast Guard consider to ensure the availability of personnel and equipment to respond to a worst case discharge or threat of discharge?

12. What operational or organizational impact will these regulations have on facilities?

13. What activities are the oil transportation, storage, and refining industries taking with regard to facility response planning in anticipation of Federal regulations and implementation dates established in OPA 90?

14. The following questions pertain to an oil complex subject to multi-agency jurisdiction:

(a) Is it preferable for the response plan to be reviewed and approved jointly by all regulating Federal agencies? Or should one agency be designated as the lead agency for review and approval of response plans (e.g. predesignated Federal On-Scene Coordinator)?

(b) In the event that one agency is designated as the lead agency for review and approval of response plans, what factors should be considered when designating the lead agency?

15. What criteria will provide adequate predictors of "substantial harm" or "significant and substantial harm" to the environment as a result of oil discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone? Criteria under consideration includes but is not limited to operational, locational, natural disaster, spill history, and environmental concerns.

Availability, Amount, and Inspection of Containment and Removal Equipment

16. (a) Should each facility required to have a response plan also be required to stage equipment at the facility for responding to other than a worst case scenario?

(b) How large a discharge should the removal equipment staged at the facility be capable of handling?

17. (a) Are there any recognized industry standards or guidelines for determining equipment necessary for a specific discharge size?

(b) What attempt should be made to standardize the amount and type of containment and removal equipment required to respond to similar spills?

18. What equipment-inspection requirements are appropriate?

19. What major equipment, other than containment booms, skimmers, and vessels, needs to be inspected?

20. (a) How frequently should equipment be inspected?

(b) Should the inspection be the responsibility of the facility owner or operator?

(c) Should third-party inspection be used?

(d) Who should be required to maintain the inspection record, where should it be located, and how long should the inspection record be retained?

21. (a) Should examinations of the equipment be made by Coast Guard

personnel as part of the annual facility inspection?

(b) Should these examinations be conducted during spot checks of facilities?

(c) Should the examination be conducted during or be limited to the periodic drills?

22. What action should be taken if required equipment is missing or in disrepair? The alternatives range from a warning from the COTP along with a strict deadline to provide or repair the equipment to a civil penalty action along with the facility being shut down until the equipment is provided or repaired.

23. What inspection requirements are appropriate for equipment maintained by a cooperative or an independent organization under contract or identified in a facility response plan but not located, staged, or stored at the facility?

24. (a) What, if any, response equipment should be approved by the Coast Guard?

(b) What other means of equipment certification are available or appropriate?

25. (a) Should pollution contractors and spill cooperatives be certified by the Federal or State governments?

(b) Should some type of self-certification, industry certification, or third-party certification be used?

(c) What qualifications should be required of the certifying parties?

26. What factors should be considered in the certification process?

27. (a) What prohibition should there be, if any, on the lending of equipment identified in a response plan to other facilities or agencies?

(b) Should there be some geographical or response time limitation placed on this practice?

28. What involvement, if any, should state or local authorities have in the approval or inspection of response equipment?

Training

29. What training, if any, in the use of containment and removal equipment should be required for facility personnel?

30. What employees at a facility should be required to have response training?

31. (a) What training should be required for spill contractors and cooperatives?

(b) Should training include on-the-job activity when conducting spill response?

32. Should the Coast Guard certify providers of this training?

33. What training in the implementation of the required response plans should be included?

Drills

34. How often should spill response drills be conducted (i.e. quarterly, during annual Coast Guard inspections, during Coast Guard spot checks, etc.)?

35. (a) Should there be a requirement to maintain a record of drills?

(b) Who should be required to maintain the record of drills, where should it be located, and how long should the record be retained?

36. (a) How should drill performance be measured?

(b) What is considered acceptable performance (i.e. boom deployment time)?

(c) What effect should poor performance during a facility drill have on the continued operation of a facility?

Facilities Permitted Under the Trans-Alaska Pipeline Authorization Act in Prince William Sound, Alaska

37. What prepositioned oil spill containment and removal equipment should be required for a facility operating in Prince William Sound?

38. What organization(s) should own the containment and removal equipment and what arrangement must a facility have for its use?

39. (a) What should be the structure of oil spill removal organization(s)?

(b) What should participate, organize, and manage the oil spill removal organization(s)?

40. (a) Who should be responsible for training local residents in oil removal techniques?

(b) What level of training should be expected?

41. Who should be required to participate in the biannual practice exercises?

42. (a) How frequently should the periodic testing and certification of oil spill containment and removal equipment be conducted?

(b) Who should be responsible for periodic testing and certification of oil spill containment and removal equipment? Potential responsible parties include the facility owner, operator, or the oil spill removal organization under contract to the facility.

(c) Who should be required to maintain the testing and certification records, where should they be located, and how long should the testing and certification records be retained?

(d) Should third-party testing and certification be used?

(e) Should examinations of the equipment be made by Coast Guard personnel as part of the annual facility inspection? Should these examinations be conducted during spot checks of facilities?

(f) Should the examination be conducted during or be limited to the periodic drills?

Economic Issues

43. What will be the economic impact of requiring facilities to develop and implement an oil spill response plan?

44. What will be the economic impact for facility owners or operators of maintaining contracts with spill response companies?

45. What will be the economic impact on facility owners or operators of reviewing and updating oil spill response plans?

46. What will be the economic impact on facility owners or operators of maintaining oil spill containment and removal equipment at the facility?

47. What will be the economic impact on the cleanup industry of enhancing containment and removal equipment capabilities?

48. What will be the economic impact on the cleanup industry of some form of certification by Federal or State governments, industry, or an independent third party?

49. What will be the economic impact of requiring facility owners or operators to train and drill personnel in spill response?

50. What will be the economic impact of these regulations on "small entities", under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b))?

Comments are not limited to the above and are invited on any aspect of implementing the requirements for facility response plans and the availability, deployment, and inspection of discharge containment and removal equipment.

Regulatory Impact Analysis

At this early stage in the rulemaking process, the Coast Guard anticipates that any final rule may be considered major under Executive Order 12291. It is significant using a number of criteria under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). This rulemaking will initiate a substantial Federal regulatory program and may have a substantial effect on States that have or are developing facility response plan requirements. It may also affect domestic shipment, storage, and handling of oil. It could possibly affect international shipment of oil to and from the United States and may generate substantial public interest and controversy.

The primary economic impact of these regulations will be on those facility owners that have to comply with any

new requirements. There are 3,500 marine oil transfer facilities currently inspected by the Coast Guard under 33 CFR part 154. Most of these facilities could reasonably be expected to cause "significant and substantial" harm to the environment and will therefore be required to prepare and submit response plans to the Coast Guard for review and approval. The cost to develop a response plan for a small to moderate facility has been estimated at between $20,000 to $70,000. This would put the estimated first year cost for all oil facilities currently regulated under 33 CFR 154.100(a) to develop a response plan between $70,000,000 to $245,000,000. This does not include the cost of any additional pollution response equipment that may be required, the cost of having pollution contractors on retainer, or the cost of belonging to a spill cooperative. In addition, it includes neither the cost of personnel training nor the cost of conducting routine response drills.

An additional unknown number of marine transportation-related facilities which handle oil and are currently regulated by the Coast Guard under 33 CFR 154.100(b) may also reasonably be expected to cause either "substantial" or "significant and substantial" harm to the environment. These facilities will also be required to prepare and submit response plans to the Coast Guard and, if applicable, be subjected to Coast Guard review and approval of the plans. These regulations may also impact private spill cleanup contractors and oil spill cooperatives.

An indirect financial impact may occur for vessels carrying oil in United States waters. These vessels include the 3,950 United States-flag tank vessels (ships and barges) inspected by the Coast Guard and approximately 1,200 foreign-flag tank vessels, based on the number of these vessels that called in United States waters in 1990. These vessels may expect to rely on facility response plans to augment their own vessel response plans required under Section 311(j)(5) of the FWPCA. Facility response plans may lessen the financial burden on these vessels.

Two alternatives for implementing the rulemaking for response plans for marine transportation-related facilities have been identified: (1) Requiring response plans for all marine transportation-related facilities; and (2) requiring response plans for marine transportation-related facilities that could reasonably be expected to cause either "substantial harm" or "significant and substantial harm" to the environment by the discharge of oil into or on the navigable waters of the United States, adjoining shorelines, or the exclusive economic zone.

The full extent of the economic and operational impact cannot be quantified at this stage. The primary purpose of this ANPRM is to help the Coast Guard to develop the regulations and to determine the cost of any new requirements, to the extent that they exceed current legal and regulatory requirements or current industry practice. The Coast Guard anticipates that the public response to this ANPRM will assist it in writing proposed rules and a draft regulatory impact analysis.

Collection of Information

The Coast Guard cannot yet estimate the paperwork burden associated with this rulemaking since it remains to be determined which facilities will be required to prepare plans. However, at a future stage, the Coast Guard will require that affected facility owners or operators prepare and submit response plans, retain records of response plan approvals, and equipment inspections. These records must be available for examination upon request by the Coast Guard. The Coast Guard expects that comments received on this ANPRM will assist it in estimating the potential paperwork burden, as required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Once determined, the Coast Guard will submit this record-keeping requirement to the Office of Management and Budget for approval.

Small Entities

There is a potential significant impact on a substantial number of small businesses, small not-for-profit organizations, and small State and local governments. Because specific requirements have not yet been proposed, the Coast Guard is currently unable to determine the effect of regulations upon small entities. The Coast Guard expects that the comments received on this ANPRM will assist it in determining the number of affected small entities, and in weighing the impacts of various regulatory alternatives for the purpose of drafting these regulations. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as small business concerns under section 3 of the Small Business Act (15 U.S.C. 632).

If you think that your business qualifies as a small entity and that this rulemaking will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Environment

This proposed rulemaking should have a positive impact on the environment by ensuring that oilspill response plans are available for facilities for the purpose of enhancing preparedness to contain and recover spills of these products. Before a proposed rule is published, a document will be prepared in accordance with Coast Guard publication COMDTINST M16475.1B, "Implementing Procedures and Policy for Considering Environmental Impacts Under the National Environmental Policy Act". That document, which will describe the anticipated environmental effects of the proposed rulemaking, will be placed in the docket for inspection or copying at a location indicated in the proposed rule. The Coast Guard invites comments addressing possible effects this proposal may have on the human environment, or on potential inconsistencies with any Federal, State, or local law or administrative determinations relating to the environment. A final determination regarding the scope of the environmental assessment will be made after receipt of relevant written comments.

Federalism

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Based on the information available to it at this time, the Coast Guard is unable to determine whether this rulemaking would have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Oil Pollution Act of 1990 prohibits Federal preemption. However, some standardization of response plan requirements is necessary since facilities may be regulated by other Federal agencies and some States may impose Federal response plan requirements. Many facilities operate in the national marketplace and excessive variation in the requirements would be economically burdensome and potentially unsafe. The Coast Guard specifically seeks public comment on the federalism implications of this proposal.

Dated: March 6, 1992.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

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Wednesday
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Part III

The President

Executive Order 12791—Nuclear Cooperation With Euratom

Federal Register
Vol. 57, No. 48
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Presidential Documents

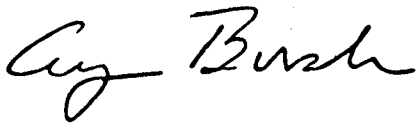
Title 3—

The President

Executive Order 12791 of March 9, 1992

Nuclear Cooperation With Euratom

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 126(a)(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to section 126(a)(2) of such Act and extended for 12-month periods by Executive Orders Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, 12587, 12629, 12670, 12706, and 12753, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1993. Executive Order No. 12753 shall be superseded on the effective date of this Executive order.



THE WHITE HOUSE,
March 9, 1992.

[FR 92-5880
Filed 3-9-92; 5:00 pm]
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